

Appendix Five

Country Survey: Zambia

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1. Introduction

On 11 March 2020, the World Health Organisation (WHO) declared the coronavirus disease (COVID-19) a global pandemic. Zambia recorded its first COVID-19 case on 18 March 2020. This report provides an overview of the Zambian government's response to the coronavirus pandemic from the period March 2020 to February 2021.

2. Available constitutional mechanisms to respond to COVID-19

The Constitution makes provision for a State of Public Emergency.¹ Only the President, in consultation with the Cabinet, can make this declaration and this should be published in the Gazette.² Unless extended through an approval by the National Assembly before expiry, the declaration will expire after seven days.³ A State of Public Emergency declaration may, at any time before it has been approved by a resolution of the National Assembly, be revoked by the President by a Proclamation published in the Gazette.⁴

The Constitution also makes provision for a Threatened Emergency which is a pre-emptive approach to a pending emergency.⁵ The President can declare a Threatened Emergency if a situation exists which, if allowed to continue, may lead to a State of Public Emergency.⁶ A proclamation by the President must be published in the Gazette. The conditions and duration of a Threatened Emergency is the same as that of a Public Emergency.⁷

The Constitution also makes emergency provisions with regard to the derogation from fundamental rights and detention, except for non-derogable rights such as the right to protection from torture, inhuman and degrading punishment or treatment.⁸ These rights may not be derogated even when a

¹ Article 30, Zambia Constitution of 1991.

² Article 30, Zambia Constitution.

³ Article 30 (2), Zambia Constitution.

⁴ Article 30 (2), Zambia Constitution.

⁵ Article 31, Zambia Constitution.

⁶ Article 31 (2), Zambia Constitution.

⁷ Article 31, Zambia Constitution.

⁸ Article 25, Zambia Constitution.

declaration of Public Emergency is in force.⁹ These emergency provisions, although not invoked in respect to COVID-19, are further explained in the Emergency Powers Act.¹⁰

The Disaster Management Act makes provisions for man-made and natural disasters causing serious disruption in the functioning of a community or society.¹¹ This Act guides the prevention and reduction of the risk of disasters, while also providing for mitigation efforts, preparedness, and rapid and effective response to disasters.¹²

While these provisions exist, the Zambian government did not invoke or declare them in the context of COVID-19. The Chief Government Spokesperson stated that a full lockdown would not have worked in Zambia because the majority of citizens, who live from hand-to-mouth would not have survived.¹³

3. Relevant legislative provisions invoked

The government invoked provisions of the Public Health Act (PHA) in its response to COVID-19 in compliance with legislation.¹⁴ The Act regulates public health matters and provides the Minister of Health with powers to declare a disease as a notifiable infectious disease through a statutory notice,¹⁵ and also grants the Minister powers to make regulations.¹⁶ On 13 March 2020, the Minister of Health declared COVID-19 a notifiable infectious disease through a Statutory Instrument¹⁷ and issued a set of regulations outlining measures aimed at containing the spread of COVID-19 including the restriction of free movement of persons suspected of suffering from COVID-19.¹⁸

Failure to comply with these instruments attracts a fine of 2,500 penalty units (K750.00 or \$35) or imprisonment for a maximum period of six months; or to both a fine and imprisonment.¹⁹

⁹ Article 25, Zambia Constitution of 1991.

¹⁰ The Emergency Powers Act of 1964.

¹¹ Zambia Disaster Management Act 13 of 2010.

¹² Section 2, Disaster Management Act.

¹³ Chris Phiri 'A total lockdown cannot work in Zambia' *Zambia Reports* 7 April 2020 <https://zambiareports.com/2020/04/07/total-lockdown-cannot-work-zambia-govt/> Accessed 8 June 2021.

¹⁴ Public Health Act of 1995.

¹⁵ Section 9(2), Public Health Act

¹⁶ Section 12, Public Health Act.

¹⁷ Public Health (Notifiable Infectious Disease) Declaration Notice, No. 21 of 2020, dated 13 March 2020;

¹⁸ Public Health (Infected Areas) (Coronavirus Disease 2019) Regulations, No. 22 of 2020 dated 13 March 2020.

¹⁹ F Kalunga 'Executive Disorder, Constitutionalism and Covid-19 in Zambia' African Network of Constitutional Lawyers Blog 2 May 2020 <https://ancl-radc.org.za/node/632> Accessed 25 May 2021.

4. Procedure, legality and constitutionality of rights-limiting measures

The Public Health Act only limits certain individual rights, but does not authorise the derogation of fundamental rights which, according to the Constitution, can only be suspended when in war or during a Public Health Emergency.²⁰ The Public Health Act further provides that measures taken by the Minister of Health for managing infectious diseases must be prescribed by a statutory instrument or notice.²¹

Interestingly, in addition to the regulations contained in the Statutory Instruments, other measures were made through Presidential announcements during national addresses.²² These announcements included restrictions relating to the movement of people, the mandatory wearing of face masks, and the prohibition of gatherings of more than 50 people. While the President is the Head of State, his announcements did not emanate from either the Public Health Act nor from the two Statutory Instruments gazetted by the Minister of Health.²³ This raises questions regarding the legal backing of these measures.²⁴ Annexure 2 provides a brief summary of the measures announced by the President in his national addresses.

²⁰ Article 25 and 30, Zambia Constitution.

²¹ Section 9(2) and 1, Public Health Act.

²² President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, President Lungu Responds To Covid-19 Surge, 13 January, 2021, https://www.sh.gov.zm/?wpfb_dl=286 Accessed 28 May 2021; President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Third National Address on Covid-19, 24 April, 2020, https://www.sh.gov.zm/?wpfb_dl=225 Accessed 28 May 2021; President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 9 April, 2020, https://www.sh.gov.zm/?wpfb_dl=216 Accessed 28 May 2021; President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 25 March, 2020, https://www.sh.gov.zm/?wpfb_dl=213 Accessed 28 May 2021.

²³ F Kalunga 'Executive Disorder, Constitutionalism and Covid-19 in Zambia' African Network of Constitutional Lawyers Blog, 2 May 2020, <https://ancl-radc.org.za/node/632> Accessed 25 May 2021.

²⁴ University of Pretoria, 'Centre for Human Rights COVID-19 Response: Zambia' <https://www.chr.up.ac.za/covid19-database/zambia> Accessed 1 May 2021.

5. Stakeholder consultations and engagements

There is evidence of a degree of stakeholder consultation with the different arms of government, civil society, the academic community and the broader public in Zambia's COVID-19 response,²⁵ however the extent of these consultations is not clear.

In terms of the various arms of government, at the onset of the virus, the National Assembly was one of the first institutions to be suspended. As a result, parliament could not play its oversight role in the decision-making process in response to the virus.²⁶ Furthermore, the suspension of parliament reduced the chances of the statutory approval of executive actions. Perhaps this also lends to the reason why a State of Public Emergency was not declared because it would have required parliamentary approval which would not have been possible due to the suspension. It is further argued that the ruling party politicised the pandemic and used it as a pretext to suspend parliament in fear that the Constitution Amendment Bill would be defeated in parliament.²⁷ Moreover, at the onset of the pandemic the Judiciary scaled down operations and postponed a number of sessions of the Supreme Court, Constitutional Court and Court of Appeal.²⁸

The Cabinet consulted on a number of occasions to approve decisions relating to COVID-19. The Minister of Finance was instrumental in putting in place regulations to mitigate the economic costs of the virus and approving the signing of economic stimulus packages to improve the economy's reduced liquidity levels.²⁹ The Minister of Health, who led the medical response, undertook and launched a national strategy that encouraged public compliance with public health measures.³⁰ A number of human rights violations took place during the enforcement of COVID-19 regulations which the Zambian Human Rights Commission condemned by calling for the observance and respect for human

²⁵ University of Pretoria, 'Centre for Human Rights COVID-19 Response: Zambia' <https://www.chr.up.ac.za/covid19-database/zambia> Accessed 1 May 2021.

²⁶ University of Pretoria, 'Centre for Human Rights COVID-19 Response: Zambia' <https://www.chr.up.ac.za/covid19-database/zambia> Accessed 1 May 2021.

²⁷ University of Pretoria, 'Centre for Human Rights COVID-19 Response: Zambia' <https://www.chr.up.ac.za/covid19-database/zambia> Accessed 1 May 2021.

²⁸ F Kalunga 'Executive Disorder, Constitutionalism and Covid-19 in Zambia' *African Network of Constitutional Lawyers Blog*, 2 May 2020, <https://ancl-radc.org.za/node/632> Accessed 30 May 2021.

²⁹ Effective States and Inclusive development Blog, 'Zambia's response to Covid-19' 28 April 2020, <https://www.effective-states.org/zambias-response-to-covid-19/> Accessed 30 May 2021.

Office of the President (2020) *Press statement by special assistant to the president (press and public relations) Mr Isaac Chipampe on the decisions made by cabinet at the 16th Cabinet meeting held at Mulungushi International Conference Centre*, 22 June, 2020, https://www.sh.gov.zm/?wpfb_dl=251 Accessed 28 May 2021.

³⁰ AM Kanduzi (2020) In the moment of making History: The case of COVID-19 in Zambia *Yesterday and Today*, Vol. 24, p.269.

rights during the enforcement of regulations.³¹ The Minister of Home Affairs, has also been vocal against the use of violence by law enforcement to enforce the restrictions.³²

There is limited information on the government's engagement with civil society. However, it is noted that civil society organisations have resisted some measures proposed by the government.³³ As part of efforts to alleviate the socio-economic burden on citizens, the government engaged with the private sector to consider waiving rentals from businesses that suffered during the pandemic.³⁴

6. Decision making body in charge of COVID-19 decisions and regulations

It is not clear who the main decision-making body responsible for COVID-19 decisions and regulations in Zambia is. In the various announcements made by the President in his national addresses, reference is made to bodies such as the Council of Ministers on Disaster Management, the Multi-Sectoral Team, and the team of Health Experts that have influenced and shaped the country's COVID-19 response.³⁵ There is confusion over which of these bodies is the primary decision-maker, how each body is composed, and the role that they each play in the decision-making process.

What is clear, however, is that the Minister of Health and the President have and continue to play a prominent role in the overall making of COVID-19 decisions and regulations. The Minister of Health

³¹ Human Rights Commission of Zambia (2020), *HRC calls for observance of respect for human rights during the enforcement of guidelines on preventing the spread of coronavirus*, 13 April 2020, <http://www.hrc.org.zm/index.php/multi-media/news/349-hrc-calls-for-observance-of-respect-for-human-rights-during-the-enforcement-of-guidelines-on-preventing-the-spread-of-coronavirus-2> Accessed 28 May 2021.

³² Effective States and Inclusive Development 'Zambia's response to COVID-19', 28 April 2020, <https://www.effective-states.org/zambias-response-to-covid-19/> Accessed 28 May 2021.

³³ Effective States and Inclusive Development 'Zambia's response to COVID-19', 28 April 2020, <https://www.effective-states.org/zambias-response-to-covid-19/> Accessed 28 May 2021.

³⁴ 'Coronavirus in Africa: Zambia says its citizens won't survive lockdown,' *IOL News*, 7 April 2020 <https://www.iol.co.za/news/africa/coronavirus-in-africa-zambia-says-its-citizens-wont-survive-lockdown-46400420> Accessed 1 May 2021.

³⁵ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, President Lungu Responds To Covid-19 Surge, 13 January, 2021, https://www.sh.gov.zm/?wpfb_dl=286 Accessed 28 May 2021; President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Third National Address on Covid-19, 24 April 2020, https://www.sh.gov.zm/?wpfb_dl=225 Accessed 28 May 2021; President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 9 April 2020, https://www.sh.gov.zm/?wpfb_dl=216 ; President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 25 March 2020, https://www.sh.gov.zm/?wpfb_dl=213 Accessed 28 May 2021.

issued two Statutory Instruments and regulations which have a direct bearing on controlling the spread of the coronavirus³⁶ It is not clear if the Minister promulgated the regulations on his own and without consultation with other Cabinet ministers and stakeholders as this information is not available.

Most of the measures taken by the country in response to COVID-19 were done through a series of Presidential announcements.³⁷ The first set of measures were announced on 25 March 2020 and included amongst others, the restriction on public gatherings to not more than 50 people; the closure of restaurants, bars, night clubs, cinemas, gyms and casinos; and the suspension of non-essential foreign travel.³⁸ These measures were extended on 9 April 2020.³⁹ The President provided further measures in his speeches on 24 April 2020 and 13 January 2021 respectively.⁴⁰

It is important to note that these measures were mere announcements, and were not gazetted, therefore having no legal backing.⁴¹ It is not clear where the mandate and authority for these measures emanate from and it is not evident on what basis decisions were made to amend (extend, remove or limit) these measures including the process of consultation and engagement followed by the President (and the Minister of Health). Annexure 2 provides a summary of the measures announced by the President and the changes made over time.

7. Summary of COVID-19 regulations

The Public Health Regulations issued by the Minister of Health in the Statutory Instrument relate to issues such as entry and exit from infected areas, the proper procedure for the disposal of bodies, and sanitation and hygiene in public premises. The measures announced by the President relate to issues

³⁶ Public Health Regulations, No. 22 of 2020, Public Health (Amendment) Regulations, 2020 dated 10 July 2020 (Statutory Instrument No. 62 of 2020).

³⁷ University of Pretoria, 'Centre for Human Rights COVID-19 Response: Zambia,' <https://www.chr.up.ac.za/covid19-database/zambia> Accessed 1 May 2021; F Kalunga 'Executive Disorder, Constitutionalism and Covid-19 in Zambia' African Network of Constitutional Lawyers Blog, 2 May 2020, <https://ancl-radc.org.za/node/632> Accessed 1 May 2021.

³⁸ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 25 March, 2020, https://www.sh.gov.zm/?wpfb_dl=213 Accessed 28 May 2021.

³⁹ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 9 April, 2020, https://www.sh.gov.zm/?wpfb_dl=216 Accessed 28 May 2021.

⁴⁰ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, President Lungu Responds To Covid-19 Surge, 13 January, 2021, https://www.sh.gov.zm/?wpfb_dl=286 Accessed 28 May 2021; President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Third National Address on Covid-19, 24 April 2020, https://www.sh.gov.zm/?wpfb_dl=225 Accessed 28 May 2021.

⁴¹ F Kalunga 'Executive Disorder, Constitutionalism and Covid-19 in Zambia' African Network of Constitutional Lawyers Blog, 2 May 2020, <https://ancl-radc.org.za/node/632> Accessed 30 May 2021.

such as the wearing of face masks and limitations of public gathering. Lists of these measures are provided in Annexure 1 and 2.

8. Challenges

There have not been any legal challenges to the regulations, however, there are a number of practical issues that have emerged. Firstly, as highlighted earlier, the measures announced by the President are without any legal backing, which makes it difficult for citizens to ascertain the exact state of affairs in the country in terms of complying with COVID-19 measures.⁴² This was exemplified in August 2020 when the Zambian Police spokesperson announced that the police would arrest and fine citizens to the equivalent of \$39 for not wearing masks in public. Shortly after this announcement, the Minister of Home Affairs rescinded the decision as it became apparent that there was no legal basis for it in the health regulations.⁴³

Secondly, in June 2020 the Zambia Police Service together with the Human Rights Commission and UN Development Program drafted and adopted the COVID-19 Standard Operating Enforcement Procedures (SOP) set to guide security and law enforcement officers in enforcing COVID-19 measures.⁴⁴ While the SOP places an emphasis on the upholding of human rights, it is reported that police have harassed, intimidated and arbitrarily detained citizens while enforcing movement restrictions.⁴⁵

9. Conclusion

The government response to the COVID-19 pandemic has been characterised by, on the one hand, the regulations gazetted by the Minister of Health and, on the other hand, the measures announced by

⁴² University of Pretoria, 'Centre for Human Rights COVID-19 Response: Zambia' <https://www.chr.up.ac.za/covid19-database/zambia> Accessed 1 May 2021.

⁴³ L Kasonde 'Covid-19, Human Rights and Zambia's 'new normal' *Daily Maverick*, 21 August 2020, <https://www.dailymaverick.co.za/article/2020-08-21-covid-19-human-rights-and-zambias-new-normal/> Accessed 1 June 2021.

⁴⁴ Zambia Police (2020) 'Zambia Police Launches Standard Operating Procedure on COVID-19' <http://www.zambiapolice.gov.zm/index.php/112-news/372-zp-launches-standard-operating-procedure-on-covid19> Accessed 30 May 2021.

⁴⁵ Amnesty International (2020) 'Zambia' <https://www.amnesty.org/en/countries/africa/zambia/report-zambia/> Accessed 30 May 2021.

the President through national addresses. This mismatch creates confusion amongst those who enforce the regulations as well those subject to enforcement. The fact that there is limited information pertaining to the body in charge of decision-making of regulations, and the process followed to amend, renew or extend measures is also a noteworthy challenge.

10. Annexures

Annexure 1: Public Health Regulations, dated 13 March 2020 - Sections 3 - 14

3. Conversion of building as hospital, observation camp or station

The ministry responsible for health may convert a suitable building to a hospital, observation camp or station for the purpose of placing a person suffering or suspected to be suffering from, or who has been in contact with a person suffering from COVID-19.

4. Exit from hospital, observation camp or station

(1) A person shall not leave a hospital, observation camp or station referred to in regulation 3 without the permission of an authorised officer.

(2) A person shall comply with any direction of the authorised officer under sub-regulation (1).

5. Entry or exit from infected area

(1) A person shall not enter or leave an infected area without—

(a) the permission of an authorised officer in a local authority of the infected area; and

(b) complying with any direction given by an authorised officer in a local area.

(2) Subject to sub-regulation (1) a person who intends to enter or leave an infected area may, before entering or leaving the infected area, be required to undergo the following:

(a) medical examination;

(b) disinfection; or

(c) remain for a specified period in a hospital, an observation camp or station converted under regulation 3.

6. Disposal of body

The body of a person who has died from COVID-19 shall be disposed of in conformity with the directions of an authorised officer.

7. Entry into premises for enquiry

An authorised officer may enter premises to search for a case of COVID-19 or to enquire whether there is or has been a case of COVID-19.

8. Informing authorised officer in local authority or public health facility

A person who becomes aware or has reason to suspect that another person has died or is suffering from COVID19 shall immediately inform the nearest authorised officer in a local authority or a public health facility.

9. Restriction on gathering

A public ceremony or gathering of more than five persons, not being a family, shall not be held in an infected area without the written permission of a local authority or Medical Officer of Health.

10. Prohibition or restriction on trade

(1) An authorised officer may prohibit or restrict the trade of food products and ready to eat foods from and in any location which may pose a danger to health of the consumers and the traders.

(2) An authorised officer may, in accordance with sub-regulation (1), institute measures for preventing or limiting the danger to health.

11. Prohibition or restriction on trading or vending in unsanitary conditions

An authorised officer shall prohibit or restrict trading in or vending of food in unsanitary conditions.

12. Sanitation and hygiene in public premises

(1) An authorised officer may inspect public premises in order to ensure that it has sufficient sanitation and hygiene to prevent the occurrence or transmission of COVID-19.

(2) An authorised officer may order the cleaning or closure of a public premise or burial of any contaminated water body where the authorised officer determines that public premises or a water body does not have sufficient sanitation and hygiene to prevent the occurrence or transmission of COVID-19.

13. Effecting of measures

The measures referred to in these Regulations will be effected if the urgency category levels described in the Schedule reach the alert level.

14. General offence

A person who fails to comply with a direction, prohibition or restriction of an authorised officer or otherwise contravenes these Regulations commits an offence and is liable, on conviction, to a fine not exceeding two thousand five hundred penalty units or to imprisonment for a term not exceeding six months, or to both.

Schedule (Regulation 13)

The Urgency Category Levels are as follows:

- (a) "alert level" conveying the highest level of importance and warranting immediate action or attention;
- (b) "advisory level" requiring the provision of important information for a specific incident or situation and does not require immediate action; or
- (c) "update level" requiring the provision of updated information for a specific incident or situation and unlikely to require immediate action.

Annexure 2: Summary of President of Zambia COVID-19 Measures

President's COVID-19 Measures issued on 25 March 2020

The President announced that on Thursday 26th march, 2020 some of the following measures will take effect for an initial period of 14 days to contain the spread of Covid-19:

- Public gatherings such as conferences, weddings, funerals, and festivals are to be restricted to not more than 50 people, subject to compliance with public health authority guidelines;
- Restaurants can only operate on a take-away, and delivery basis;
- All bars, night clubs, cinemas, gyms and casinos must close;
- The government suspended non-essential foreign travel, particularly, to countries which have confirmed Covid-19 cases;

- The Zambian missions abroad and the department of immigration must be alert to reviewing the issuance of visas for people wanting to travel to Zambia, as well as at all ports of entry;
- Travellers will be allowed entry into Zambia, but those who exhibit symptoms will be quarantined in a medical facility for treatment, while all other travellers without symptoms will be quarantined for at least 14 days at their own cost.⁴⁶

President's COVID-19 Measures issued on 9 April 2020

The President extended the above measures to another two weeks given the success it had on controlling the spread of the virus.⁴⁷ The President further requested as a measure to include the wearing of masks and social distancing and sanitising measures.

President's COVID-19 Measures issued on 24 April 2020

The President relaxed the measures and allowed the following being undertaken normally subject to adhering to public health regulations, guidelines and certifications:

- Places of worship may congregate while observing social distancing, mandatory face masks and sanitising and hand washing guidelines.
- Sporting activities such as golf and tennis, which do not involve physical contact between players where the sport is played in non-crowded space, can begin to be played but bars in those premises will remain closed.
- Barbershops and salons may continue to operate
- Failure to adhere to the public health regulations, guidelines and certification, will attract penalties including revoking of licences at any given time.⁴⁸

⁴⁶ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 25 March 2020, https://www.sh.gov.zm/?wpfb_dl=213 Accessed 2 June 2021.

⁴⁷ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Statement on the Covid-19 pandemic, 9 April, 2020, https://www.sh.gov.zm/?wpfb_dl=216 Accessed 2 June 2021.

⁴⁸ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, Third National Address on Covid-19, 24 April, 2020, https://www.sh.gov.zm/?wpfb_dl=225 Accessed 2 June 2021.

President's COVID-19 Measures issued on 13 January 2021

The President made a clarion call aligned to the Public Health Act and COVID-19 associated Statutory Instruments Nos. 21, 22 and 62 of 2020 that:

- All citizens must wear masks and practice good hand hygiene when in public places and gatherings.
- All public facilities and hosts of public gatherings must ensure provision of hand washing facilities or alcohol-based hand sanitisers and enforce the use of masks in these facilities.
- Local authorities will facilitate disinfection of conveyances and public places including markets, bus stops and stations, shopping malls, places of worship, schools and office places;
- The owners of the public vehicles are directed to ensure passengers wear masks and are provided with hand hygiene facilities before embarking onto the vehicles.
- Drivers flouting the rules will have their licences revoked.
- Enforcement of public health measures in bars must be in place and the conditions for opening bars must be adhered to.
- Failure to adhere to these measures may lead to the withdrawal of trading and liquor licences.⁴⁹

⁴⁹ President of the Republic of Zambia, Dr. Edgar Chagwa Lungu, President Lungu Responds to Covid-19 Surge, 13 January 2021, https://www.sh.gov.zm/?wpfb_dl=286 Accessed 2 June 2021.