



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

ZAMBIA

1. The Committee against Torture considered the second periodic report of Zambia (CAT/C/ZMB/2) at its 824th and 827th meetings, held on 8 and 9 May 2008 (CAT/C/SR.824 and 827), and adopted, at its 831st meeting and 832nd meeting, on 14 and 15 May 2008 (CAT/C/SR.831 and 832), the concluding observations as set out below.

A. Introduction

2. The Committee welcomes the report of Zambia, the open and frank dialogue held with the high-level delegation, and the replies to the questions raised during the dialogue. The Committee also welcomes the efforts made by the State party to acknowledge the challenges and difficulties faced in the implementation of the Convention. The Committee regrets, however, that the State party was unable to implement all the recommendations made by the Committee during the consideration of the initial report of Zambia, in 2001.¹

¹ *Official Records of the General Assembly, Fifty-seventh session, Supplement No. 44 (A/57/44), paras. 59-67.*

B. Positive aspects

3. The Committee welcomes the following positive developments:

(a) The ratification of the Rome Statute of the International Criminal Court, on 13 November 2002;

(b) The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 24 April 2005;

(c) The establishment of the National Constitutional Conference (Act No. 19 of 2007) mandated to undertake a constitutional reform process;

(d) The abolition of corporal punishment through the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003, the Penal Code (Amendment) Act No. 10 of 2003, the Education Act (Amendment) Act No. 11 of 2003, and the Prisons (Amendment) Act No. 16 of 2004;

(e) The Prisons (Amendment) Act No. 16 of 2004, which provides for the establishment of a health-care service in prisons; the release of prisoners on parole by the Commissioner of Prisons on the recommendation of the Parole Board; and the discharge from prison of any terminally ill prisoner, upon approval of the Minister;

(f) The enactment of guidelines in 2003 by the Ministry of Home Affairs stipulating standards for the interrogation of suspects and the treatment of persons in custody;

(g) The creation of the Zambia Police Forensic Laboratory, available to officers in Lusaka, offering police investigators qualitative scientific methods of investigating crime rather than relying on confession statements.

C. Subjects of concern and recommendations

Definition of torture

4. The Committee reiterates its concern expressed in its previous conclusions and recommendations² with regard to the fact that the State party has neither incorporated the Convention into its legislation nor introduced corresponding provisions in respect of several articles, in particular:

(a) The definition of torture (art. 1);

(b) The criminalization of torture (art. 4);

² Ibid., para. 64.

- (c) The prohibition of cruel, inhuman or degrading treatment in the penal system (art. 16);
- (d) Recognition of torture as an extraditable offence (art. 8);
- (e) Systematic review of interrogation rules (art. 11);
- (f) Jurisdiction over acts of torture, including those committed abroad (art. 5).

The Committee reiterates its previous recommendations and urges the State party to incorporate speedily the Convention into its legal system and to include in its criminal legislation and other provisions criminalizing acts of torture a definition of torture that covers all the elements contained in article 1 of the Convention and appropriate penalties that take into account the grave nature of such acts.

Absolute prohibition of torture

5. The Committee is concerned that article 25 of the State party's Constitution does not clearly stipulate the absolute prohibition of torture, regardless of whether a state of war or a public emergency has been declared (art. 2).

The State party should incorporate in its Constitution and other laws the principle of an absolute prohibition of torture whereby no exceptional circumstances whatsoever may be invoked to justify it.

Non-refoulement and extradition

6. The Committee welcomes the cooperation between the State party and the Office of the United Nations High Commission for Refugees, which aims to strengthen the State party's capacity to protect refugees, and notes with appreciation the positive steps already taken by it to recognize the need to replace the 1970 Refugees Control Act by a revised refugee bill. It is concerned, however, that the Refugee Control Act currently in force does not explicitly provide for protection against non-refoulement and that the current expulsion, return and extradition procedures and practices may expose individuals to the risk of torture (art. 3).

The State party should ensure that the new Refugee Bill and the Immigration and Deportation Act fully comply with article 3 of the Convention. The State party should also provide the Committee with detailed information on cases of denial of extradition, return or expulsion owing to the risk that the person might be subjected to torture, ill-treatment or the death penalty upon return.

7. The Committee notes that the State party makes extradition contingent on the existence of an extradition treaty and that the Extradition Act allows for extradition of offenders from and to Commonwealth countries. The Committee is however concerned by the fact that the State party, when it receives a request for extradition from another State with which it has no extradition treaty, does not invoke the present Convention as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention (arts. 7 and 8).

The State party should take appropriate legislative and administrative measures to ensure that the present Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention when it receives a request for extradition from any other State party with which it has no extradition treaty, while at the same time observing the provisions of article 3 of the Convention.

Obligation to investigate and the right to complain

8. The Committee notes with satisfaction that the Human Rights Commission is allowed to conduct prison and police cells inspections. However, it is concerned that it does not have sufficient financial and human resources to conduct such visits nor the power to take action against persons found guilty, as it can only make recommendations to the competent authorities. The Committee also expresses concern about the frequent failure by the State party to implement the Commission's recommendations and that the Commission is not competent to initiate legal proceedings on behalf of complainants (art. 11).

The State party should provide the Human Rights Commission with sufficient financial and human resources and allow it to receive financial support without the prior agreement of the President. It should also reinforce the independence of the commissioners, especially with regard to the appointment process, and enhance the enforcement power of the Commission. Additionally, the State party should ensure that the Commission is competent to initiate legal proceedings and that its recommendations are fully and promptly implemented by the authorities to whom they are directed.

9. While noting that the State party has begun the process of drafting a prosecution policy, the Committee is concerned that, despite the State party's commitment expressed seven years ago,¹ no measures have been taken to remove the function of prosecution from the police to the Director of Public Prosecutions (art. 12).

The State party should ensure the prompt enactment of an adequate prosecution policy in order to ensure a fully independent complaint mechanism for victims of torture. In that regard, it should remove the function of prosecution from the police to the Director of Public Prosecutions in order to guarantee the suspect's rights in the administration of justice.

10. While noting that officers found guilty by the Police Public Complaints Authority have been charged with administrative sanctions, the Committee regrets the absence of prosecution of perpetrators of torture and cruel, inhuman or degrading treatment, as well as the lack of appropriate penalties for such perpetrators. The Committee is also concerned at the lack of appropriate compensation for victims of torture (arts. 4 and 14).

The State party should ensure adequate prosecution of perpetrators of acts of torture and appropriate compensation, including full rehabilitation for victims of torture. In that regard, the State party should include in its next periodic report statistical information on the number of cases of torture brought to courts and on compensation received by victims.

Fundamental safeguards

11. The Committee notes with concern that the police service rely on the judges' rules, which are not enforceable, for guidance on the procedures to be followed by police officers in detaining and questioning suspects. The Committee also expresses concern that there are no formal rules ensuring the right to contact relatives, the right of access to a lawyer, including for children, and medical examination from the outset of detention (arts. 2 and 11).

The State party should consider amending its Code of Criminal Procedure and take effective measures to ensure that fundamental legal safeguards for persons detained by police officers are respected, including the right to inform relatives, have access to counsel and independent medical assistance from the outset of detention.

12. The Committee, while welcoming the setting-up of the Forensic Laboratory in Lusaka, regrets that only police officers working in that location can investigate efficiently (art. 11).

The State Party should establish forensic laboratories in all provincial centres and provide training in the use of such laboratories.

Administration of justice

13. The Committee notes the efforts made by the State party to punish police and prison officers for torture, abuses or violations of human rights. It remains concerned however, about the fact, acknowledged by the State party, that most people living in the State party are unaware of their rights and thus unable to present their allegations before appropriate authorities or tribunals (art. 13).

The State party should undertake awareness-raising campaigns in order to ensure that all persons in the State party are aware of their rights, as envisaged in article 13 of the Convention.

14. While welcoming the fact that law enforcement personnel do not rely on confession statements unless other independent evidence has been obtained, the Committee notes with concern that there is no legislation or other measures to ensure that any statement made as a result of torture cannot be invoked as evidence in any proceedings (art. 15).

The State party should adopt all necessary legislative, judicial or administrative measures to ensure the strict application of article 15 of the Convention and should provide detailed information to the Committee on any cases where such evidence has been excluded or used and on measures implemented.

Systematic review of detention facilities and living conditions in prisons

15. The Committee welcomes the numerous administrative and other measures taken to improve the conditions of detention and the State party's commitment to continue these efforts. However, the Committee reiterates the concerns expressed in its previous concluding observations¹ about the severe overcrowding in detention facilities, the still poor physical conditions prevailing in prisons and the lack of hygiene and adequate food. The Committee is also concerned at the use of a reduced diet as a form of punishment (art. 16).

The State party should take urgent measures to bring conditions in detention centres into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The State party should allocate all material, human and budgetary resources necessary for this purpose and give priority to:

- (a) Reducing overcrowding and the high number of prisoners in detention;**
- (b) Improving food provision for detainees;**
- (c) Speedily abolishing the law and the practice of reduced diets.**

16. The Committee, while welcoming the amendment of the Prisons Act of 2004 providing for the establishment of a health-care service in prisons, which would enable prison services to employ competent medical personnel to attend to the health needs of inmates, is concerned at the prevalence of diseases such as HIV/AIDS and tuberculosis and the high contamination rate of inmates and prison officers due to overcrowding and the lack of adequate health care (art. 16).

The State party should speed up the establishment of health-care services in prisons and the recruitment of medical personnel in order to bring conditions of detention into line with international standards.

17. While welcoming the amendment of the Prisons Act of 2004 providing for the release of prisoners on parole, including terminally ill prisoners, the Committee remains concerned at the fact that prison authorities make in practice little use of this remedy (art. 16).

The State party should urge the competent prison authorities to use in practice all legal possibilities to release prisoners on parole by the Commissioner of Prisons on the recommendation of the Parole Board and to discharge from prison any terminally ill prisoner.

18. The Committee notes with concern that juveniles are often not held separately from adults, women from men, and pretrial detainees from convicted prisoners. The Committee is also concerned at the low legal age for criminal responsibility (8 years) (art. 16).

The State party should take urgent measures to ensure that accused persons are detained separately from convicted ones and that children and women are detained separately from adults and men respectively, in all circumstances. The State party should raise the age of criminal responsibility to a more internationally acceptable age.

19. The Committee expresses concern at the conditions of detention of convicted prisoners on death row, which may amount to cruel, inhuman or degrading treatment, in particular due to overcrowding and the excessive length of time on death row (art. 16).

The State party should consider taking measures to restrict the application of the death penalty and should adopt procedural reforms that include the possibility of measures of pardon. Furthermore, the State party should ensure that its legislation

provides for the possibility of the commutation of a death sentence where there have been delays in its implementation. The State party should ensure that all persons on death row are afforded the protection provided by the Convention.

Violence perpetrated by law enforcement officials

20. The Committee expresses its concern at information of law enforcement personnel inflicting torture and other cruel, inhuman or degrading treatment during criminal investigations in police stations (arts. 1 and 16).

The State party should ensure that the allegations of the excessive use of force during criminal investigations are thoroughly investigated, if appropriate the accused are brought to trial and if found responsible adequately punished.

Protection of children from cruel, inhuman or degrading treatment

21. While noting that the State party's legislation prohibits corporal punishment in schools, the Committee remains concerned about the absence of legislation prohibiting such punishment in the family and in institutions other than schools, and that corporal punishment is de facto widely practised and accepted as a means of upbringing (art. 16).

The State party should extend legislation prohibiting corporal punishment to the family and to institutions other than schools, ensure that legislation prohibiting corporal punishment is strictly enforced and undertake awareness-raising and educational campaigns to that effect.

Violence against women

22. The Committee acknowledges the State party's ongoing process of reviewing the Penal Code to prevent and punish gender-based violence as well as the National Action Plan on Gender-Based Violence. However, the Committee notes with concern reports of widespread violence against women, particularly rape and violence in the family. The Committee is also concerned at the discrepancy between statutory and customary law as regards issues of gender-based violence (art. 16).

The State party should continue its efforts to prevent and punish gender-based violence and adopt all appropriate measures to prevent, combat and punish violence against women, in particular by speedily adopting the legislation under way against gender-based violence and by incorporating offences of family violence and marital rape in its Penal Code. The State party should ensure the priority of statutory law over customary law and practices and the right to appeal.

23. The Committee notes the State party's efforts to ensure that female prisoners are supervised by female officers. However, the Committee is concerned at information of acts of sexual violence by law enforcement personnel, especially in rural areas, and regrets the low number of complaints and the absence of convictions in this regard.

The State party should continue its recruitment process of female officers and ensure that procedures are in place to monitor the behaviour of law enforcement officials. The State party should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. The State party should set up a rehabilitation and support system for victims of gender-based violence.

Training on the prohibition of torture

24. While acknowledging the State party's efforts to provide human rights training to law enforcement officers, including the police, the Committee remains concerned at (art. 10):

(a) The lack of training on the ways of prevention and prohibition of torture and cruel, inhuman and degrading treatment or punishment provided for law enforcement officials at all levels, including police officers, prison staff, judges and the military;

(b) The absence of training to detect signs of torture and ill-treatment for medical personnel;

(c) The inadequacy of training materials available, notably on the conduct of interrogation rules.

The State party should continue human rights training with the objective of bringing about a change in attitudes and behaviour and include the prohibition of torture for all professionals, enumerated in article 10 of the Convention, at all levels. The State party should also ensure practical training for medical personnel to detect signs of torture and ill-treatment. The State party should provide adequate training materials focusing specifically on the prohibition of torture.

25. The Committee notes with appreciation the State party's commitment to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment.

The State party should consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment.

26. The Committee regrets that, despite the commitment expressed during the consideration of the initial report of Zambia in 2001, the State party has not yet made the declarations provided for in articles 21 and 22 of the Convention.

The State party should consider making the declarations provided for in articles 21 and 22 of the Convention.

27. The Committee notes the current development of a central database by the Central Statistics Office. The State party should provide in its next periodic report the following data, which will facilitate the Committee's assessment of the implementation of obligations under the Convention:

(a) Statistics on the reception capacity and population of each prison in Zambia, including data disaggregated by gender and age group (adults/children) and the number of pretrial detainees;

(b) Statistics on gender-based violence and abuse against women and children in custody that have been investigated and prosecuted and the related convictions of perpetrators and compensations provided to victims;

(c) Statistics on cases of extradition, expulsion or return, including information on the handing over of detainees.

28. The Committee invites the State party to ratify the United Nations human rights treaties and their protocols to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

29. The State party is encouraged to disseminate widely the State party reports submitted by Zambia to the Committee and the concluding observations and summary records, in appropriate languages, through official websites, the media and non-governmental organizations.

30. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting, approved recently by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.4).

31. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8, 9, 11, 13 and 18 above.

32. The Committee requests the State party to submit its next periodic report, which will be considered its third periodic report, by 30 June 2012.
