

TREATY BODY MONITOR

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COMMITTEE AGAINST TORTURE 40TH SESSION REPUBLIC OF ZAMBIA, 2ND REPORT 8 - 9 MAY 2008

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Information submitted to the Committee

State report

On 23 September 2005 Indonesia submitted its second periodic report regarding the implementation of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereafter referred to as Convention) to the Committee against Torture (hereafter referred to as Committee) at its 40th session in Geneva.¹ The report includes a general overview of the measures taken and progress made in implementing the Convention, followed by a systematic analysis of the substantive Articles of the Convention. The first part of the report presents a general overview of the legislative, judicial, administrative, and other measures that the State party has put in place to implement the Convention and to prevent the use of torture, including a Cabinet Memorandum for the incorporation of the Convention into domestic law. The second part addresses the subjects of concern that were raised by the Committee during the presentation of the initial report. This includes prosecution policy, allegations of widespread use of torture, poor prison conditions and violence against women.

¹ CAT/C/ZMB/2, 9 February 2006. Available at <http://daccess-ods.un.org/TMP/3638687.html>

On 26 February 2008 the Committee submitted a list of issues with regard to the consideration of the periodic report.² The Committee asked for additional information on Articles 1 to 16 of the Convention and the main issues raised were the definition of torture in the national legislative framework, incorporation of the Convention into domestic legislation as well as dissemination of information on the Convention, the principle of non-refoulement for asylum seekers and refugees, training on the provisions of the Convention, standards for the interrogation of suspects and the treatment of persons in custody, conditions of detention, disaggregated data on complaints received by the Human Rights Commission, the existence of a torture and ill-treatment complaints procedure, rehabilitation mechanisms for victims of torture, admissibility of evidence obtained through torture, death penalty sentences, juvenile detentions, violence and trafficking against women, and measures to reverse the spread of HIV/AIDS.

Written replies to the list of issues were distributed to the Committee but they were not available online prior to the examination.

No NGOs submitted alternative reports to the Committee.

Themes and issues

The delegation was headed by Mrs Gertrude Imbwae, Permanent Secretary at the Ministry of Justice, who was accompanied by several representatives and experts of the Government and of the National Human Rights Commission. She presented the State report, emphasizing that it was drafted under the leadership of the Ministry of Justice, which for the occasion constituted an Inter-Ministerial Human Rights Reporting Committee comprising of members from relevant ministries and departments, the judiciary, the National Human Rights Commission, civil society and academia. Mrs Imbwae noted that in Zambia, they had developed an inclusive practice which ensured that the views of civil society were part of the human rights reporting process. She also pointed out how the preparation of the periodic report was an opportunity for the Government to take stock of its legislative, judicial and administrative functions in order to assess the impact of these functions on human rights in general and the prohibition against torture in particular.

She highlighted the great efforts made by Zambia in promoting and protecting human rights and in implementing the Convention. Mrs Imbwae said that Zambia was currently undergoing a Constitutional reform process. A national constitutional conference had been established to consider and deliberate over provisions and to adopt the draft Constitution. This conference also established the Human Rights Committee, which is chaired by the director of the Human Rights Commission. In concluding, she wished for it to be recognized the fact that the Zambian Government was facing wide ranging challenges which sometimes made it difficult to effectively guarantee the rights protected under the Convention. However, she stated, Zambia remained fully committed to the protection and promotion of human rights and fundamental freedoms.

After the opening statement, the floor was given to the two country report rapporteurs, Mr Marino Menendez and Mr Kovalev, who began the interactive dialogue. They both recognized the challenges that Zambia was facing as a developing country. They acknowledged that the activities of certain ethnic groups, as well as refugees coming from neighbouring countries, have created obstacles to the promotion and protection of human rights. The main issues which arose during the session were the definition of torture in domestic law, detention conditions, children, women, refugees and asylum seekers, homosexuality, data collection, and redress mechanisms for victims of torture.

² CAT/C/ZMB/Q/2, 26 February 2008. Available at <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.ZMB.Q2.doc>

Definition of torture in domestic law

Committee Chairperson and country rapporteur for Zambia, Mr Marino Menendez, pointed out the lack of a clear definition of torture in the national legislative framework. He noted that the Constitution refers to the right of a person not to be subject to torture, but he also noted how this concept is not included or further developed in the Penal Code. As the Penal Code penalizes crimes and behaviours similar to torture, Mr Marino Menendez asked the delegation if the Government was planning to include a clear definition of torture in the Penal Code. He also asked if courts in Zambia took into consideration the provisions of the Convention.

Head of delegation Mrs Imbwaie assured that the Cabinet would be informed so that it could reconsider the issue of incorporating the definition of torture in domestic legislation. The Government would also carry out a sensitization program to ensure that stakeholders were educated on issues of torture. She acknowledged that courts based there operate on the so called 'judges rules', which took into account the provisions of the Convention.

Committee Chairperson Mr Marino Menendez welcomed the recognition by the delegation of the need for a definition of torture in the legislative framework.

In its concluding observations,³ the Committee urged the State party to speedily incorporate the Convention into its legal system and include in its criminal legislation a definition of torture and the principle of an absolute prohibition of torture.

Detention conditions

On the issue of detention conditions and detainees, Mr Marino Menendez posed several questions. He asked who had the power to arrest suspected criminals and if there was the need of an arrest warrant. Regarding pre-trial arrest, he referred to the report which stated that a person can be initially arrested for 24 hours. He inquired of the delegation if this pre-trial arrest could be extended, as the Committee received information on pre-trial detentions lasting for 4 years. He requested more information on the normal length of investigations and on the legal value of the police code of conduct. He wanted to know if there was any body monitoring arrests and detentions carried out by police officials, and if there was a body receiving complaints against actions committed by police forces. He reported information obtained by the Committee where an individual who was detained in prison presented an allegation denouncing acts of torture during the detention, but his complaint was rejected because his detention had not been registered in the alleged detention centre. Mr Marino Menendez asked to clarify this inconformity. Mr Marino Menendez also sought further clarification on the deprivation of food to inmates as a form of punishment, the right to lawyer during investigations, access to assistance and the right to contact family.

Co-rapporteur Kovalev also raised his concern regarding detention conditions. Based on information provided by NGOs, he argued that the prison population had highly increased in recent years but facilities remained very limited. Prisoners were therefore fighting among themselves for space and mattresses. Mr Kovalev underlined that such overcrowding could lead to serious health problems. It was reported that many prisoners died because of these conditions, including inappropriate food, no ventilation, not enough windows, no running water and no toilets. Other Committee members expressed similar concern related to overcrowded prisons, investigation and detention conditions.

Mrs Imbwaie began the response by stating that apart from law enforcement officers, members of the public might affect an arrest where it was evident that a crime was being committed. The Human Rights Commission has the mandate to visit prisoners, and this was commended by Mrs Imbwaie as a deterrent measure against acts of torture as the prisoners are able to report acts of torture to visiting justices in absence

³ CAT/C/ZMB/CO/2, 15 May 2008. Available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ZMB-CO2.pdf>

of prison officers. The head of delegation informed the Committee that the State party regrets that an accused person was detained for 4 years without trial, as the law states that an accused person has to be brought to court within 48 hours after the arrest. This was considered as an exceptional case. On the issue of registration of offenders, she affirmed that there is an occurrence book that showed the date of arrest and nature of offence, and which enables a magistrate to take all necessary action in case of prolonged detention. With regard to prisoners having their diet reduced as a form of punishment, the head of delegation recalled that this is in accordance with the law. However, she noted that the Government was in the process of amending the legislation on this matter. She assured that all prisons have healthcare facilities manned by clinical officers and nurses, and that complicated cases are referred to hospital. On the issue of inappropriate detention facilities, she clarified that the Government was aware of the problem and that it was undertaking rehabilitation of prisons, including the sinking of boreholes to improve water reticulation.

As follow up question, Committee Chairperson Mr Marino Menendez asked for additional information on the length of interrogation before a detainee could be freed or put in pre-trial detention. The delegation stated that a person should be brought to court within 48 hours, but admitted that it often depends on the logistical facilities available to bring the person in front of the court.

In its concluding observations, the Committee urged the State party to take measures to bring conditions in detention centres into line with UN Standard Minimum Rules for the Treatment of Prisoners. The State party should give priority to reducing overcrowding in detention, improving food provisions for detainees, and speedily abolishing the law and practice on reduced diet. The State should ensure that the allegations of the excessive use of force during criminal investigations are thoroughly investigated, if appropriate brought to trial and if found responsible adequately punished. The Committee recommended Zambia to ensure that children and women are detained separately from adults and men. The Committee asked the State party to consider taking alternative measures to restrict the application of the death penalty and ensure that all persons on death row are afforded the protections provided by the Convention.

Vulnerable groups

Children

Several Committee members expressed their concern at issues related to juvenile justice and street children. Committee Chairperson Mr Marino Menendez and Committee member Kovalev stated that the age of criminal responsibility, which is presently set at 8 years of age, should be reviewed. Many Committee members also noted that children have no guarantee of legal aid because of a lack of adequate staffing, and that no rehabilitation centres are provided for children victims of torture. The Committee asked the delegation what measures the Government aimed to adopt to improve juvenile justice in Zambia. Concerning the problem, Committee member Ms Sveaass asked how the problem of street children was dealt with and the present status of the strategic plan for street children proposed by the Committee on the Rights of the Child.

Concerning the age of criminal responsibility, the delegation said that Zambia was in the process of reviewing the legislation. Mrs Imbwae affirmed that where a juvenile might not have legal representation, other safeguards exist under the *Juvenile Act* such as the practice that matters before court are heard in camera with a guardian, parent or juvenile inspector present. On issues related to street children, the Government has put in place a four year strategic plan based on the findings of the 2006 situation analysis of children on the street, where seven broad objectives had been identified. The main objective is to reduce the number of street children by 50%, then to rehabilitate and integrate all children sleeping on the streets, to improve and expand rehabilitation and reintegration programmes for these children, and to strengthen the existing policy and legislative framework to provide protection and care for children on the street.

In its concluding observations, the Committee asked the State party to raise the age of criminal responsibility to a more internationally acceptable age. The State 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.

Women

Committee member Ms Gaer asked the delegation if the Government has any means to monitor the sexual violence against women, since it is not criminalized in the Penal Code. She also asked to elaborate on the detention conditions of women, and if any special facility is provided to pregnant women or women with children detained in prison. Ms Gaer insisted that sexual violence was occurring in prisons and on the lack of women officers dealing with female prisoners. She reported on NGO information which claimed that sex was a condition for women to exit prison. Committee member Ms Sveaass asked what steps the Government intended to undertake to eradicate sexual violence against women and especially the belief that having sex with a virgin could cure a man affected by HIV/AIDS.

In terms of supervision of female prisoners, Mrs Imbwae affirmed that there are no female prisons supervised by male prison warders, and that therefore the issue of sexual harassment does not exist. Arrest can be conducted by male police officers, and cases of sexual offences are dealt with according to the law. In order to improve the welfare of female inmates, the delegation stated that vocation trainings on weaving, knitting, baking and sewing were conducted. Concerning gender based violence, the delegation informed the Committee that several initiatives, such as ‘Women’s Justice Empowerment’, have been launched to train local court justices on issues related to violence against women. Mrs Imbwae pointed out that the Government was in the process of preparing legislation against gender based violence, and that the Penal Code had been amended to introduce stiffer penalties for sexual offences. Additionally, a programme on sexual and gender based violence, as well as on HIV/AIDS, were being implemented. The delegation explained that the Government is trying to sensitize various stakeholders in urban and rural areas on the issue that having sex with a minor does not cure HIV. On domestic violence, the delegation noted that corporal punishment is not encouraged in homes, but it admitted that it is impossible to monitor what was happening in private. The delegation concluded that a helpline for women victims of sexual violence was under construction.

In its concluding observations, the Committee asked the State party to continue its efforts to prevent and punish gender based violence and adopt all appropriate measures to combat and punish violence against women. 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 Committee recommended that the State party set up rehabilitation and support system for victims of gender based violence.

Refugees and asylum seekers

Committee Chairperson Mr Marino Menendez said that the application of the principle of non-refoulement was of great concern for the Committee. He asked what the Zambian whether this was protected by and if the asylum seeker had any possibility of recourse. He also sought more information on the level of cooperation between Zambian authorities and the United Nations High Commissioner for Refugees (UNHCR), and wanted to know how temporary residence permits are issued.

Concerning extradition, the delegation informed the Committee that the Attorney General issues warrants of extradition, while a deportation order is issued by the Minister of Home Affairs. Head of delegation Mrs Imbwae emphasized the good level of cooperation between the Ministry of Home Affairs and UNHCR on matters regarding asylum seekers and decisions of granting refugee status. Mrs Imbwae asserted that there was a high level of consultation on the resident permit to be issued to refugees. However, the current position is that refugees who have financial resources are given self-employment permits to run a business, while those with special skills are given work permits to work in various industries as professionals.

In its concluding observations, the Committee recommended the State party to ensure that the new *Refugee Bill* and *Immigration and Deportation Act* fully comply with Article 3 of the Convention. The State party should also ensure that the Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in Article 4 of the Convention.

Other issues

Few other issues were touched upon by Committee members during the interactive dialogue. Among them the Committee asked about the status of homosexuality and the delegation firmly replied that same sex relationships are an offence under the Penal Code and that, as it is a decision taken through referendum, the people of Zambia have no intention to legalize it. Committee member Kovalev wanted to know if trainings on the provisions of the Convention were conducted among law enforcement units, and the delegation affirmed that local court justices were trained under the ‘Access to Justice Programme’. Regarding the right of victims to seek redress, the delegation informed that the Constitution provides for redress to persons whose rights have been infringed under the bill of rights, and that the amount of compensation paid depends on the court’s decision. On the need for data collection, as raised by Committee member Mr Grossman, the delegation informed that the Central Statistics Office was in the process of developing a central database.

Concerning the death penalty, the Committee noted that there were currently 200 people on death row in Zambia, and it reported the case of a person who had been on death row for 27 years. It was asked if the Government had any intentions to abolish the death penalty. The delegation noted that such issues related to human rights are put before the citizens through referendum, and their last view was to keep the death penalty.

Other Committee members also expressed concern in relation to the use of evidence obtained through torture, although the delegation did not respond to these concerns.

Conclusions and next steps

The Committee welcomed the detailed and frank dialogue with the delegation of Zambia, and thanked the head of delegation Mrs Imbwae for the replies she provided them. Committee member Mr Grossman expressed the mutual need of promoting those values and human rights that both the Committee and the State party were sharing.

A number of other UN treaty bodies have made recommendations on the issues addressed by the Committee. In 2001, the Committee on the Elimination of Discrimination against Women encouraged gender training for all public officials, in particular law enforcement officials and judiciary, as well as health workers, to educate them about consequences of all forms of violence against women and girls.⁴ In 2003, the Committee on the Rights of the Child (CRC) called upon the State party to take all appropriate measures to implement juvenile justice system in conformity with the Convention⁵, and set up child-sensitive mechanisms to receive complaints against law enforcement officers regarding ill-treatment during arrest, questioning and police custody. The CRC also recommended that Zambia train the police force and prison staff on the human rights of children.⁶ In 2005, the Committee on Economic, Social and Cultural Rights (CESCR) recommended that Zambia strengthen measures aimed at improving living conditions of prisoners and detainees,⁷ and it reiterated the recommendation made by the CRC that street children be provided with preventive and

⁴ Paragraph 239 bis, A/57/38(SUPP), CEDAW, 200. Available at www.universalhumanrightsindex.org/en/index.html

⁵ Paragraph 71, CRC/C/15/ADD.206, CRC, 2003. Available at www.universalhumanrightsindex.org/en/index.html

⁶ Paragraph 33, CRC/C/15/ADD.206, CRC, 2003. Available at www.universalhumanrightsindex.org/en/index.html

⁷ Paragraph 51, E/C.12/1/ADD.106, CESCR, 2005. Available at www.universalhumanrightsindex.org/en/index.html

rehabilitative services for physical and sexual abuse, as well as adequate food, clothing, housing, health care and educational opportunities⁸. CESCR also recommended that the State party control the spread of HIV/AIDS, including by providing and encouraging the use of condoms.⁹ In 2007, the Human Rights Committee (HRC) asked the State party to take immediate action to rise the minimum age of criminal responsibility to an acceptable level under international standards.¹⁰

The Committee requested that Zambia submit its third periodic report by 30 June 2012.

Last revised and updated: 20 June 2008.

⁸ Paragraph 46, E/C.12/1/ADD.106, CESCR, 2005. Available at <http://www.universalhumanrightsindex.org/en/index.html>

⁹ Paragraph 53, E/C.12/1/ADD.106, CESCR, 2005. Available at www.universalhumanrightsindex.org/en/index.html

¹⁰ Paragraph 26, CCPR/C/ZMB/CO/3, HRC, 2007. Available at <http://www.universalhumanrightsindex.org/en/index.html>

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