



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

Distr.: General
17 February 2011

Original: English

Committee against Torture

Forty-fifth session

1–19 November 2010

List of issues prior to the submission of the third periodic report of Zambia (CAT/C/ZMB/3)*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous concluding observations

Articles 1 and 4

1. With reference to previous recommendations of the Committee (para. 4),¹ please provide information about the measures, if any, taken to include in its criminal legislation a specific definition of the crime of torture that covers all elements contained in article 1 of the Convention. What measures have been taken to criminalize all acts of torture with appropriate penalties that take into account the grave nature of such acts and to ensure that all aspects of torture are criminalized and punished in accordance with article 4 of the Convention?

* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/ZMB/CO/2.

Article 2²

2. With reference to previous recommendations of the Committee (para. 5), please provide an update on the incorporation into the Constitution, or any other laws, of the principle of the absolute prohibition of torture whereby no exceptional circumstances whatsoever may be invoked to justify it.

3. With reference to previous recommendations of the Committee (para. 11), please provide information on measures taken by the State party to amend the Code of Criminal Procedure and take effective measures to guarantee that the fundamental legal safeguards of persons detained by police officers are respected from the very outset of detention, including prompt access to legal counsel, medical examination by independent doctor and the right to inform family members. Please inform the Committee of any restrictions that may be imposed on these rights and the reasons for such imposition. Please indicate if all persons detained are registered from the outset of detention. Please provide information on the maximum period in law of pretrial detention.

4. Please provide information on the “cell captain” justice system in prisons, including corporal punishment and any measures taken by the State party to abolish that system, in accordance with the Prison Act and Prison Rules.

5. With reference to previous recommendations of the Committee (para. 22), please provide information on all measures taken to prevent, combat and punish violence against women. With further reference to previous recommendations (para. 27), please provide statistics on gender-based violence and abuse against women. Please indicate whether the State party has taken steps to ensure that statutory law takes precedence over customary law and practices and to ensure the right to appeal. Has appropriate legislation been adopted against gender-based violence and marital rape incorporated into the Penal Code? Has the State party set up a rehabilitation and support system for victims of gender-based violence? Please indicate whether the State party has adopted specific legislation criminalizing domestic violence and measures to combat sexual violence against young girls in the school environment.³

6. With reference to previous recommendations of the Committee (para. 23), please provide an update on the recruitment process of female officers and the introduction of procedures to monitor the behaviour of law enforcement officials. Please provide information on measures taken by the State party to ensure that male members of staff are not placed in charge of women held in police custody or in prisons, and on the system put in place to hear complaints of prisoners for acts of violence. What specific measures have been adopted by the State party to prevent rape in custody and to investigate allegations of rape and deaths in police custody?

7. Please provide information on measures taken to investigate complaints of physical, verbal and sexual assault of inmates by other inmates or officers. What measures has the State party taken to ensure that any act of violence committed against a prisoner is duly

² The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2 (2007) on implementation of article 2 by States parties, paragraph 3, states: “the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter ‘ill-treatment’) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear.” See further chapter V of the same general comment.

³ CCPR/C/ZMB/CO/3, para. 19.

prosecuted and punished?⁴ Please provide detailed statistical information on complaints, investigations, prosecutions, convictions and sentences, and on whether the State party promptly, effectively and impartially investigates all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. In this connection, please provide also statistics, disaggregated by age, sex, ethnicity and nationality, for persons deprived of their liberty.

8. With reference to previous recommendations of the Committee (para. 27), please provide statistics on violence and abuse against children in custody and the number of cases that have been investigated and prosecuted, the related convictions of perpetrators and compensation provided to victims. Please also provide information on action taken by the State party to prohibit all forms of violence against children wherever it occurs, including corporal punishment in schools, and whether public information efforts with respect to appropriate protection of children from violence have been undertaken.⁵ Please provide information on measures introduced to prevent corporal punishment in reformatory centres for children.

9. Please provide information on the alleged illegal establishment by Paramount Chief Chitimukulu in Northern Province of a prison in his palace, in Mungwi district, in order to confine people suspected of practicing witchcraft in his Chiefdom. It is alleged that the prison has been in existence since February 2010. Please provide information on what measures have been taken by the State party to prevent the creation of illegal prisons and whether any such prisons have been established in other parts of Zambia.

Article 3

10. With reference to previous recommendations of the Committee (para. 6), please provide information on measures taken by the State party to bring the new Refugee Bill and the Immigration and Deportation Act into full compliance with article 3 of the Convention. Please also provide detailed information on cases of denial of extradition, return or expulsion owing to the risk that the person might be subjected to torture or ill-treatment upon return.

11. With reference to previous recommendations of the Committee (para. 27), please provide statistics on cases of extradition, expulsion or return, including information on the handing over of detainees.

12. Please provide information on whether administrative detention prior to deportation is carried out on a case-by-case basis and is proportionate and necessary. Please also indicate the maximum duration of administrative detention for the purposes of deportation.

Articles 5, 7 and 8

13. With reference to previous recommendations of the Committee (para. 7), please provide information on the legislative and administrative measures taken by the State party to ensure that the Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in its article 4 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.

⁴ Ibid., para. 20.

⁵ Ibid., para. 22.

Article 10

14. With reference to previous recommendations of the Committee (para. 24), please provide an update on the human rights training undertaken by the State party with the objective of bringing about a change in attitudes and behaviour and with a view to ensuring training on the prohibition of torture for all professionals at all levels, as listed in article 10 of the Convention. Has the State party provided adequate training materials focusing specifically on the prohibition of torture?

15. Please provide information on whether the State party has significantly increased its efforts to ensure that police investigators are adequately trained in techniques of investigations and human rights, and that they are provided with sufficient investigation equipment.⁶

16. Has the State party increased, in particular, the training of the staff of Victim Support Unit offices and of the Police on violence against women, including sexual abuse and domestic violence?⁷

17. Please indicate if there are programmes to train medical personnel in detecting, recognizing and treating physical and psychological torture injuries resulting from torture or cruel, inhuman and degrading treatment. Is the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) included in this training? How many persons have received such training, how is it assessed and what is its outcome?

Article 11

18. With reference to previous recommendations of the Committee (para. 8), please provide an update on the steps taken by the State party to enhance the effectiveness⁸ of the Human Rights Commission and to provide it with sufficient financial⁹ and human resources¹⁰ and allow it to receive financial support without the prior agreement of the President. Please also provide an update on what has been done to reinforce the independence of the commissioners, especially with regard to the appointment process, and to enhance the Commission's enforcement power. In addition, please provide information on the steps taken by the State party to 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.

19. With reference to previous recommendations of the Committee (para. 12), please provide an update on the measures taken by the State party to establish forensic laboratories in all provincial centres and provide training in the use of such laboratories.

20. Please provide information on the establishment of juvenile courts and justices to enhance access to justice of children in conformity with their specific needs.¹¹

21. Please provide information on measures, including policies,¹² taken by the State party to improve the living conditions of prisoners and detainees, described as "poor and

⁶ Ibid., para. 21.

⁷ Ibid., para. 19.

⁸ CERD/C/ZMB/CO/16, para. 20.

⁹ CCPR/C/ZMB/CO/3, para. 10.

¹⁰ E/C.12/1/Add.106, para. 34.

¹¹ A/HRC/8/43, para. 58 (10).

¹² E/C.12/1/Add.106, para. 51.

life-threatening”, and ensure its prioritization.¹³ In particular, please provide information on efforts made to guarantee the right of detainees to be treated with humanity and dignity, by ensuring that they live in healthy conditions and have adequate access to health care and food.¹⁴

22. Please provide information on the exact nature of penal block cells and any measures taken to abolish their use. Please provide information on the practice of stripping inmates naked and holding them in water in penal block confinement. Please also provide information on the number of hours worked by inmates sentenced to hard labour. Please provide information on the steps taken by the State party to end the practice of inmates working at officer farms and on Sundays.

Articles 12 and 13

23. Please provide information on measures taken by the State party to ensure that alleged cases of torture or ill-treatment are seriously investigated, prosecuted and punished in an appropriate manner under the country’s criminal legislation, and that adequate reparation, including compensation, is granted to the victims.¹⁵

24. With reference to previous recommendations of the Committee (para. 9), please provide an update on the enactment of an adequate prosecution policy in order to ensure a fully independent complaint mechanism for victims of torture. Please indicate whether the function of prosecution has been removed from the police to the Director of Public Prosecution in order to guarantee suspects’ rights in the administration of justice. Please indicate whether detainees are able to send confidential complaints to State bodies and other organizations, and whether all prison officials are aware of, and do not interfere with, this right.

25. With reference to previous recommendations of the Committee (para. 13), please provide information on whether the State party has undertaken 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. Please provide information on the type, periodicity and venues of such campaigns and whether their impact has been assessed.

26. With reference to previous recommendations of the Committee (para. 20), please provide information on steps taken by the State party to ensure that the allegations of the excessive use of force during criminal investigations are thoroughly investigated, and on whether the accused are brought to trial if appropriate and, if found responsible, adequately punished.

Article 14

27. With reference to previous recommendations of the Committee (para. 10), please provide an update on the prosecution of perpetrators of acts of torture and appropriate compensation, including full rehabilitation, for victims of torture. Please provide statistical information on the number of cases of torture brought to courts and on compensation received by the victims. Please also provide information on whether each case of torture or

¹³ A/HRC/8/43, para. 58 (8).

¹⁴ CCPR/C/ZMB/CO/3, para. 23.

¹⁵ CCPR/C/ZMB/CO/3, para. 21.

ill-treatment by police officers is seriously investigated, prosecuted and punished and that adequate reparation is granted to victims.¹⁶

Article 15

28. With reference to previous recommendations of the Committee (para. 14), please provide information on the specific legislative, judicial or administrative measures taken by the State party to ensure the strict application of article 15 of the Convention. What procedures are in place to ensure the implementation of safeguards which ban obtaining confessions by torture? Please provide detailed information on any cases where such evidence has been excluded or used and on measures implemented.

Article 16

29. With reference to previous recommendations of the Committee (para. 15), please provide an update on the measures taken by the State party to bring conditions in detention centres into line with the Standard Minimum Rules for the Treatment of Prisoners. Please indicate whether the State party has allocated all material, human and budgetary resources necessary for this purpose. Please provide information (para. 27) on:

(a) 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) Information on any action taken by the State party to reduce the prison population¹⁷ in view of overcrowding and the high number of persons in detention; and to ensure effective non-custodial alternatives for defendants awaiting trial;

(c) Whether the State party has developed alternative measures to imprisonment,¹⁸ including community service and fines, especially for minor crimes and petty offences.

30. With further reference to previous recommendations of the Committee (para. 15), please provide information on measures taken by the State party to:

(a) Improve food provision for detainees and to speedily abolish the law and the practice of reduced diets and on whether prisoners receive regular meals or only one “combined meal” per day;

(b) Upgrade water, sanitation and cooking facilities in all prisons and ensure a better provision of basic necessities, such as soap and adequate clothing.

31. With reference to previous recommendations of the Committee (para. 16), please provide information on 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. In particular, please indicate which specific measures have been taken to reduce the prevalence of HIV/AIDS and tuberculosis and to stem the high contamination rate of inmates and prison officers due to overcrowding and lack of adequate health care.

¹⁶ A/HRC/8/43, para. 58 (7).

¹⁷ CCPR/C/ZMB/CO/3, para. 23.

¹⁸ Ibid., para. 23.

32. Please provide information on specific measures taken, in particular by the police, the judiciary and the prison service, to reduce outbreaks of dysentery, cholera and tuberculosis exacerbated by overcrowding and, in particular, to prevent the spread of airborne diseases such as tuberculosis which lead to reinfection and/or death of prisoners. Have tuberculosis prevalence studies been conducted in order to understand the true extent of the disease in prisons? Please provide information on whether the State party has taken steps to eliminate the use of non-medical prison officers from doing triage and deciding which prisoners are entitled to evaluation and treatment. Is there voluntary testing and counselling for all inmates regarding HIV/AIDS and prompt initiation of treatment?

33. With reference to previous recommendations of the Committee (para. 17), please provide information on the measures taken by the State party to 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.

34. With reference to previous recommendations of the Committee (para. 18), please provide information on the measures taken by the State party to ensure that accused persons are detained separately from convicted ones, that children and women are detained separately from adults and men, respectively, in all circumstances. Please provide information on whether the State party has raised the age of criminal responsibility from 8 years to an age more acceptable under international standards.¹⁹

35. With reference to previous recommendations of the Committee (para. 21), please provide information on whether the State party has extended legislation prohibiting corporal punishment in schools to the family and institutions other than schools. Does the State party ensure that legislation prohibiting corporal punishment is strictly enforced and has it undertaken awareness-raising and educational campaigns to that effect?

36. Please provide information on measures taken by the State party to prevent the ill-treatment of workers, including miners. Please provide statistical data on any such incidents. Please also provide information about the results of the investigation into the shooting on 15 October 2010 of miners at the Collum coal mine in Sinazongwe district in Southern Province, during which 11 persons are reported to have been wounded.

Other issues

36. With reference to previous recommendations of the Committee (para. 25), please provide information on the current status of the State party's views regarding the ratification²⁰ of the Optional Protocol to the Convention and the establishment of an effective national preventive mechanism.

37. With reference to previous recommendations of the Committee (para. 26), please indicate whether the State party has considered making the declarations provided for in articles 21 and 22 of the Convention.

38. With reference to previous recommendations of the Committee (para. 27), please provide information on the status of the development of a central database by the Central Statistics Office.

39. With reference to previous recommendations of the Committee (para. 19), please provide information on any measures taken by the State party to restrict the application of

¹⁹ See also CCPR/C/ZMB/CO/3, para. 26

²⁰ A/HRC/8/40, para. 26

the death penalty to the most serious crimes and to adopt procedural reforms that include the possibility of measures of pardon. Please also indicate whether the State party has ensured that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in implementation. Has the State party ensured that all persons on death row are afforded the protection provided by the Convention?

40. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

41. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the second report, including any relevant jurisprudential decisions.

42. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the second periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

43. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the last report in 2008, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.
