



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

Distr.
GENERAL

CAT/C/ZMB/2
9 February 2006

Original: ENGLISH

COMMITTEE AGAINST TORTURE

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

Second periodic reports of States parties due in 2003

Addendum

ZAMBIA* **

[15 December 2005]

* For the initial report of Zambia, see document CAT/C/47/Add.2; for its consideration by the Committee, see documents CAT/C/SR.494 and 497 and *Official Records* CAT/C/XXVII/Concl.4.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Glossary		5
Foreword		6
Executive summary		7
CHAPTER 1	1 - 50	8
Article 2	1 - 11	8
A. Legislative measures	1 - 2	8
B. Administrative measures	3 - 8	8
C. Judicial measures	9	10
D. Other measures	10	10
E. Factors and difficulties	11	10
Article 3	12 - 17	10
A. Legislative measures	12 - 13	10
B. Judicial measures	14	11
C. Administrative measures	15 - 16	11
D. Factors and difficulties	17	11
Article 4	18	11
Article 5	19	12
Article 6	20	12
Article 7	21	13
Article 8	22	13
Article 9	23	14

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
Article 10	24 - 30	14
A. Legislative measures	24	14
B. Judicial measures	25	14
C. Administrative measures	26 - 29	15
D. Factors and difficulties	30	15
Article 11	31 - 34	15
Article 12	35 - 38	16
A. Legislative measures	35	16
B. Judicial measures	36	16
C. Administrative measures	37	16
D. Factors and difficulties	38	17
Article 13	39 - 43	17
A. Legislative measures	39	17
B. Judicial measures	40	17
C. Administrative measures	41 - 42	17
D. Factors and difficulties	43	17
Article 14	44	18
Article 15	45	18
Article 16	46 - 50	18
A. Legislative measures	46	18
B. Judicial measures	47	18
C. Administrative measures	48	19
D. Factors and difficulties	49 - 50	19

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
CHAPTER 2	51 - 71	19
Declaration with respect to articles 21 and 22 of the Convention	52	19
Prosecution policy	53	20
Allegations of widespread use of torture and apparent impunity by perpetrators within the State	54	20
Human Rights Commission	55 - 57	20
Police and prison cells inspections by the HRC	58	21
Custody officer	59 - 60	21
Police Legal and Professional Standards Unit	61	21
Status of the Convention in domestic legislation	62	22
Delays in investigating allegations of torture and in bringing suspects to trial	63 - 71	22
CHAPTER 3	72	24
CONCLUSION	73	25

Glossary

ACC	Anti-Corruption Commission
DEC	Drug Enforcement Commission
HRC	Human Rights Commission
HURID	Institute of Human Rights, Intellectual Property and Development Trust
LEAs	Law Enforcement Agencies
NGO	Non Governmental Organisations
PIs	Prohibited Immigrants
PLPSU	Police Legal and Professional Standards Unit
PPCA	Police Public Complaints Authority
VSU	Victim Support Unit
WILSA	Women in Law in Southern Africa
YWCA	Young Women's Christian Association
ZAWA	Zambia Wildlife Association

Foreword

I am pleased to present Zambia's First Periodic Report on the implementation of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.

I wish to state that the Government of the Republic of Zambia views torture with great abhorrence and has continued taking measures aimed at preventing torture within the country. Some of the prohibitions of torture are already part of domestic legislation. Further, Government has initiated a Cabinet Memorandum aimed at domesticating the Convention into domestic legislation has been prepared. This is essential in protecting and promoting fundamental rights and freedoms.

It is worth noting that the preparation of this First Report provided Government an opportune moment to review its legislative, judicial and administrative functions with a view to placing appropriate intervention when implementing the Convention. It also identified several factors and difficulties. The Report is an open, frank and honest account of measures that Zambia is taking to implement the Convention.

The Report was prepared by relevant Government Ministries and Departments, the Judiciary, Human Rights Commission, Civil Society and Academia. I would, therefore, like to take this opportunity to thank all those who participated in this exercise (see Annex 1); and the local Zambian resource personnel that educated the participants on the reporting guidelines of the Convention. The Committee may wish to learn that there exists adequate and qualified local expertise that is capable of preparing State reports on human rights treaties. As such, my Government shall endeavour to render timely reports.

In order to enhance knowledge of human rights, the Ministry of Justice, will prepare a training manual on human rights law, which will be incorporated into the training courses of all law enforcement agencies. There are also plans to distribute the manual to ordinary Zambians for their knowledge and use.

Lastly, through these measures, the Government of Zambia endeavours to create a culture and respect for human rights.

George Kunda, S.C., MP.
Minister of Justice and Attorney-General

June 2005

Executive summary

The Government of the Republic of Zambia acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 5th November, 1998. The instrument of accession was deposited on 7th October, 1998 with the Secretary General of the United Nations. The Convention entered into force for Zambia on 6th November, 1998.

This is Zambia's First Periodic Report under the Convention that is being submitted to the Committee against Torture. The Report outlines the legislative, judicial, administrative and other measures that the State party has put in place in order to adapt its national laws and policies with the provisions of the Convention. It illustrates the various challenges that the State party experiences in implementing the Convention.

The Committee against Torture may wish to note that the responsibility of preparing State reports in Zambia lies with the Ministry of Justice. In this regard, the Ministry of Justice constituted an Inter-Ministerial Human Rights Reporting Committee, which it tasked the responsibility of coordinating the collection of data contained in this Report. The Members of this Committee were drawn from relevant Government Ministries and Departments, the Judiciary, Human Rights Commission, Civil Society and Academia.

The process of preparing the State Report on the Convention commenced with an induction workshop which was held in Lusaka, the Capital City, by the Ministry of Justice for Members of the Inter-Ministerial Committee. Local Zambian resource personnel were employed in educating participants on the reporting guidelines of the Convention. Provincial workshops were subsequently held and data collected in line with the reporting guidelines of the Convention. With the data received from all the provinces, a draft Report was prepared. In order to confirm the content of the Report, a two day National Validation Symposium was held for all stakeholders.

Chapter 1

Chapter 1 gives an account of the legislative, judicial, administrative and other measures that the State party has put in place to implement the Convention. It places emphasis on measures that the State party will be undertaking to prevent torture. It also describes the various factors and difficulties affecting the implementation of the Convention.

Chapter 2

Chapter 2 addresses the subjects of concern that were raised by the Committee against Torture during the State party's presentation of its Initial Report. The Chapter demonstrates the nature of improvements in the organization and operation of the State party's law enforcement system. The challenges that the State party faces in ensuring effective and efficacious services from its law enforcement agencies are also highlighted.

Chapter 3

Chapter 3 provides information on the level of implementation of the Committee's recommendations by the State party arising from the consideration of its Initial Report. It also concludes this Report.

CHAPTER 1

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

A. Legislative measures

1. The State party reports that the legislative measures contained in its Initial Report remain unchanged. In addition the State party has incorporated some of the provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment into domestic legislation. In this regard, assault occasioning actual bodily harm and offences set out in Sections 229, 230, 231, 247, 248 and 323 of the Penal Code, Chapter 87 are already punishable.
2. Further, the State party has outlawed corporal punishment following the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003, the Penal Code (Amendment) Act No. 10 of 2003 and the Education Act (Amendment) Act No. 11 of 2003. The Prisons (Amendment) Act No. 16 of 2004 has been enacted *inter alia*, to repeal provisions relating to corporal punishment. Corporal punishment is now outlawed in all the prisons in Zambia.

B. Administrative measures

3. As per its Initial Report the State party has continued its human rights training programmes for its law enforcement officers. This is through human rights training programmes conducted by the Zambia Police and Prisons Service colleges.
4. The Prisons Service recruited 133 officers in 1998, 250 officers in 2000 and 283 officers in 2003. The Police Service recruited officers as follows:

Table 1
Recruitment of police officers

	Paramilitary	Police college	Mobile unit	Total
1999	195	402	188	785
2000	459	649	525	1 633
2001	459	-	-	-
2002	-	-	662	662
2004	199	1 381	199	1 779

Source: Zambia Prisons and Zambia Police Service 2005.

5. In addition, in 2002, the Human Rights Commission (HRC) conducted a total number of sixty five (65) workshops for law enforcement officers, (see table 2 below) throughout the country except for North-western Province. The workshops were conducted in two segments: that is the first series of workshops were held for high command; and the second for junior officers.

Table 2
Workshops held for law enforcement officers

Province	Number of officers
Southern	1 048
Western	1 015
North-western	-
Lusaka	1 616
Eastern	926
Luapula	823
Central	1 026
Copperbelt	1 718
Total	8 172

Source: Human Rights Commission, 2002.

6. The Committee may wish to note that the HRC is in the process of broadening its mandate with the decentralization of its functions by the opening of offices in Ndola, Kasama and Mongu.

7. The Anti-Corruption Commission and Drug Enforcement Commission have equally introduced Ethical training for their members of staff. The Drug Enforcement Commission (DEC) trained 442 officers in ethical matters in 2004. Similarly, the Anti-Corruption (ACC) conducted workshops for its staff at all levels in ethical matters from 14th October to 15th November, 2004. In all 208 members of staff and 5 Commissioners of the ACC were trained. A draft "Code of Ethics" to guide the officers in upholding professionalism in their work was formulated during the workshops.

8. The Police Public Complaints Authority (PPCA), an institution established by the Zambia Police Act (Amendment) Act No. 14 of 1999 was launched on 7th May 2003. So far, the PPCA has received 825 complaints, made 45 rulings in which 13 officers were dismissed from the Police Service. The cases before the PPCA range from false imprisonment, unlawful detention to abuse of authority by individual police officers.

C. Judicial measures

9. The Judicature continues to offer relief to persons who have been subjected to pain and cruelty.

D. Other measures

10. Human rights training programmes have also been conducted by a Non-Governmental Organisation (NGO), the Institute of Human Rights, Intellectual Property and Development Trust (HURID) for the Police Service. Five workshops since 2003 were conducted at which 125 senior police officers were trained in human rights. In addition HURID has awarded scholarships to deserving police officers to pursue the study of post graduate diplomas in human rights at the University of Zambia. So far seven (7) senior officers from the Police Service have been offered scholarships. Equally two (2) senior officers each from the Prisons Service and Immigration Department have been awarded scholarships to pursue similar post graduate studies.

E. Factors and difficulties

11. As per its Initial report, the HRC continues to face some of the stated institutional inadequacies due to the economic hardships that the State party finds itself in. These inadequacies also extend to the Prisons Service, Police Service and the PPCA which are pivotal in implementing the Convention.

Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

A. Legislative measures

12. There are no new legislative measures in terms of Articles 3. Further, the Refugees Control Act Chapter 120 and the Immigration and Deportation Act Chapter 123 are being revised to, *inter alia*, make them responsive to matters of asylum seekers and refugees.

13. Currently the Refugees Control Act is skewed to the control of refugees who were perceived as a security threat. This perception finds its roots from the 1970s historic era when Zambia played an important role in the liberation struggles of Southern Africa. The Immigration and Deportation Act is tailored towards prohibited immigrants and their deportation without much reference to other rights at law. The Committee is invited to note, the State party's Report on the Convention on the Elimination of All Forms of Racial Discrimination.

B. Judicial measures

14. There are no judicial measures to report on.

C. Administrative measures

15. Additional administrative measures have been developed through the Immigration Department that aim at achieving the principle of *non refoulement*. That is to say, if an asylum seeker expresses fear that if he is returned to his country of origin, his life would be in danger, such individual will either be admitted within the State party as a refugee or referred to a third country where his life will not be in danger. This is done in collaboration with the Commission for Refugees under the Ministry of Home Affairs, United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM).

16. However, Zambia will not accept within its jurisdiction criminals who run away from the justice system of a particular country.

D. Factors and difficulties

17. The State party reports that it experiences difficulties in adequately providing for refugees.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

18. Torture is still not provided for as a specific offence under the Penal Code; although as earlier reported elements of torture such as assault occasioning actual bodily harm and offences set out in Sections 229, 230, 231, 247, 248 and 323 of the Penal Code are punishable.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

19. There are no new measures to report on.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

20. As per its Initial Report, the State party still continues to deal with acts or omissions that fall within the definition of offences set out in Sections 229; 230; 247; 248 and 323 of the Penal Code, Chapter 87.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

21. The Extradition Act, Chapter 94, allows for extradition of offenders from and to Commonwealth countries in respect of extraditable offences prescribed under the Act which include, maliciously or wilfully wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm, murder, manslaughter and aiding, abetting, counselling or procuring the commission of or being an accessory before or after the fact or attempting or conspiring to commit any of the above offences.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

22. The Extradition Act, Chapter 94 regulates extradition of offences (see paragraph 21 above).

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

23. In terms of Article 9, Zambia views torture with abhorrence and has enacted the Extradition Act and the Mutual Legal Assistance in Criminal Matters Act, Chapter 98 which facilitate extradition for extraditable offences in criminal matters generally. Torture which amounts to assault occasioning actual bodily harm or maliciously or wilfully wounding or inflicting grievous bodily harm, murder, manslaughter are all extraditable (see paragraph 21 above).

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

A. Legislative measures

24. There are no new measures to report on.

B. Judicial measures

25. There are no measures to report on.

C. Administrative measures

Human Rights Commission

Training

26. As earlier stated, between September 2002 and January 2003, the HRC conducted training workshops in “Law Enforcement and Human Rights” for all Law Enforcement Agencies (LEAs) in Western, Lusaka and Southern Provinces; that is, Zambia Police Service, Prisons Service, Office of the President, Zambia Wildlife Authority, Immigration Department, Anti-Corruption Commission and Drug Enforcement Commission.

27. In 2005, HURID conducted a Human Rights Training Workshop for Law Enforcement Officers, including the Police.

28. The aim of these workshops was to reach every officer in the LEAs in order to educate the officers in human rights and law enforcement.

Police and Prisons Service Colleges

29. As earlier stated the Police and Prisons Service colleges have incorporated in their training, the teaching of human rights education for new recruits. Plans are underway to review the current human rights syllabus in order to make its content more responsive to the needs of the trainees such as interrogation methods, rights of suspects, treatment of persons in custody and guidelines on the use of force (including firearms). These Colleges also train officers from the Drug Enforcement Commission and the Anti-Corruption Commission.

D. Factors and difficulties

30. The factors and difficulties affecting the implementation of Article 10 include inadequate training materials, facilities, qualified personnel and logistics.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

31. The State party wishes to report that the Ministry of Home Affairs issued guidelines in 2003 which, *inter alia*, stipulate standards for the interrogation of suspects and the treatment of persons in custody.

Police Service

32. The Committee may wish to note that the State party’s Courts still admit derivative evidence. However, the practice in the Zambia Police Service is that officers will not rely on confession statements unless other independent evidence has been obtained. By this procedure,

it is unlikely that suspects will be forced to make confession statements. Further, the Zambia Police Forensic Laboratory which is now operational offers police investigators qualitative scientific methods of investigating crime rather than relying on confession statements. Hitherto, the Forensic laboratory is only available to officers in Lusaka. Police officers in the periphery are still unable to efficiently conduct investigations; hence the need to establish forensic laboratories in all the other provincial centres. Once established, officers will require skills training in the use of such laboratories.

Prisons Service

33. The health care obtaining in prisons is inadequate because of the limited number of health personnel that deal with a large prisons population. Notwithstanding, the Prisons (Amendment) Act No. 16 of 2004 has now provided for the establishment of a Health Care Service within prisons. This will enable the Prisons Service employ competent medical personnel to attend to the health needs of inmates and prisons officers. This will be an improvement to the current situation where medical personnel are seconded to the Prisons Service from the Ministry of Health.

34. The Prisons (Amendment) Act No. 16 of 2004 has provided for the release of prisoners on parole by the Commissioner of Prisons on the recommendation of the Parole Board. Further, the Commissioner may with the approval of the Minister order the discharge from prison of any terminally ill prisoner. It is envisaged that this method will result into a fast track procedure in dealing with such prisoners.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

A. Legislative measures

35. There are no new measures to report on.

B. Judicial measures

36. There are no new measures to report on.

C. Administrative measures

37. The PPCA as earlier stated has been set up to investigate allegations of unprofessional conduct by police officers including allegations of torture. The HRC in terms of Article 12 continues to play its role of sensitization and bringing out allegations of torture, if any, by law enforcement agents and to the attention of relevant authorities.

D. Factors and difficulties

38. Inadequate institutional capacity and staffing levels in the Zambia Police Service and Prisons Service hinder the effective and prompt investigation of alleged acts of torture.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

A. Legislative measures

39. In terms of Article 13, the State party has outlawed corporal punishment.

B. Judicial measures

40. There are no new measures to report on.

C. Administrative measures

41. The President of the Republic of Zambia in 1998 appointed a Commission of Inquiry under Statutory Instrument No. 94 of 1998, to investigate and report on allegations of torture, abuses or violations of human rights on persons suspected to have been involved in the failed coup d'etat of 28th October, 1997 by members of the security services. Since the Initial Report, the State party wishes to inform the Committee of the following the findings of the said Commission. Three (3) officers were dismissed from the Police Service (from the rank of Commissioner of Police to Assistant Superintendent) whilst twenty-two (22) officers were reprimanded by way of demotion in rank, forfeiture of salary or transfer to a lesser station than their rank.

42. Additionally, the PPCA provides a mechanism for addressing allegations of torture.

D. Factors and difficulties

43. The State party recognises that most people living in its jurisdiction continue to be unaware of their rights and are thus unable to present their allegations before appropriate authorities or tribunals.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

44. There are no new legislative, judicial or administrative measures to report on.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

45. There are no new legislative, judicial or administrative measures to report on.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

A. Legislative measures

46. The legislative measures remain the same as in the Initial Report. However, the President appointed a Constitutional Review Commission in 2003 whose mandate is to, *inter alia*, receive submissions from Zambians on various issues on the Bill of Rights.

B. Judicial measures

47. There are no new measures to report on.

C. Administrative measures

48. In order to counter incidents of cruel, inhuman or degrading treatment or punishment involving persons in the custody of the State, a number of administrative measures have been taken, including the following:

- (a) Decongestion of prisons, that is by, the establishment of open-air prisons in Luangwa (Lusaka Province) and Kaoma (Western Province) in 2004;
- (b) Immigration authorities have adopted the practice of issuing temporary permits to prohibited immigrants (PIs) as opposed to keeping them in prisons;
- (c) Prisons have embarked on farming to supplement prisoners' food requirements;
- (d) A total of 150 new police posts have been built with the help of the community countrywide;
- (e) As a pilot project six cells in police stations in Lusaka have been renovated in order to make their conditions more habitable. These are Lusaka Central, Kabwata, Woodlands, Emmasdale, Matero and Chilenje Police stations;
- (f) To overcome mixing adults with juvenile offenders due to congestion, prisons authorities have turned penal blocks into accommodation cells for juvenile offenders; and
- (g) Female suspects are placed on Police bond where there are no female detaining facilities.

D. Factors and difficulties

49. While a number of open air prisons have been established to accelerate decongestion, this measure is limited by the high remandee population that cannot be sustained in open air prisons. The remandee prisoner population accounts for more than fifty percent of the total prisons population which stands at an annual average of 13,500 inmates.

50. The separation of juvenile offenders from adult offenders and the provision of food for all inmates continue to remain a challenge for the State party.

CHAPTER 2

51. During the State party's presentation of its Initial Report a number of concerns that were raised by the Committee were left unanswered. The concerns have now been addressed as follows.

Declaration with respect to articles 21 and 22 of the Convention

52. Zambia agrees with the Committee for its need to make a declaration with respect to Articles 21 and 22 of the Convention. The State party is of the view that such declaration would be in line with principles of international customary human rights law. More so that individuals living within its territory would receive enhanced protection of their human rights, including

freedom from torture. Further, the State party is aware that, such declaration needs to be made at the earliest opportunity especially considering that it has already accepted the competence of the Human Rights Committee of the Covenant on Civil and Political Rights to deal with human rights violations including torture.

Prosecution policy

53. The State party has begun the process of drafting a prosecution policy that is intended to guide public prosecutions in Zambia. Under this policy, a number of issues will be covered including the function and position of police officers in public prosecutions; and the need to make such officers directly responsible to the Director of Public Prosecutions. When implemented, this system will ensure that all prosecutions in Zambia are properly coordinated and supervised by the Director of Public Prosecutions in order to guarantee suspect's rights in the administration of justice.

Allegations of widespread use of torture and apparent impunity by perpetrators within the State party

54. Zambia has continued to take measures aimed at educating law enforcement officers against torture or other abuses of power when dealing with persons in police custody or prisons. Additionally, the State party does not encourage impunity and will decisively take action against perpetrators. This is evident from the measures that were undertaken towards police officers who were accused of torturing suspects of the 1997 failed coup d'etat.

Human Rights Commission

55. The HRC has continued in its efforts to educate law enforcement agents and also to bring out human rights violations in the open including those committed by law enforcement agents. Table 3 below presents a summary of complaints received by the HRC:

Table 3

Summary of complaints received in the period 1998-2002

Year	Complaints received	Complaints concluded		Pending complaints	
		Number	Per cent	Number	Per cent
1998	972	345	35.5	627	64.5
1999	986	312	31.6	674	68.4
2000	933	694	74.3	239	25.7
2001	823	684	83.1	139	16.9
2002	1 100	720	65.4	380	34.6
Total	4 814	2 755	57.2	2 059	42.8

Source: Human Rights Commission, 2002.

56. The 1998 figures are for complaints received, concluded and pending for that year. From 1999 to 2002 the figures for complaints received and complaints pending include those for the respective year and those brought forward from the previous year. Of the 1,100 complaints received in 2002, 57 per cent of these were from Lusaka Province.

57. The data given in this table is not disaggregated into categories of human rights violations but rather relates to all complaints brought to the HRC ranging from torture, labour complaints, domestic disputes and complaints against abuse of power by police officers.

Police and prison cells inspections by the HRC

58. The HRC conducted Prisons and Police cells inspections from November 2002 to January 2003 in every district. The findings revealed that Zambian prisons and police cells are in a bad state. Being mindful of this concern, the State party has undertaken initiatives stated throughout this Report to improve the treatment of prisoners and remandees.

Custody officer

59. Following amendments to the Zambia Police Act (Amendment) Act No. 14 of 1999, custody officers have been designated to all Police stations or posts. A Custody officer holds the rank of inspector. His role is to ensure that:

- (a) A person in police custody is treated in a decent and humane way;
- (b) A person in police custody who requires medical attention has access to medical facilities;
- (c) Police cells or other places used for the custody of persons are in clean and habitable conditions;
- (d) Necessary provisions and other facilities used by a person in custody are in hygienic condition;
- (e) A suspect's name is recorded, the offence for which the person is arrested is stated as well as the condition of the person; and
- (f) Recommendations as to that person's well-being as are necessary are taken, including the requirement for that person to have medical attention.

60. Every person placed in police custody is first presented to the Custody officer before detention.

Police Legal and Professional Standards Unit

61. The Police Legal and Professional Standards Unit (PLPSU) was established in July 2003 to investigate corruption, arbitrary arrests and detention and other unprofessional behaviour within the Police Service. The PLPSU has the power to recommend to the Inspector General of Police action to be taken against any erring officer(s). The PLPSU is headed by the Assistant Commissioner of Police (Legal). So far the PLPSU has dealt with cases brought before it and has recommended the discipline of 3 officers. The PLPSU is guided by the Police Act, Service Instructions and Service Standing Orders.

Status of the Convention in domestic legislation

62. As earlier stated, the Convention has not yet been incorporated into domestic legislation; although the State party has initiated a Cabinet Memorandum that takes into account the Committee's concerns regarding:

- (a) Definition of torture (Article 1);
- (b) Criminalisation of torture (Article 4);
- (c) Recognition of cruel punishment in the penal system (Article 8);
- (d) Prohibition of cruel punishment in the penal system (Article 16);
- (e) Systematic review of interrogation rules (Article 11); and
- (f) Jurisdiction over acts of torture, including those committed abroad (Article 5).

The Cabinet Memorandum seeks to incorporate the Convention into domestic legislation.

Delays in investigating allegations of torture and in bringing suspects to trial

63. Whilst there might be delays in investigating allegations of torture or bringing suspects timely to trial, this delay is not intentional, but is influenced by significant financial and technical constraints that the State party finds itself in. Some of these constraints include inadequate number of officers trained and skilled in human rights knowledge and limited expertise in conducting proper investigations.

64. Notwithstanding, the PLPSU, PPCA and HRC act as a check on police actions.

Poor prisons conditions

65. The Prisons Service has embarked on a number of interventions which include the following:

- (i) Two open air prisons at Luangwa and Kaoma with an accommodation capacity for one hundred (100) and ninety (90) convicts respectively;
- (ii) The State party allocated the Prisons Service K3.7 billion in 2002. The funds provided were mainly targeted towards prisons infrastructure construction and rehabilitation; and water supply and sanitation. Rehabilitation works were undertaken at Prisons Service Headquarters, Mbala, Isoka, Nchelenge, Mwense, Livingstone, Mwembeshi, Kabwe Staff Training School, Mpima Remand, Kabompo, Mansa, Samfya, Kasama, Kasenshi, Ndola Remand, Mufulira, Luanshya, Chingola, Chondwe and Kawambwa.

In 2003, the Prisons Service received K2.5 billion from the State party to continue the said works. Further, K2.7 billion was allocated and released to the Prisons Service in 2004 to continue the rehabilitation of prisons infrastructure.

More specifically, the State party procured electric pots for installation in prisons kitchens in all the 9 main provincial prisons. The construction of two dormitories at Mwembeshi prison to accommodate 200 inmates at a cost of K4 billion was undertaken;

- (iii) The Prisons Act has been amended to provide for the establishment of a health care service within Prisons which will be responsible for the day to day care of inmates and staff;
- (iv) The State party through its Prisons Service and in conjunction with the Danish Government has embarked on rehabilitating prisons through the “Access to Justice Programme”. So far Kamfinsa Prisons in Kitwe is under going rehabilitation of kitchens, clinic, toilets, showers and provision of electric pots.

Additionally, through the Dutch Government three prisons in Kabwe, that is maximum, medium and female prisons have been rehabilitated. Further, works were undertaken by the British Government in Kabwe through the construction of a sick bay at the maximum prison and sinking three bore holes aimed at improving water reticulation;

- (v) The Swedish Government has assisted Government in procuring electric pots for Katombora, Lusaka Central, Mukobeko Maximum and Kansenshi Prisons;
- (vi) The State party is also collaborating with the International Committee of the Red Cross in improving ventilation in two of the most congested prisons, that is, Lusaka Central and Lusaka Remand prisons;
- (vii) Efforts have been made during the reporting period to improve on the provision of medicines to inmates in prisons;
- (viii) In order to speed up the disposal of cases by the Judiciary and thereby reduce congestion in prisons; a Magistrates court complex has been constructed in Lusaka with the assistance of the Norwegian Government. The complex comprises of 12 court rooms and is expected to be operational by June, 2005; and
- (ix) The State party has enacted the Penal Code (Amendment) Act. No. 12 of 2000 and the Criminal Procedure Code (Amendment) Act No. 13 of 2000 which provide for community service in order to reduce on custodial sentences and thereby lessen congestion in prisons.

Incidences of violence against women in society

Police cells and prisons

66. The State party reports that it has never witnessed incidences of violence against women in police cells or prisons. Section 24 of the Criminal Procedure Code, Chapter 88 provides that female offenders and prisoners can only be handled by female police officers or wardresses.

The only interface that takes place between a male officer and a female offender or prisoner is when entering particulars of such a person in official books at the time of arrest or detention; or during supervisory inspections by a male officer in charge who must be accompanied by female officers.

Violence against women

67. Measures to address gender violence, particularly violence against women and children have been put in place. These include the following:

The Victim Support Unit (VSU)

68. This is a specialized Unit within the Zambia Police Service that was created in 1994. It deals with cases related to property grabbing; spouse battering; and sexual abuse brought before it by women and children. The Unit is established in all police stations and posts countrywide and is accessible to the general public. All cases that are reported to the VSU are prosecuted by officers from the Unit. These officers have been specifically trained in matters of property grabbing, spouse battering and sexual abuse issues.

69. With the support of the United Nations International Children's Fund (UNICEF), VSU has carried out campaigns to sensitize women on their rights and how they can complain about domestic violence. In addition, the United Nations Population Fund (UNFPA) in its fifth country programme has a major component on combating gender based violence. The programme includes training of local court justices, magistrates, prosecutors and police officers in property grabbing, spouse battering and sexual abuse issues. Other NGOs such as the Young Women's Christian Association (YWCA) and Women in Law in Southern Africa (WILSA) are also instrumental in spearheading campaigns and programmes on violence against women and children.

The Sex Crimes Unit

70. The Zambia Police Service established the Sex Crimes Unit in 2003 to deal with cases of sexual assault; defilement; and rape in the country.

Strengthening of laws and enforcement mechanisms

71. Government has initiated the process of strengthening laws, and enforcement mechanisms, which are intended to facilitate the establishment of an integrated approach towards combating gender based violence. In addition, the State party is in the process of reviewing the Penal Code with a view to ensuring that cases of gender-based violence are incorporated. Further, the constitutional review process is expected to address the rights of women and children.

CHAPTER 3

72. Whilst the State party recognizes the harm that a victim of torture is likely to suffer, it also recognizes that certain arrangements regarding the rehabilitation of victims of torture need to be put in place. In this regard the State party is yet to establish or designate rehabilitation centres for victims of torture.

CONCLUSION

73. Zambia is fully committed to realizing its obligations in the Convention once the same has been incorporated into domestic legislation. In this regard, introducing the crime of torture as defined in Article 1 of the Convention with appropriate penalties is of paramount importance to the State party. There is need to guarantee protection and freedom against torture for all persons within Zambia and eliminate impunity, if any, enjoyed by torture perpetrators. The process therefore, demands introduction of legislative, judicial and administrative measures that will ensure foolproof mechanisms in implementing the Convention.
