

# Human Rights Violations in Zambia

## Part I: General situation

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### Shadow Report UN Human Rights Committee

90<sup>th</sup> session  
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## Foreword:

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Writing alternative reports is one of the primary activities of the World Organisation Against Torture (OMCT) and a vital source of information for the United Nations Treaty Bodies including the Human Rights Committee (HRC). This activity is complementary to providing direct assistance to victims.

These alternative reports are a valuable source for Independent Experts who analyse the implementation of the United Nations Human Rights Instruments. With these reports, it is possible to see the situation as objectively as possible and to take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

With the support of the European Union, OMCT presented this report on Human Rights Violations in Zambia at the 90<sup>th</sup> session (9-27 July 2007) of the Human Rights Committee, during which the third Zambian State Report was reviewed.

This report is based on a research and interviews carried out by OMCT during a preparatory mission held in Lusaka from 23<sup>rd</sup> April to 27<sup>th</sup> April 2007. It is jointly prepared with three national human rights non-governmental organisations (NGOs):

- HURID – Institute of Human Rights, Intellectual Property and Development Trust
- Wildaf – Zambia
- ZCEA (Zambian Civic and Education Association)

Representatives from these NGOs will attend the HRC session, brief the members of the Committee on the human rights situation in Zambia and present the shadow report.

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The World Organisation Against Torture (OMCT) is the world's largest coalition of non-governmental organisations fighting against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. Its global network comprises nearly 300 local, national and regional organisations, which share the common goal of eradicating such practices and enabling the respect of human rights for all.

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## Recommendations:

1. The Human Rights Commission should be established in full conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) annexed to General Assembly resolution 48/134. To that end, the State party should:
  - a. reinforce the independence of the Commissioners, especially with regard to the appointment process
  - b. ensure that the recommendations adopted by the Human Rights Commission are fully and promptly implemented
  - c. allow the Human Rights Commission to receive funds to carry out its activities.
2. The death penalty should only be applied to the most serious crimes in Zambia and the State party should amend its Criminal Code to that end. Moreover, Zambia should be encouraged to continue to apply the *de facto moratorium* on the death penalty and be encouraged to abolish capital punishment and accede to the Second Optional Protocol to the Covenant.
3. The State party is urged to amend its legislation to ensure that torture and cruel, inhuman or degrading treatment or punishment are criminalized. The definition of torture should comply with the Article 1 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment.
4. An inquiry should be opened in each case of alleged torture, and the perpetrators of such acts should be prosecuted and punished appropriately. Effective reparations, including adequate compensation, should be granted to victims.
5. The State party should take measures to strengthen the implementation of the Legal Aid Act and ensure the provision of legal aid to individuals entitled to receive it, in particular by increasing the availability of funds.
6. The State party should address the very high level of overcrowding and poor physical conditions prevailing in the prisons and other detention facilities. The State party should also address the lack of hygiene, adequate food and appropriate medical care, which may be tantamount to inhuman and degrading treatment.
7. The State party should consider alternative measures to imprisonment to address the situation in the detention facilities.

**1. Constitutional and legal framework within which the Covenant is implemented (Art.2):****List of issues #1:**

Please specify whether the Covenant takes precedence over domestic legislation in case of conflict between the two. Can the Covenant be directly invoked before the courts? If so, please provide examples.

Zambia is a party to the International Covenant on Civil and Political Rights. However, Zambia, like many other Commonwealth states, follows a dualist legal system. This means that all international treaties ratified do not have an automatic application as part of national law unless domesticated or internalized by an act of Parliament.

The Covenant on Civil and Political Rights does not take precedence over domestic legislation in cases where the two are in conflict. This is because Zambia has a dualist legal regime that does not allow international instruments to be self-executing domestically. In addition, the Covenant cannot be invoked before a domestic court of law as courts do not consider an international instrument as being part of Zambian law. However, it is important to note that despite the covenant not being able to be invoked before domestic courts of law in Zambia, Part III of the Zambia Constitution (Bill of Rights) provides for the protection of most of the rights contained in the covenant.

**List of issues #2:**

Please indicate whether the State party has taken any steps to harmonize the Constitution with the Covenant and whether it has developed democratic institutions and human rights machinery for better implementation of the Covenant (previous concluding observations, para.7).

There has been no deliberate effort to harmonize the Zambian Constitution with the Covenant ever since the State acceded to the Covenant in April 1984.

The State has established the democratic institutions and human rights machinery for better implementation of the covenant and these include the Police Public Complaints Authority (PPCA) and the Human Rights Commission (HRC).

**The Human Rights Commission**

The Human Rights Commission was established following a recommendation by the Munyama Human Rights Commission of Inquiry, appointed in 1993 to investigate the human rights situation in the Second Republic after 31<sup>st</sup> October 1991.

The Commission consists of a Chairperson, a Vice-Chairperson and five other Commissioners, all appointed and dismissed (in case of incompetence or misbehaviour<sup>1</sup>) for three years by the President and subject to ratification by the National Assembly<sup>2</sup>.

Pursuant to section 9 of the Human Rights Commission Act, the functions of the Commission are:

- Investigate human rights violations
- Investigate any maladministration of justice;
- Propose effective measures to prevent human rights abuses;

<sup>1</sup> See « The Human Rights Commission Act », Section VII

<sup>2</sup> See « The Human Rights Commission Act », Section V

- Visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of persons held in such places and make recommendations to redress existing problems;
- Establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuses to enhance the respect for protection of human rights; and
- Do all such things as are incidental or conducive to the attainment of the functions of the Commission.

With regard to the investigation of human rights violations, the Human Rights Commission has the powers to investigate either on its own initiative or on receipt of a complaint or allegation by (i) an aggrieved person acting in such person's own interest, (ii) an association acting in the interest of its members, (iii) a person acting on behalf of an aggrieved person, or (iv) a person acting on behalf of and in the interest of a group or a class of persons.

Following the investigation, the Commission may issue recommendations "*to the appropriate authority*"<sup>3</sup> for any victim of an abuse of human rights<sup>4</sup> (i.e. release of a person from detention; payment of a compensation seeking for redress before a court). The "*appropriate authority must, within 30 days, make a report to the Commission, on any action taken by such authority to redress human rights violations*".

#### **Main weaknesses:**

Lack of independence of the Human Rights Commission:

The Commissioners are appointed by the President, who has the power to decide upon the composition of the Commission. The Commissioners, who are appointed by the President, are ratified by Parliament. It is important to note that the President has power to relieve any of the Commissioners of their duties if they grossly misconduct themselves. Currently, none of the Commissioners has been dismissed on these or any other grounds. However, the weakness of the Human Rights Commission is not so much in the security of tenure of the Commissioners but in the powers given to the Commission in the executions of its mandate. Much as the power to visit detention facilities and investigate cases of human rights violations, the Commission does not have the power to take any act against persons found guilty as it can only make recommendations to the relevant authorities on what actions should be taken in relation to the findings of the Commission. These recommendations can either be adopted or ignored by government authorities.

Lack of enforcement power:

This is one of the main weaknesses of the Commission, which is not in a position to take any further action once the recommendations are issued, especially in the case where a recommendation issued is not implemented by the "appropriate authority". Additionally, the Commission is not competent to initiate legal proceedings on behalf of the complainants. The dependence by the HRC on other authorities to take action does not give assurance to the complainant for redress. This procedure also unduly prolongs the possible proceedings.

Lack of funding:

The budget of the Commission, which is adopted by the Parliament, remains extremely low and does not cover the basic expenses of the Commissioners<sup>5</sup>. The Commission is not allowed to

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<sup>3</sup> See « The Human Rights Commission Act », Section 13

<sup>4</sup> See « The Human Rights Commission Act », Section 10

<sup>5</sup> See « The Human Rights Commission Act », Section 22

receive grants or any other financial support from international institutions or other donations from any source, unless they have been expressly approved by the President. This may also undermine appropriate funding and result in an unnecessary administrative burden.

## 2. Right to life (Art. 6):

### List of Issues #11:

Has the State party considered the abolition of death penalty in its legislation and the ratification of the Second Optional Protocol to the Covenant? (previous concluding observations, para.23)

## Death penalty

### A) Scope:

The death penalty is still in force despite the constitution guaranteeing the right to life. Article 12 (1) of the constitution states that *“a person shall not be deprived of his life intentionally except in execution of a sentence of a court in respect of a criminal offence under the law in force in Zambia of which the person has been convicted”*.

The death penalty is still in force in Zambia for the following acts:

1. acts of treason (article 43 of Criminal Code),
2. murder (articles 200 and 201 of the Criminal Code), although extenuating circumstances may reduce the sentence to manslaughter as provided in article 201 of the Criminal Code,
3. aggravated robbery (article 294 of the Criminal Code), when there is a specific use of a firearm or where the offensive weapon or instrument is not a firearm and grievous harm is done.<sup>6</sup>

The sentence of death is excluded from certain categories of people who commit offences punishable by death. These include mentally disturbed persons, female convicts who are expecting at the time of sentencing and all persons below the age of 18 or below at the time of the offence. The death penalty is not imposed where there are extenuating circumstances. Extenuating circumstances are defined in the Penal Code as “any fact associated with the offence which would diminish morally the degree of the convicted person’s guilt” taking into consideration the “standard of behaviour of an ordinary person of a class of the community to which the convicted person belongs.”

According to the HRC’s opinion, the death penalty should only apply to the “most serious crimes”<sup>7</sup> and then should be a “quite exceptional measure”<sup>8</sup>. The HRC further considered that crimes of

<sup>6</sup> Aggravated robbery

... Notwithstanding the provisions of subsection (1), the penalty for the felony of aggravated robbery under subsection (1) shall be death-

(a) where the offensive weapon or instrument is a firearm, unless the court is satisfied by the evidence in the case that the accused person was not armed with a firearm and-

(i) that he was not aware that any of the other persons involved in committing the offence was so armed; or

(ii) that he dissociated himself from the offence immediately on becoming so aware; or

(b) where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence, unless the court is satisfied by the evidence in the case that the accused person neither contemplated nor could reasonably have contemplated that grievous harm might be inflicted in the course of the offence.

(3) In this section “firearm” has the meaning assigned to it in section two of the Firearms Act. Cap. 110 (No. 18 of 1963 as amended by No. 40 of 1969 and Act No. 29 of 1974)

<sup>7</sup> See General Comment #6

<sup>8</sup> See General Comment #6

treason<sup>9</sup> and robbery<sup>10</sup> should not attract the death penalty as they should not be considered as “serious crime”, as is the case in Zambia.

Moreover, the HRC adopted a very clear position on Zambia in 1990 in the case “*Lubuto v. Zambia*”, in which it considered that aggravated robbery (as defined in the Zambian Criminal Code) violates article 6, as it should be not considered “a serious case”.<sup>11</sup>

Since then, no change has been made to amend the Criminal Code and to reduce the scope of the death penalty.

## **B) Practice:**

The High Court is the competent first degree of jurisdiction to hear the cases of treason, murder and aggravated robbery. Decisions may be appealed before the Supreme Court, which has the power to confirm or to dismiss the case.

If the case is confirmed by the Supreme Court, the President can issue a death warrant or commute the sentence.

Since 1997, the President has not issued any death warrants, having firmly stated when he was newly elected that he would not endorse any death sentence. In practice, the death penalty is then still pronounced but there is a *de facto moratorium* on executions. No execution has been carried out since 1997.

- **Situation in death row:**

Persons sentenced to death are sent to Mukobeko Maximum Security Prison located in Kabwe in the Central Province of Zambia. This prison was built in 1961 for a capacity of 400 inmates but as of 29<sup>th</sup> May, 2007 a visit to the prison by the LRF Kabwe Office revealed that there is a total of **1’678** prisoners, **296** of which are on death row.

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<sup>9</sup> See Concluding Observations on the UK’s Overseas Territories (2001), UN Doc. CPR/CO/73/UK; CCPR/CO/73/UKOT, para. 37: “*The Committee is concerned that in the Turks and Caicos Islands, alone among the overseas territories, capital punishment for the offences of treason and piracy has been retained. It considers that such retention may raise issues under article 6 of the Covenant, particularly since the death penalty has been abolished for the offence of murder. The State party should take the necessary steps to abolish the death penalty for treason and piracy*”.

<sup>10</sup> See Concluding Observations on Korea (1992), UN Doc. A/47/40, paras.470-518: « *En ce qui concerne l'article 6 du Pacte, le représentant de l'Etat partie a déclaré qu'en plus des délits prévus par la loi sur la sécurité nationale, 15 crimes étaient passibles de la peine de mort. Une sentence de mort pouvait être prononcée en cas de cambriolage accompagné de circonstances aggravantes odieuses. Le Gouvernement qui a déjà considérablement réduit le nombre des délits passibles de la peine capitale a l'intention de progresser encore dans cette voie. La loi sur la sécurité nationale ne traite que d'un genre de crime : les activités contre l'Etat qui mettent en danger la sécurité nationale, et nombre de délits énumérés dans la loi, par exemple le meurtre à des fins insurrectionnelles, sont également couverts par le Code pénal. En vertu de la loi sur l'administration pénale, la sentence de mort est exécutée par pendaison. L'avortement est punissable en vertu du Code pénal, mais la loi sur la santé maternelle et infantile autorise des exceptions en cas de viol, d'inceste et de danger pour la mère. La référence dans le rapport à l'avortement pour des raisons d'eugénisme se rapporte au cas où le fœtus présente de graves malformations.* » [translation available only in French]

<sup>11</sup> See Communication *Lubuto v. Zambia* (390/90), UN Doc. CCPR/C/55/D/390/1990/Rev.1: “The Committee notes that the author was convicted and sentenced to death under a law that provides for the imposition of the death penalty for aggravated robbery in which firearms are used. The issue that must accordingly be decided is whether the sentence in the instant case is compatible with article 6, paragraph 2, of the Covenant, which allows for the imposition of the death penalty only “for the most serious crimes”. Considering that in this case use of firearms did not produce the death or wounding of any person and that the court could not under the law take these elements into account in imposing sentence, the Committee is of the view that the mandatory imposition of the death sentence under these circumstances violates article 6, paragraph 2, of the Covenant”.

This shows an increase compared with the statistics from the Human Rights Commission, which visited the prison in September 2005 and provided the following figures:

Total population of prisoners: 1'442 prisoners with the following breakdown:

• Death row	264
• Convicts	995
• Remandees	162
• Lifers	<u>21</u>
• <b>Total</b>	<b><u>1,442</u></b>

This population of 1, 678 prisoners translates into congestion of up to more than 4 times the original and normal capacity at Mukobeko. The prison building has never been extended. The sanitary conditions have been described as alarming by the judiciary and the congestion in the prison has exacerbated this problem. For Example, during a visit by the Human Rights Commission it was observed that in the Condemned Section each cell accommodates about six prisoners instead of the recommended one prisoner per cell under Section 120 of the Prisons Act. This poses great danger to the safety and health of inmates, especially that there are no toilet facilities at night. The cells do not have ablution facilities. It was also observed in the female section that there were 7 children with their inmate mothers.

- **Abolition of the death penalty:**

There has been a public debate on the death penalty in Zambia for years now. A consideration by the Constitution Review Commission in 1994 on whether Zambia should become a party to the Second Optional Protocol to the ICCPR abolishing the death penalty was not fruitful. The government engaged large scale consultation process during this time and finally the Constitution recommended that the death penalty should be retained, due to public concern over the rising rate of crime.

The *de facto moratorium* on the death penalty is essentially due to the political commitment of the current President. He further pledged that he wanted to abolish the death penalty. However it seems that public opinion is not in favour of such abolition.

In February 2004, the president commuted the death sentences of 44 soldiers convicted of treason because of their involvement in the 1997 failed coup. In May, 2004 he further commuted death sentences of 15 prisoners of convicted in separate cases of murder and armed robbery to prison sentences ranging from 20 to 50 years. In June, 2004 one of the 44 soldiers, Jack Chiti, convicted of treason and sentenced to death, was released on health grounds.

Currently, the numerous death row cases in Mukobeko Maximum Prison in Kabwe have created a situation of overcrowding (see above). Some detainees have been kept waiting on death row for 27 years.<sup>12</sup> If one of the reasons of this overcrowded situation is the moratorium, NGOs are concerned by the fact that Tribunals continue to pronounce the death penalty. This augmentation, together with the lack of commutation to lighter penalties, has led to this dramatic rise in the number of detainees on death row.

In the meantime, another positive step should however be mentioned: according "The Post", a national daily newspaper, the President announced that "*he would sign a statutory instrument in which he would commute death sentences to life imprisonment or other terms of imprisonment*".<sup>13</sup> This move is particularly positive, as it will decongest prisons and specifically the number of death row cases. The Human Rights Commission and NGOs welcomed the President's commitment.

<sup>12</sup> See the article in *the Times of Zambia* "Mukobeko inmates plead for pardon", April 17<sup>th</sup> 2007

<sup>13</sup> See the article in "*The Post*" "HRC welcomes Levy's intention to commute death sentences", April 29<sup>th</sup> 2007

However, NGOs are concerned by the lack of a time framework to implement the above mentioned instrument.

### 3. Prohibition of torture and other ill treatment (Art. 7):

#### List of Issues #11:

Please provide information on the measures adopted in law and in practice to put an end to reported torture and ill-treatment of persons deprived of their liberty and on abuses allegedly committed by police officers and members of security forces. Have perpetrators been prosecuted? If so, please provide information on their outcome. Has compensation been granted to the victims and their families? (previous concluding observations, para.12)

Part III of the Constitution of Zambia provides that no one shall be subjected to torture or any inhuman or degrading punishment or other like treatment. This provision however does not define the term torture neither does it provide for an act of torture as a crime. It is important to note that there is no other provision in the laws of Zambia that provides for torture as a crime in Zambia. This in itself has perpetuated acts of torture.

To this effect officers implicated in acts of torture are charged with the offence of causing grievous bodily harm and not torture. Such officers are charged in accordance with sections of the Penal Code which include:

- **section 229** - which provides that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years,
- **section 232** - which provides that any person who unlawfully wounds another or unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person, is guilty of a felony and is liable to imprisonment for three years,
- **section 247** - which provides that any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year,
- **section 248** - which provides that any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.

The other fact that perpetuates acts of torture in Zambia is the fact that derivative evidence is admissible in the courts of law. This basically means that if a suspect is tortured during the interrogation process and as a result of the torture that suspect reveals the whereabouts of stolen property and based on that information the officers recover the stolen property, the courts will accept the exhibits as evidence regardless of the means that the officers used in obtaining that evidence. Therefore, it can be concluded that the measures adopted in law are not sufficient to end acts of torture in Zambia.

Recently, the Human Rights Commission reported that a Prison officer in Mufulira had been subjecting some of the inmates to torture.

It must be noted however that, in practice, the State has made efforts to have officers implicated in acts of torture brought to justice. This is evident in the case involving suspects of the 1997 failed coup. After receiving allegations of torture, the State established the Japhet Banda Commission to ascertain the facts surrounding the alleged acts of torture and other inhuman and degrading treatment by officers on the suspects. The findings of the Commission showed that

most of the suspects had suffered torture, inhuman and degrading treatment at the hands of named officers. To this end, the Commission recommended that some of the perpetrators be discharged of their duties and reprimanded while others were to be demoted. The Commission further awarded compensation which the State had to pay to the victims of torture. However, there are reports that the State has not compensated most of these victims (except for a few).

The establishment of the Human Rights Commission is another effort by the State to help reduce acts of torture by officers on inmates of suspects in their custody. This body is competent to receive complaints of cases of torture or ill-treatment (see above). However, as mentioned, the Human Rights Commission may only make recommendations to the State.

In both provinces, cases of torture are listed. According to a study of the Human Rights Commission, for 2006, 160 complaints have been introduced from different sources. Regarding the crime of torture, 24 complaints have been introduced with the following repartition on the year<sup>14</sup>:

	Male	Female
1 <sup>st</sup> quarter 2006	6	0
2 <sup>nd</sup> quarter	4	1
3 <sup>rd</sup> quarter	9	3
4 <sup>th</sup> quarter	0	2
1 <sup>st</sup> quarter 2007	1	1
Total	20	7

One of the characteristics of these cases is the impunity of the perpetrators. Indeed, in spite of the numerous complaints of inmates, few cases have been brought to the courts to date.

Furthermore, the State established the Police Public Complaints Authority (PPCA). The Act establishing this institution has been given the authority to direct prosecution or dismissal of those officers found guilty of violation of human rights (torture inclusive). It is important to note that officers found guilty by the PPCA have been dismissed or discharged of their duties on recommendation by the PPCA. However, none of the perpetrators of torture has been prosecuted.

**Case from Legal Resources Foundation:**

**March 2006:** The Lusaka High Court has discharged a Lusaka resident who was wrongfully detained for over three years without trial. Judge Tamula Kakusa released Cosmas Tembo, 36, of Lusaka' John Laing compound, on March 27 after a Habeas Corpus application by the Legal Resources Chambers.

Tembo spent three years and seven months in remand after having been wrongly arrested and detained by then Criminal Investigations Officer (CIO) Mwikisa of Pentagon police post in Chibolya compound.

Tembo told LRF News upon his release that he was arrested on August 7, 2002 at Mano Nimbuto Bar in John Laing with five other men by police officers from Chibolya Police Post in connection with a robbery of K14.9 million and household goods.

Tembo, who did not know the five men that he was arrested with, later learnt that one of the suspects was Benson Musonda, who had been on wanted lists for several aggravated robbery cases.

<sup>14</sup> Human Right Commission, Drafting of the 2006 annual report.

Tembo said he was tortured and jointly charged with Musonda for aggravated robbery while the others were released. After being detained for a month at Chibolya Police Post they were taken to Lusaka Central Police Station where an identification parade was conducted on September 25, 2002 and Musonda was identified as the person who robbed the complainant.

When Tembo was not identified, the arresting officer Mwikisa neglected to release him. When the matter finally came up on March 27, 2006 after a long and unsuccessful procedure, Mwikisa appeared in court and was told that the Court did not intend to proceed with Tembo's matter as he did not arrest him after he was not identified in the identification parade.

The Deputy Chief State Advocate Francis Nsokolo said he had no objection to the Habeas Corpus application, therefore Judge Kakusa discharged Tembo.<sup>15</sup>

#### List of Issues #12:

Has the State party abolished corporal punishment in accordance with article 7 of the Covenant? (previous concluding observations, para.27).

Zambia has abolished Corporal Punishment. This is evident firstly in the ruling of the John Banda case. In this case, the presiding judge outlawed Corporal Punishment describing it as being unconstitutional because Corporal punishment is inhuman and degrading. The basis for this decision was Article 15 of the Constitution of Zambia (Part III) which prohibits torture, inhuman or degrading treatment.

Further in 2004, Parliament amended provisions of the law that provided for Corporal Punishment in the Penal Code, the Criminal Procedure Code and the Education Act.

#### 4. Security of person and freedom of arbitrary arrest - arrest and custodial detention - (Art. 9)

It is important to note that Zambia's legal framework (Constitutional provisions) is quite consistent with the provisions of the ICCPR.

Article 13 of the Zambian Constitution provides for the protection of the right to personal liberty and the procedure of arrest and legality of detention for circumstances under which a person's right to liberty may be limited by law.

- Custodial detention:

Further, Section 33 (1) of the Criminal Procedure Code provides the general procedure with regard to arrest and the legality of detention. According to this article, the arresting officer has the obligation to present the arrested person to the Court within 24 hours. However, the State party itself acknowledges that with "*logistical problems such as transport, court infrastructure and human resources*", the time limit is not always respected.<sup>16</sup>

- Pre-trial detention:

Article 13 §3 of the Constitution provides that:

*"Any person who is arrested or detained --*

<sup>15</sup> [www.lrf.org.zm/Newsletter/march2006/lusakaman.html](http://www.lrf.org.zm/Newsletter/march2006/lusakaman.html)

<sup>16</sup> See State report, p. 51 §203

(a) for the purpose of bringing him before a court in execution of an order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

*and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial”.*

However, there is no limit to the length of pre-trial detention in Zambia and this has led to detainees remaining under remand at times for over four years. The timeframe within which a detainee should be brought for trial is determined by the pace with which the prosecutors are able to prepare for prosecution. This has greatly undermined the rights of detainees to a speedy trial as guaranteed by the Constitution and has also led to the congestion currently being experienced in Zambian Prisons.

- Police interrogations
  - Length of the police interrogations / investigations:

Investigations in Zambia, like pre-trial detentions, do not have time limits and are to a large extent responsible for the long period of pre-trial detentions. There is no law which can compel the police to investigate a matter within a specific period for the reason that investigations, as it is argued, have a lot of factors beyond the control of the investigators. However many of the prolonged investigations are the result of poor institutional capacity on the part of the police.

- The presence of a lawyer / legal assistance during the interrogations

Article 18 (d) of Constitution provides a specific disposition with regard to the legal aid, which reads:

*“Every person who is charged with a criminal offence (...) “shall, unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose, be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice”.*<sup>17</sup>

According to this provision the Legal Aid Act had been adopted and established a “Legal aid Directorate” and a “Legal aid Board”.

The Directorate provides free legal assistance to indigents while the Board is in charge of the administration of a Legal Aid Fund, from which private legal practitioners can be hired to represent indigents who have been granted legal aid. Legal aid is mandatory for all serious criminal cases triable in the High Court. It is discretionary in all other cases. The Legal Aid Board does not have the numbers and capacity to assist indigents who need services of counsel during interviews or interrogations.

- The presence, if necessary, of an interpreter for the interrogations

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<sup>17</sup> Constitution, Article 18 (d).

Practice has shown that the investigators communicate with suspects in a language understood by both parties. However, the provision of interpreters is normally restricted to court proceedings.

## 5. Treatment of persons deprived of their liberty (Art. 7 and 10)

### List of Issues # 13:

Please indicate what action has been taken by the National Committee on Penal Reform to improve poor conditions in places of detention in the State party and to ensure the implementation of article 10 of the Covenant as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners (previous concluding observations, para. 13).

#### A) Access to the detention facilities:

According to NGOs, some of them are authorised to have access to the prisons and other detention facilities. Precisely, the NGO "Prison Fellowship Association" has access to these places and provide support to the detainees, including food and health care.

The Human Rights Commission has also the right to visit the detention facilities and recently produced the overview of the situation in prisons (see below).

#### B) Situation in prisons

The authorities themselves have acknowledged this disastrous situation in their report,<sup>18</sup> although the Prison Act provides that the State party endeavours to treat prisoners in a human way.<sup>19</sup>

According to the NGO "Prison Fellowship Association", an NGO based in Lusaka and active in the support of the prisoners in the detention facilities (both legal and material support), the situation did not really improve since the last examination of the Zambian State report before the Human Rights Committee.

In Zambia, the prison population has increased from 3,000 prisoners in 1964 to 14,427 as of August 2005 with the following breakdown<sup>20</sup>:

- 8568 convicted prisoners,
- 4938 remand prisoners,
- 273 condemned prisoners,
- 25 mentally sick,
- 294 prohibited immigrants
- 79 convicted juveniles
- 230 remand juveniles

The prison population has grown immensely without any extension of the infrastructure and capacity of the prisons. The consequence has been endemic overcrowding.

Most of the Zambian prisons were built in the colonial days and are now outdated and need major refurbishment. Nevertheless, it is very difficult to have a clear and comprehensive picture of the current situation in prison facilities as there is a lack of figures and statistics. However, the Human

<sup>18</sup> See State report, p. 57, § 240

<sup>19</sup> See State report, p. 54, § 222

<sup>20</sup> Human Rights Commission, report on prison and police cells visits, Central province, 2005, introduction to the report, p. iii

Rights Commission recently produced two reports on the situation in the Central<sup>21</sup> and Copperbelt<sup>22</sup> provinces, respectively.

**a) Central and Copperbelt provinces:**

- *Prison overpopulation*

Prisons in both of these provinces are congested, according to the Commission of Human Rights. Despite this increase in the prison population, there has been no corresponding effort in either expanding the old dormitories or building new ones.

In Luanshya State prison, for instance, the dormitory was built for 27 inmates in 1968 and is now housing more than 106. They are crowded together for at least eight hours with only open toilets.<sup>23</sup>

Even members of the justice system expressed their preoccupation after seeing the conditions of detention in the country. Ndola High Court Judge Justice Munalula Lisimba, who was speaking during the official opening of the High Court Sessions in Northern Province, said that during prison visits they had observed that many prisons were dilapidated. He specified that "it is common to find two or more inmates sharing a torn single mattress, using a torn blanket and in some instances inmates have no blankets at all." He also said that there was overcrowding, with most prisons being made to accommodate twice their normal capacities.<sup>24</sup>

- *Inadequacy of amount of food and quality of food*

The Prison Act provides that the State party endeavours to treat prisoners in a human way through the provision of food. Moreover, "*inspections and tests*" have to be done on the quality and quantity of prisoners' food.<sup>25</sup>

The prison service in the Central province is, however, experiencing a critical shortage of food. The little available food is lacking in both nutrition and quantity. Basic nutritional needs of the inmates are not adequately met and they are used to receiving only one "combined meal" for breakfast, lunch and supper.<sup>26</sup>

- *Hygiene and access to medical care*

Sewer systems in most of the prisons are blocked. In both provinces, ventilation in the cells is poor and there are few windows. The worst **situation in the Central province was found at Mpima Remand prison**, where human waste was found floating in small ponds.<sup>27</sup>

The state of cells in police stations is also very poor. In the Copperbelt, there are often no toilets—even no water—and a heavy, repulsive smell persists. In the Chati police station for instance,

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<sup>21</sup> Human Rights Commission, report on prison and police cells visits, Central province, 2005.

<sup>22</sup> Human Rights Commission, report on the Commission's visit to places of detention on the Copperbelt Province between 25<sup>th</sup> of March to 8<sup>th</sup> April 2007.

<sup>23</sup> Ibid

<sup>24</sup> <http://www.lrf.org.zm/Newsletter/february2007/govt.html>

<sup>25</sup> State report p.54, §224

<sup>26</sup> This is especially the case in the Mpima Remand prison, see Human Rights Commission, report on prison and police cells visits, Central province, 2005, p.1

<sup>27</sup> See Human Rights Commission, report on prison and police cells visits, Central province, 2005, p.1

there are maggots all over the floor, coming out from the block pit latrine.<sup>28</sup> This situation presents a high health risk contrary to the respect of human rights.

The specific situation of the detainees affected by HIV or tuberculosis is not taken into account. There is no supplementary ration of food for them, while the ARV supposes a specific diet to produce good results. Moreover, the detainees already affected have not been separated from the rest of the prison population to be ensured adequate treatment and, as a result, the inmates are not spared by the HIV/AIDS pandemic.

According to the Commissioner of prisons Jethro Mumbuwa (former Commissioner), the Prisons Service last year lost 114 officers and 449 inmates to HIV/AIDS-related illnesses. He assured that “in Zambia the HIV prevalence rate in prisons stands at 17 per cent, which is two per cent higher than that of the general population”.<sup>29</sup>

- *Segregation of prisoners*

The Section 60 of the Prisons Act provides that male and female prisoners should be kept apart and confined in separate prisons or in separate parts of the same prison as for convicted and unconvicted prisoners of each sex.<sup>30</sup>

The problem in most cases comes in relation to the separation of juveniles from adult offenders. In some detention facilities, juveniles are detained in the same facility as adults.

The situation of prohibited immigrants is also worrying. They are mixed with hard core criminals even if many of them are not convicted of any crimes. Putting them in prison without more consideration is traumatic and dehumanising.

#### **b) Lusaka Central Prison - pre-trial prison:**

The regular visits from Lusaka Central Prison undertaken by “Prison Fellowship Association” show that there is a population of 1600 inmates for only 320 places available – **showing a level of overcrowding of 500 %**. The vast majority is in pre-trial detention<sup>31</sup>.

Currently, each of the 16 cells which has a capacity of 20 places (20m<sup>2</sup>), is occupied by 100 inmates. They are not allowed to leave their cells from 4.30pm to 8.00am. Each cell has one toilet and there are only 4 showers for all the prison.

The food is provided once a day and is always composed of manioc and beans. With regard to the medical situation, a trained nurse is available within the prison and “Prison Fellowship Association” is providing the basic medication, as the detainees cannot afford it.

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<sup>28</sup> Human Rights Commission, brief report on the Commission’s visit to places of detention on the Copperbelt Province between 25<sup>th</sup> of March to 8<sup>th</sup> April 2007.

<sup>29</sup> Times of Zambia, “449 inmates, 114 officers die from HIV/AIDS illnesses”, 2005

<sup>30</sup> State report, p. 54, §227 ss.

<sup>31</sup> Information based on interview conducted with representatives of “Prison Fellowship Association”, in Lusaka, April 2007.



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