

WHAT IS BEING DONE TO PREVENT, PUNISH AND STOP TORTURE?

Having ratified the UNCAT in 1989, Zambia is obliged to, among other things, take effective legislative measures to prevent, punish and end torture. In the recent past, there have been efforts to enact a law that criminalizes torture. At the close of 2017, Cabinet adopted a Bill to enact Anti-Torture law that would give legal effect to Article 15 of the Constitution of Zambia and domesticate the UNCAT.

At international level, Zambia subscribes to the Universal Periodic Review (UPR) process which reviews the human rights situation in UN Member States every four years. During the 4th cycle (2022) UPR of Zambia, the government pledged to implement recommendations to enact a law criminalizing torture in line with its prohibition in the Constitution and the UNCAT. Similar commitments were made during the 3rd (2017/2018), 2nd (2012) and 1st (2008) UPR cycles. However, despite the continued pledge by the government, it had not yet enacted the law that penalises acts of torture at the time of writing this brochure (May 2024).

As the Commission continues to raise public awareness and monitor the protection of the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment, it will also continue to advocate for the enactment of the anti-torture law. Such a law will make torture a punishable offence and, thus, end the impunity of law enforcement officials and private individuals who do not seem to be deterred by the prohibition on torture in the Constitution.

Notwithstanding the delay in enacting the law to criminalize acts of torture, there have been some notable efforts aimed at enhancing the protection of the right to life and freedom from torture, inhuman or degrading punishment. On 23rd December 2022, Zambia became the 25th African State to abolish death penalty when President Hakainde Hichilema signed into law the Penal Code (Amendment) Bill No. 25 of 2022 that removed provisions for the death penalty. Universally, the death penalty is considered cruel, inhuman and degrading. The government's decision to ban the use of death penalty demonstrates its commitment to protecting the right to life and ending cruel, inhuman or degrading forms of treatment or punishment.

Get in touch

WHERE CAN I REPORT ACTS OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT?

Victims of torture and other acts of cruel, inhuman or degrading treatment or punishment have the right to report and seek redress for the human rights violations suffered. The Human Rights Commission is mandated by law to receive complaints, investigate and secure redress for human rights violations in Zambia. The violations of the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment can be reported to the Commission through the following offices and platforms:

Provincial Office Mobile Contacts:

No.	Airtel Number	Town
1	0764-353501	Lusaka
2	0764-353543	Livingstone
3	0764-353519	Solwezi
4	0970-520352	Chipata
5	0970-520358	Chinsali
6	0970-520355	Ndola
7	0970-520356	Mansa
8	0957-445833	Kabwe
9	0957-445829	Mongu
10	0957-446032	Kasama



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Human Rights Commission



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WHAT IS TORTURE?

Torture has been defined in the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) as:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him or her for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

This definition brings out four key elements which must be met for an act to be considered as torture. The first one is that an act should cause severe pain or suffering, mentally or physically. The second element is the intentional infliction of pain or suffering. The third one is the purpose for which an act of torture is being done. And the fourth element is the involvement of a public official, directly or indirectly. Any act that does not reach the threshold of torture as defined by the UNCAT is regarded as cruel, inhuman or degrading treatment or punishment.

WHAT IS INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT?

Every person has the right to be protected from treatment or punishment that is inhuman or degrading. Like torture, inhuman treatment or punishment causes suffering that affects a person physically or emotionally. The pain or suffering inflicted may be less in severity compared to torture and lack the elements characterizing acts of torture. Treatment or punishment regarded as degrading has the effect of humiliating and demeaning a person and taking away their dignity as a human being.

Acts of inhuman or degrading treatment or punishment vary depending on circumstances and include, but are not limited to:

- violence causing physical and/or emotional

- pain on its victims;
- abuse or assault occasioning actual bodily harm or mental suffering;
- subjecting a person to prolonged interrogation causing stress and mental anguish;
- detaining a person under inhumane conditions;
- depriving a person under detention of basic necessities of life, such as food, water and access to life-saving drugs;
- dehumanizing a person or group of people; and
- use of excessive force by law enforcement officers.

IS TORTURE PROHIBITED IN ZAMBIA?

Freedom from torture and other cruel, inhuman or degrading treatment or punishment is recognised as an absolute right. The restriction or suspension of this right is not permitted under any circumstance, not even during a declared state of emergency. Torture in all forms is prohibited under Article 1 of the UNCAT, as well as Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Zambia is a State Party.

As a party to the UNCAT and ICCPR, Zambia is obliged to take effective measures to prevent, stop and end not just torture, but other acts of cruel, inhuman or degrading treatment or punishment that may be occurring in any territory under her jurisdiction. Accordingly, Article 15 of the Constitution of Zambia prohibits the infliction of torture or inhuman or degrading punishment or other like treatment on a person.

IS TORTURE CRIMINALISED IN ZAMBIA?

Torture is not criminalized under the Zambian law. While Article 15 of the Constitution prohibits torture, there is no law that defines torture or prescribes penalties for acts of torture. According to Article 18 of the Constitution, “a person shall not be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law”. In the absence of a law defining what torture is and prescribing the appropriate punishment for torture, the practice has been that perpetrators are charged and prosecuted for assault - related offences such as prescribed in section 248 of the Penal Code Act, Chapter 87 of the Laws of Zambia. As a result, acts of torture are not being punished commensurate with the seriousness of the offence and impunity of law enforcement official has persisted going by the number of complaints in relation to torture that the Human Rights Commission has continued to receive on a regular basis.

IS CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT CRIMINALISED IN ZAMBIA?

There are provisions in the existing statutes that criminalise acts which constitute cruel, inhuman, or degrading treatment or punishment. These include the Penal Code Act Chapter 87 of the Laws of Zambia, which makes offences for various acts related to cruel, inhuman, or degrading treatment or punishment, such as “acts intended to cause grievous harm” (Section 224) and “assaults occasioning actual bodily harm” (Section 248).

The Anti-Gender-Based Violence Act No. 1 of 2011, in defining gender-based violence (GBV) includes a range of aspects that amount to cruel, inhuman or degrading treatment, such as, “physical, mental, social or economic abuse” that may be inflicted on a person because of his or her gender. Further, this Act provides the legal framework for the protection of victims of GBV and prosecution of its perpetrators.

The Zambia Correctional Service Act No. 37 of 2021 includes provisions relating to the protection of the dignity and privacy of persons in detention. Section 34 (1) prohibits the search of a person being admitted to a Correctional Centre or prison by a Correctional Officer of the opposite sex. It goes further to provide that the search must be done in a manner that is respectful and recognizes the inherent dignity and privacy of that person.

The Children’s Code Act No. 12 of 2022 makes provisions in relation to protection of children from torture and other cruel, inhuman or degrading treatment or punishment in all situations. For instance, the Code prohibits corporal punishment (Section 22) and torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty of a child (Section 23 (1)).

The Education Act No. 23 of 2011 also prohibits corporal punishment and cruel, inhuman or degrading treatment of a child in institutions of learning under section 28.

While these and other laws criminalise many types of ill-treatment, a major gap in the legal framework remains that excludes punishment of heinous acts of torture which is a gross violation of the inherent human dignity. It is, therefore, essential that a comprehensive law criminalising torture is enacted to guarantee protection from torture and other cruel, inhuman or degrading treatment or punishment.