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June 25, 2010

Hon. Mkhondo Lungu
Minister of Home Affairs
Republic of Zambia

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Dear Honourable Minister:

Human Rights Watch is a leading independent non-governmental organization, founded in 1978, that monitors human rights developments in more than eighty countries around the world.

Between September 2009 and February 2010, Human Rights Watch—in partnership with the AIDS and Rights Alliance for Southern Africa and the Prisons Care and Counselling Association—conducted research into prison health conditions in Zambia, culminating in the recent report *Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons*.ⁱ For the purposes of that report, we interviewed 246 prisoners and 30 prison officers at six prisons in the central corridor of Zambia. We also interviewed 46 representatives from the government, international agencies, donors, and non-governmental organizations, including meetings with representatives from the Ministry of Home Affairs and the Zambia Police Service.

We are writing today to draw your attention to the repeated testimony we received from prisoners throughout the prison facilities we visited, describing routine physical abuse during the time when the prisoners had been held in police custody. This treatment could amount to torture in violation of Zambian and international law. We urge you to immediately take action to investigate and halt these abuses.

1. Reports of Physical Abuse in Police Custody

While conducting our research, we consulted senior officials in the Ministry of Home Affairs. One official assured us that the use of force to extract confessions from detainees in police custody has been stopped. In an interview, a senior police representative also claimed that the use of force in police custody is “not policy” and only used by a “few rotten eggs.”ⁱⁱ To the contrary, however, testimony provided by prisoners indicated an ongoing, widespread and systematic

pattern of brutality. A significant proportion of the 246 prisoners we interviewed volunteered testimony about the abuse they suffered in police custody, and gave strikingly similar depictions of the abuse. Other legal and human rights investigators working in Zambia corroborated our findings, indicating strongly that such abuse continues to be widespread.

As Tandiweⁱⁱⁱ, 27, a female inmate at Lusaka Central Prison, told us:

When I was in police custody, they beat me, a torture I have never experienced in my lifetime. They beat me, undressed me, whipped me. They put handcuffs on me so hard that the blood couldn't flow. They turned me upside down and hung me upside down, with a steel cord between my legs. They swung me and beat me. They saw I was crying and screaming and put a cloth in my mouth to suffocate me. I fainted—I couldn't handle the pain. They were abusing me with their language, calling me a prostitute. They put me somewhere where I couldn't talk to anyone. They were trying to get me to say something—I don't know. They were just torturing me for four days, beating me. After, there was lots of blood where I was beaten. My hands were green and swelling.

They hit me on my ears and face with a metal band. There were scratches on my face. They said, "you have to give us information about who had killed the person." They tried to find out who had killed the person—I didn't know. The police are supposed to investigate a case, not to torture.

After, they were scared to take me to a doctor because I still had injuries. They only took me after one month, when the swelling was down. When I went to the doctor, the police followed me into the doctor's room and listened to me. The police told the doctor that I was lying. "Just a simple torture that she was given, not much," he said.^{iv}

Titus, 21, at Mumbwa Prison, also had an experience that was typical of the testimony researchers heard:

I [was arrested for] aggravated robbery. In these cases they treat the subject as if the suspect is already guilty. My hands were cuffed for four days and nights. They passed a metal bar between my hands and legs and hung me between two tables and beat me with the police baton. They mostly beat my low back, under my feet and on top of my feet and the hands and the head. There were almost six guys—they were forcing me to accept a situation I never knew....Words were put in my mouth. They introduced men to me and told me they were my gang members. In fear of pain I accepted....I know from civics class that I was supposed to

go to court and get a lawyer, but none of that happened. I was tortured twice a day for five days. Breakfast is torture; lunch is torture. They used electrified rods too. I'm not certain where they were applied. I can't really remember everything. Pictures come into my mind. Sometimes I feel like committing suicide, or like this was all my fault. That I will be rejected by my family. Sometimes I feel that my hopes and dreams are shattered. Sometimes I feel that it is the end of the world.^v

Prisoners we interviewed repeatedly reported that police had beaten them in custody in order to try to coerce a confession, and often inflicted serious injuries.^{vi} Inmates showed researchers their misshapen fingers—in some cases smashed by hammers or iron bats^{vii}—and scars on their feet and hands.^{viii} Many have long-term injuries that require ongoing medical attention, ostensibly due to their treatment in custody.^{ix} Indeed, one inmate at Kamfinsa Prison alleged that “some inmates are brought in half dead” from police brutality.^x

Former detainees in police custody particularly implicated the Criminal Investigations Directorate (CID) in systematic abuse, including binding and hanging prisoners from the ceiling to force confessions.

Additionally, we were told that some police officers tried to coerce female detainees into sex in exchange for their release. One female prisoner who had been detained in police custody reported:

They arrested and they beat me, asking questions. They beat me up when I said I didn't know anything. They said, “we want you to say this, then we will let you go.” They didn't sexually abuse me, but they asked me to have sex with them. They said they would release me if I did, and I said no.^{xi}

Our findings of police brutality are consistent with those of other legal and human rights researchers.^{xii} The Zambian Legal Resources Foundation has successfully litigated numerous police brutality cases and obtained compensation awards for its clients.^{xiii} The Legal Resources Foundation confirmed to us: “It has been going on for a long time; even the police themselves say, ‘I will beat you, I will torture you, I will claim your human rights.’”^{xiv}

2. International, Regional and National Obligations Against Torture

Under international human rights law, people in detention retain their human rights and fundamental freedoms. The only exceptions are restrictions required by the fact of incarceration^{xv} and for justifiable segregation or the maintenance of discipline.^{xvi} The material resources available to governments—or lack thereof—are not a justifiable reason for failing to uphold prisoners' basic rights.^{xvii}

As you will be aware, the most fundamental protection for detainees is the absolute prohibition on torture. As well as being a well-established norm of international law, by which Zambia is bound, the prohibition is also reflected in the Zambian Constitution, and in several of the human rights treaties to which Zambia is a party.^{xviii} The International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture prohibit torture and cruel, inhuman, or degrading treatment or punishment without exception or derogation.^{xix} Article 10 of the ICCPR further requires that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”^{xx} The African Charter on Human and Peoples’ Rights also protects every individual’s human dignity and prohibits “all forms of exploitation and degradation,” including slavery, torture, and cruel, inhuman or degrading punishment and treatment.^{xxi}

Our investigation suggests that domestic grievance mechanisms in Zambia for addressing this kind of abuse are currently insufficient. In 2009, the Police Public Complaints Authority, established to adjudicate complaints against the police, reported receiving 245 complaints between January and November. In only 27 of these cases was the perpetrator punished or a settlement mediated. According to the United States Department of State, many complainants dropped their complaints after direct intervention by those they were accusing of brutality. Methods varied from direct intimidation to offers of financial compensation to drop a complaint. At the same time, many cases of alleged police brutality also went unreported due to lack of awareness of the complaints authority or fear of retribution.^{xxii} The Zambian Human Rights Commission has noted that “[i]n practice, the Authority has not been effective because of poor funding, lack of adequate personnel, lack of transport, insufficient accommodation and resistance from the Police.”^{xxiii}

Our research points clearly to the police brutality described by Zambian inmates violating national and international law prohibitions on torture.^{xxiv}

3. Recommendations

In the light of the serious allegations of torture we obtained from prisoners who were detained in police custody, we would urge the following actions:

- Investigate all allegations of brutality and punish all officers found to have inappropriately used force against a suspect.
- Issue a directive to all police officers that there will be a zero tolerance policy towards the use of force to extract confessions, and that officers who illegally use force will be disciplined and prosecuted where appropriate.

- Institute special training sessions for all police officers on suspects' rights and non-coercive methods of interrogation.
- Seek increased funding for the Police Public Complaints Authority, and sensitize all officers as to its function.

I am writing a separate private letter to the Inspector General of Police. Thank you for the opportunity to express our concerns to you, and I hope that our recommendations will help you begin to tackle this serious problem.

Yours sincerely,



Rona Peligal
Acting Director, Africa Division
Human Rights Watch

ⁱ Prisons Care and Counselling Association, AIDS and Rights Alliance for Southern Africa, and Human Rights Watch, *Zambia – Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons*, 1-5432-620-9, April 2010, <http://www.hrw.org/node/89834>.

ⁱⁱ PRISCCA, ARASA, and Human Rights Watch interview with Gezepi Chakulunta, HIV/AIDS focal point person, Ministry of Home Affairs, February 4, 2010; PRISCCA, ARASA, and Human Rights Watch interview with Donald Mwandila, Hospital Admin, Zambia Police Service Medical Directorate, Lusaka, February 4, 2010; PRISCCA, ARASA, and Human Rights Watch interview with K.N. Chikwanda, Staff Officer Medical, Zambia Police Service Medical Directorate, Lusaka, February 4, 2010.

ⁱⁱⁱ All names of prisoners/former police detainees have been changed to protect their anonymity and security.

^{iv} PRISCCA, ARASA, and Human Rights Watch interview with Tandiwe, Lusaka Central Prison, October 4, 2009.

^v PRISCCA, ARASA, and Human Rights Watch interview with Titus, Mumbwa Prison, October 5, 2009.

^{vi} PRISCCA, ARASA, and Human Rights Watch interview with Ngosa, Kamfinsa Prison, October 1, 2009 (female inmate beaten “left, right, center, behind” by police, resulting in ongoing sight problems); PRISCCA, ARASA, and Human Rights Watch interview with KT-04-06, Lusaka Central Prison, October 4, 2009 (beaten and “tortured” for information on a robbery resulting in long-term leg pain, even after an operation); PRISCCA, ARASA, and Human Rights Watch interview with Adam, Mumbwa Prison, October 5, 2009 (beaten at the police station and “made to confess”); PRISCCA, ARASA, and Human Rights Watch interview with Mwelwa, Choma Prison, October 8, 2009 (beaten on back and legs by police in attempt to make him tell them the location of the cattle he was charged with stealing, told magistrate with no result); PRISCCA, ARASA, and Human Rights Watch interview with MM-08-02, Choma Prison, October 8, 2009 (beaten on back by broom handle when refused to confess; told magistrate with no result); PRISCCA, ARASA, and Human Rights Watch interview with Bwalya, Mwembeshi Prison, October 6, 2009 (beaten by police to coerce a confession, no subsequent medical treatment); PRISCCA, ARASA, and Human Rights Watch interview with Clive, Mwembeshi Prison, October 6, 2009 (arms placed under knees and clasped in front of knees, beaten with short baton; received no medical treatment after beating and has ongoing swelling problems with leg); PRISCCA, ARASA, and Human Rights Watch interview with Aaron, Choma Prison, October 8, 2009 (beaten and tortured at police station when handcuffed and suspended between two tables, blindfolded, and beaten on back and fingers by a hippo tail whip and wooden stick, trying to get him to confess); PRISCCA, ARASA, and Human Rights Watch interview with Peter, Choma Prison, October 8, 2009 (beaten by police on forearms and hands with iron bar and on waist with short wood baton in order to try to force confession); PRISCCA, ARASA, and Human Rights Watch interview with Phiri, Mukobeko Maximum Security Prison, September 29, 2009 (beaten at the police station with an iron bar to force confession); PRISCCA, ARASA, and Human Rights Watch interview with Isaac, Mukobeko Maximum Security Prison, September 29, 2009 (beaten at police station so that he would tell them where the stock he was accused of stealing was located); PRISCCA, ARASA, and Human Rights Watch interview with Angela, Lusaka Central Prison, October 4, 2009 (beaten at police station so that she would tell them where man they were looking for was).

vii PRISCCA, ARASA, and Human Rights Watch interview with Mwamba, Mwembeshi Prison, October 6, 2009; PRISCCA, ARASA, and Human Rights Watch interview with Chibesa, Mwembeshi Prison, October 6, 2009.

viii See, for example, PRISCCA, ARASA, and Human Rights Watch interview with Kaila, Mumbwa Prison, October 5, 2009.

ix See, e.g., PRISCCA, ARASA, and Human Rights Watch interview with Angela, Lusaka Central Prison, October 4, 2009 (continuing chest problems due to a police beating). See also PRISCCA, ARASA, and Human Rights Watch interview with Titus, Mumbwa Prison, October 5, 2009 (“I’m having some problems as a result of my torture. I have numbness in my hands – I can’t feel my hands anymore.”); PRISCCA, ARASA, and Human Rights Watch interview with RS-03-12, Lusaka Central Prison, October 4, 2009 (blind in right eye from police beatings); PRISCCA, ARASA, and Human Rights Watch interview with Misheck, Mukobeko Maximum Security Prison, September 30, 2009 (continuing leg and back pain after being beaten with sticks at Kabwe Central Police Station over a period of four months).

x PRISCCA, ARASA, and Human Rights Watch interview with CM-01-12, Kamfinsa Prison, October 1, 2009.

xi PRISCCA, ARASA, and Human Rights Watch interview with KT-04-01, Lusaka Central Prison, October 4, 2009.

xii The Zambia Human Rights Commission found that “cases of unlawful detention and torture were still prevalent in 2003, especially in police cells...In some cases, there were reports of loss of life as a result of torture.” Zambia Human Rights Commission, “Annual Report: 2003,” 2003, p. 9. In 2004 it again decried the fact that “police still widely used torture as a means of extracting confessions from suspects.” Zambia Human Rights Commission, “Annual Report: 2004,” 2004, p. 10. In 2006, the Zambia Human Rights Commission even observed four suspects “ushered in...straight from the torture chambers with fresh wounds” during a visit to Livingstone Central Police Station. Zambia Human Rights Commission, “Annual Report: 2006,” 2006, p. 18. The 2008 US State Department Human Rights report reported killings by police officers from 2006, 2007 and 2008. US Department of State, “2008 Human Rights Report: Zambia.” According to the US State Department, “police frequently used excessive force including torture when apprehending, interrogating, and detaining criminal suspects or illegal immigrants....In July 2007 Deputy Minister for Home Affairs Grace Njapau told parliament that the government had put in place measures to reduce brutality and abuse of inmates by police, including additional training for police officers; however, no known action was taken on these initiatives during the year. According to human rights groups, police occasionally demanded sex from female detainees as a condition for their release. There also were reports that police officers raped women and young girls while they were in custody.” US Department of State Bureau of Democracy, Human Rights, and Labor, “2008 Human Rights Report: Zambia,” February 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119031.htm> (accessed May 14, 2010). International treaty monitoring bodies have also criticized Zambia for police brutality. In 2007, the UN Human Rights Committee noted that “[t]he State party should ensure that each case of torture or ill-treatment is seriously investigated, prosecuted and punished in an appropriate manner under its criminal legislation, and that adequate reparation, including compensation, is granted to the victims. In order to facilitate such policy, the State party should envisage criminalizing torture and cruel, inhuman and degrading treatment as such.” UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: Zambia,” U.N. Doc. CCPR/C/ZMB/CP/3 (2007), p. 6. See also, Committee Against Torture, “Concluding Observations: Zambia,” U.N. Doc. CAT/C/ZMB/CO/2 (2008), para. 20 (“The State party should extend legislation prohibiting corporal punishment to the family and to institutions other than schools, ensure that legislation prohibiting corporal punishment is strictly enforced and undertake awareness-raising and educational campaigns to that effect.”). In 2008, Denmark raised in front of the Human Rights Council concerns about the high number of cases involving violence and in some cases torture by the police in Zambia. Human Rights Council, “Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: Zambia,” U.N. Doc. A/HRC/8/43 (2008), p. 4.

xiii PRISCCA, ARASA, and Human Rights Watch interview with Robby Shabwanga, projects officer, Legal Resources Foundation, October 14, 2009.

xiv Ibid.

xv United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, paras. 57-58; United Nations (UN) Human Rights Committee, General Comment 21, Article 10, Humane Treatment of Persons Deprived of Liberty (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.7 (1994), paras. 3-4; Basic Principles for the Treatment of Prisoners, adopted December 14, 1990, G.A. Res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990), prin. 5.

xvi UN Standard Minimum Rules for the Treatment of Prisoners, paras. 57-58.

xvii UN Human Rights Committee, General Comment 21, paras. 3-4.

xviii The Constitution of Zambia Act, *The Laws of Zambia*, 1996, <http://www.parliament.gov.zm/downloads/VOLUME%201.pdf> (accessed March 2, 2010), art. 15.

xix International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

xx ICCPR, art. 10.

xxi African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, art. 5.

^{xxii} US Department of State Bureau of Democracy, Human Rights, and Labor, “2009 Human Rights Report: Zambia,” March 11, 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135983.htm> (accessed May 14, 2010).

^{xxiii} Zambia Human Rights Commission, “Strategic Plan 2007-2011,” October 2006, http://www.hrc.org.zm/media/strategic_plan.pdf (accessed May 14, 2010), p. 16.

^{xxiv} International standards also directly prohibit such treatment. Body of Principles, prin. 21; United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979), arts. 2, 3 and 5.