



Zambia's Compliance with the International Covenant on Civil and Political Rights: The Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty

and

Prisoners' Future Foundation

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The purpose of **Prisoners Future Foundation** (PFF) is to contribute to the improved welfare of inmates and ex-inmates through providing them with legal services, support to their rehabilitation, empowerment and integration. Further, PFF supports the mitigation of climate change by contributing to correctional facilities putting into place environmental management measures. Its Strategic Intervention Areas include (1) improved access to justice and rehabilitation of inmates; (2) re-integration and empowerment of ex-inmates; (3) creation of environment friendly correctional facilities; and (4) institutional development of PFF. PFF's vision is a society in which there is equal access to justice for inmates and ex-inmates, respect for human rights, observance of the rule of law and a sustainable and pollution-free environment. PFF's mission is to provide legal services as a means of promoting human rights to inmates and their rehabilitation while empowering and integrating ex-inmates into society. PFF also promotes environmental management within and around correctional facilities for the purposes of mitigating the negative effects of climate change.

EXECUTIVE SUMMARY

1. This report addresses Zambia’s compliance with its international human rights obligations with respect to the death penalty. In May 2022, Zambian President Hakainde Hichilema announced government plans to abolish the death penalty, and on December 23, 2022, he announced that the country had in fact abolished the death penalty for ordinary crimes.¹ Formal abolition of the death penalty is a major step forward for human rights in the country, adding to the growing consensus worldwide for the universal abolition of the death penalty.
2. This report examines the current state of the death penalty in Zambia, including (1) legislation in respect of abolishing the death penalty; (2) torture and cruel, inhuman, or degrading treatment in detention, including for people under sentence of death; (3) administration of justice and fair trial; and (4) conditions of detention.
3. This report recommends that Zambia eliminate the death penalty for military offenses, amend the Constitution to strike language authorizing the death penalty, commute the sentences of people currently under sentence of death, bring detention conditions into compliance with international human rights standards, and ensure the fair trial and due process rights of all persons suspected of committing crimes.

I. Zambia retains the death penalty for military crimes and in its Constitution, people remain on death row, and Zambia has not yet ratified the Second Optional Protocol of the International Covenant on Civil and Political Rights (List of Issues paragraph 11).

4. In its 2021 List of Issues, the Committee requested “information on the obstacles preventing the State party from abolishing the death penalty and from ratifying the Second Optional Protocol to the Covenant.” The Committee also asked Zambia to “comment on the reported increase in the number of death sentences pronounced in 2019” and “on measures taken to prevent wrongful imposition of the death penalty and the remedies available to those who are exonerated.”²
5. In its response to the List of Issues, Zambia reports that the State party “is currently in the process of amending the Penal Code to remove provisions relating to the death penalty.”³ The response explains that because of mandatory death penalty provisions, “[t]he increase of the number of death sentences pronounced is commensurate to the number of convictions that warrant the imposition of the sentence.”⁴ The response also asserts that if a person is exonerated, “the law provides for civil remedies which include an action for false imprisonment or malicious prosecution.”⁵

¹ UN News, *Zambia: Abolition of the death penalty is ‘a historic milestone,’* Jan. 6, 2023, available online at <https://news.un.org/en/story/2023/01/1132212>.

² Human Rights Committee, *List of issues in relation to the fourth periodic report of Zambia*, (Jan. 20, 2021), U.N. Doc. CCPR/C/ZMB/Q/4, ¶ 11.

³ Human Rights Committee, *Replies of Zambia to the list of issues in relation to its fourth periodic report*, (Dec. 8, 2022), U.N. Doc. CCPR/C/ZMB/RQ/4, ¶ 36.

⁴ *Id.* ¶ 37.

⁵ *Id.* ¶ 38.

6. On December 23, 2022, President Hichilema signed into law Penal Code (Amendment) Bill number 25, banning the death penalty and the offence of criminal defamation of the president;⁶ however, the Defense Act and the Constitution of Zambia still recognize the death penalty.⁷ Since 1997, however, Zambia has maintained a “de facto moratorium” on the death penalty⁸ and no President of Zambia has issued a death warrant since that year.⁹
7. In December 2022, Zambia abolished the death penalty for ordinary crimes. President Hakainde Hichilema announced the government’s plan to formally abolish the death penalty on May 24, 2022, stating that “use of the death penalty is incompatible with fundamental human rights and dignity.”¹⁰ On December 23, 2022, he assented to Penal Code (Amendment) Bill number 25 of 2022, which according to the Office of the President caused the Penal Code

⁶ Brownyn Dudley, *Zambia is the 25th African State to Abolish the Death Penalty*, World Coalition Against the Death Penalty, Jan. 6, 2023, <https://worldcoalition.org/2023/01/06/zambia-abolishes-the-death-penalty/>; Press Release, Press & Public Relations Office of the Office of the President of Zambia, President Hichilema Assents into Law the Penal Code (Amendment) Bill No. 25 of 2022; Abolishes the Imposition of the Death Penalty & The Offence of Criminal Defamation of the President (Dec. 23, 2022) (on file with the author).

⁷ Constitution of Zambia art. 12, ¶ 1 (“No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.”); *Id.* art. 97, ¶ 2 (“A person who is sentenced to death may request the President, either directly or through a representative, for a pardon or commutation of the sentence.”); *see also Report of the Working Group on the Universal Periodic Review: Zambia* (January 9, 2018), U.N. Doc. A/HRC/37/14 ¶ 122 (“The death penalty was provided for in the Bill of Rights in the Constitution, which could be amended only by referendum.”); *and also* Lusaka Times, “Stakeholders Express Divergent Views on the Abolishment of the Death Penalty and the Offense of Criminal Defamation of the President” (December 27, 2022), available at <https://www.lusakatimes.com/2022/12/27/stakeholders-express-divergent-views-on-the-abolishment-of-the-death-penalty-and-the-offense-of-criminal-defamation-of-the-president/> (“The Patriotic Front (PF) aspiring presidential candidate Brian Mundubile mentioned that the death penalty will remain on the statute books despite the Government’s amendment of the Penal Code to abolish Capital Punishment, adding that the death penalty falls under Part Three (III) of the Constitution, which is the Bill of Rights.”); *and also* The Defence Act, Ch. 106, 8 Laws of Rep. of Zambia § 29(1) available at <https://www.parliament.gov.zm/node/843> (authorizing the death penalty for a variety of military crimes).

⁸ *Summary of Stakeholders’ Submissions on Zambia* (Report of the Office of the United Nations High Commissioner for Human Rights) (November 21, 2022), U.N. Doc. A/HRC/WG.6/42/ZMB/3 ¶ 6 (noting that “HRCZ stated that . . . the death penalty was provided for in law but, since 1997, Zambia had maintained a de facto moratorium on its execution.”); *see also Report of the Working Group on the Universal Periodic Review: Zambia* (January 9, 2018), U.N. Doc. A/HRC/37/14 ¶ 122 (“Strides had been made since 1997 in efforts to abolish the death penalty, which was why there had been no executions since 1997.”)

⁹ Zambia Law Development Commission, *Review of the Penal Code Act, Chapter 87 of the Laws Of Zambia and the Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia* (2022) at 17, available at <http://www.zambialawdevelopment.org/download/reportreview-of-the-penal-code-act-chapter-87-of-the-laws-of-zambia-and-the-criminal-procedure-code-chapter-88-of-the-laws-of-zambia/> (“Whilst the courts continue to pass the death sentence in accordance with section 303 of the CPC, people who are sentenced to death are not executed but end up carrying out the equivalent of a life sentence. This is because no President has issued a death warrant under section 305(4) of the CPC, since 1997.”); *see also* Freedom in the World 2022—Zambia (Zambia: Freedom in World 2022 Country Report), Freedom House, <https://freedomhouse.org/country/zambia/freedom-world/2022> (“While the death penalty remains on the books, no executions have taken place since 1997.” (responses to F3 under “F. Rule of Law”)); Sishuwa Sishuwa, “Zambia has Killed the Death Penalty, but Other Rights Remain on Death Row”, *The Guardian* (January 9, 2023 at 1:15pm EST), available at <https://www.theguardian.com/global-development/2023/jan/09/zambia-has-killed-the-death-penalty-but-other-rights-remain-on-death-row> (“Since 1997, Zambian presidents have refused to sign execution orders, choosing instead to commute sentences to life imprisonment.”)

¹⁰ UN News, *Rights Office Welcome’s Zambia’s Pledge to Abolish the Death Penalty*, (May 27, 2022), available at <https://news.un.org/en/story/2022/05/1119282>.

Act to be “amended to repeal all provisions of the Penal Code Act which provided for the imposition of mandatory death sentences in the absence of extenuating circumstances.”¹¹ The UN team in Zambia referred to this development as a “historic milestone.”¹² The amendment to the Penal Code Act resulted in the repeal of the Act’s provisions that prescribed the death sentence for persons convicted of capital offences such as murder or aggravated robbery; therefore, there will not be an enabling law to compel the courts to issue a death sentence to a person found guilty of such offences.¹³

8. The December 2022 amendment to the Penal Code Act is a welcome development, but it does not provide for total abolition of the death penalty in Zambia.¹⁴ The Constitution of Zambia provides for the death penalty in Article 12 of Part III (which is part of the Bill of Rights).¹⁵ The UN country team “encouraged” the Zambian government to pursue efforts to amend the

¹¹ Press Release, Press & Public Relations Office of the Office of the President of Zambia, President Hichilema Assents into Law the Penal Code (Amendment) Bill No. 25 of 2022; Abolishes the Imposition of the Death Penalty & The Offence of Criminal Defamation of the President (Dec. 23, 2022) (on file with the author)

¹² UN News, *Zambia: Abolition of the Death Penalty ‘a Historic Milestone’*, (January 6, 2023), available at <https://news.un.org/en/story/2023/01/1132212#:~:text=The%20decision%20by%20Zambia%20to,on%20Friday%20in%20a%20statement>

¹³[Source on file with the Prisoners' Future Foundation (2023).] ; *see also* The Penal Code (Amendment) Bill, 2022, N.A.B. 25, 2022 (Oct. 14, 2022) available at <https://www.parliament.gov.zm/node/10684>. The bill, *inter alia*, amends Section 24 of the principal Act to delete paragraph (a); *id.* at ¶ 3; repeals Section 25; *id.* at ¶ 4; amends Section 43(1) to change “suffer death” to “life imprisonment”; *id.* at ¶ 8; replaces Section 201(1) with “A person convicted of murder shall be sentenced to life imprisonment or, where there are extenuating circumstances, a sentence other than life imprisonment;” *id.* at ¶ 14; and amends Section 294(2) to change “death” to life imprisonment.” *Id.* at ¶ 15. In Section 24 of the existing Penal Code Act, “death” in (a) as one of the “punishments” that “may be inflicted by a court”, Section 25 of the Act included certain provisions regarding the sentence of death, Section 43(1) provided that “[a] person is guilty of treason and shall be liable to suffer death who . . .” is as further described in that section, Section 201(1) provided that “[a]ny person convicted of murder shall be sentenced- (a) to death; or (b) where there are extenuating circumstances, to any sentence other than death,” and Section 294(2) provided that “the penalty for the felony of aggravated robbery under subsection (1) shall be death” if certain conditions specified in that section were met. The Penal Code Act, Cap. 87, 2 Laws of Rep. of Zambia §§ 24, 25, 43(1), 201(1), 294(2) available at <https://www.parliament.gov.zm/node/824>.

¹⁴ *See, e.g.,* Lusaka Times, *Stakeholders Express Divergent Views on the Abolishment of the Death Penalty and the Offense of Criminal Defamation of the President* (December 27, 2022), available at <https://www.lusakatimes.com/2022/12/27/stakeholders-express-divergent-views-on-the-abolishment-of-the-death-penalty-and-the-offense-of-criminal-defamation-of-the-president/>. In particular, the article quotes Brian Mundubile, described as “an aspiring presidential candidate” of the Patriotic Front: “Yes, some other enabling legislation like the Penal Code could be amended but that does not mean that it is no longer on our statute book. So maybe to put it in layman’s language, the UPND Government took a shortcut in trying to blind off that particular provision of the law. But what the proper procedure would be is a push for a referendum such that when there are amendments to Part III of our Constitution as required by Article 79 of our Constitution, then appropriate amendments can be made.” *Id.* *See also, e.g.,* Isaac Mwanza, “Bally Not Walking With the People on Death Penalty”, Lusaka Times (January 5, 2023), available at <https://www.lusakatimes.com/2023/01/05/bally-not-walking-with-the-people-on-death-penailty/> (“The announcement by President Hichilema that Zambia has thus abolished the death penalty only plays to the minds of excited stakeholders who may not be aware that the death penalty in Zambia is a constitutional matter. What President Hichilema’s administration has done, in actual sense, is that they have repealed provisions of an inferior law that compelled judges to impose the death penalty. However, the Constitution remains intact in its recognition of the death penalty in Zambia.”)

¹⁵ Constitution of Zambia art. 12, ¶ 1 (“No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offense under the law in force in Zambia of which he has been convicted.”); *see also Report of the Working Group on the Universal Periodic Review: Zambia* (January 9, 2018), U.N. Doc. A/HRC/37/14 ¶ 122 (“The death penalty was provided for in the Bill of Rights in the Constitution, which could be amended only by referendum.”).

Bill of Rights “to include, inter alia . . . an explicit prohibition of the death penalty.”¹⁶ Due to the existence of these constitutional provisions, it is possible that a person that brings a murder suspect to court may challenge the constitutionality of a sentence that is other than death.¹⁷ In addition, the Defence Act authorizes the death penalty for military crimes.¹⁸

9. Zambia previously pursued measures to amend the Constitution’s reference to the death penalty. In 2016, Zambia held an unsuccessful referendum to amend the Bill of Rights.¹⁹ While a majority of Zambians who participated in the 2016 referendum voted in favor of the proposed constitutional amendments, the amendment was defeated because less than 50% of total eligible voters in Zambia participated—a requirement for a valid referendum.²⁰
10. The proposed 2016 constitutional amendments would not have abolished the death penalty.²¹ They included a provision that “[a] person shall not be deprived of life intentionally, except for a capital offence the sentence of which is death, subject to limitations, defenses and extent prescribed” as well as a provision that would preclude a court from imposing death sentences on any person who is pregnant or any child, or “where there are extenuating circumstances relating to the commission of the offence.”²²
11. In its 2022 national report for the Universal Periodic Review, the Government of Zambia indicated it is continuing to pursue support for another referendum to amend Part III of the

¹⁶ *Compilation of Information Prepared by the Office of the United Nations High Commissioner for Human Rights: Zambia* (November 15, 2022), U.N. Doc. A/HRC/WG.6/42/ZMB/2 ¶ 9.

¹⁷ [Source on file with the Prisoners’ Future Foundation (2023).]

¹⁸ [Source on file with the Prisoners’ Future Foundation (2023).] ; *see also* The Defence Act, Cap. 106, 8 Laws of Rep. of Zambia § 29(1) available at <https://www.parliament.gov.zm/node/843> (providing that “[a]ny person subject to military law under this Act who, with intent to assist the enemy” commits certain listed act, “shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.”)

¹⁹ *Report of the Working Group on the Universal Periodic Review: Zambia* (January 9, 2018), U.N. Doc. A/HRC/37/14 ¶ 122 (noting that “[t]he death penalty was provided for in the Bill of Rights in the Constitution, which could be amended only by referendum” and “[i]n 2016, a referendum that could have led to the abolition of the death penalty had been held, but the people had rejected the motion and the Bill of Rights had remained unchanged.”); *see also* Cephias Lumina, “Zambia’s Failed Constitutional Referendum: What Next?”, ConstitutionNet (News) (September 12, 2016), available at <https://constitutionnet.org/news/zambias-failed-constitutional-referendum-what-next>.

²⁰ Cephias Lumina, *Zambia’s Failed Constitutional Referendum: What Next?*, ConstitutionNet (News) (September 12, 2016), available at <https://constitutionnet.org/news/zambias-failed-constitutional-referendum-what-next>. The article noted “[i]n terms of the Referendum Act, at least 50% of Zambians ‘entitled to be registered as voters for the purposes of Presidential and Parliamentary elections’ (that is, Zambians above 18 years) must vote in the referendum in order for it to be valid” and Zambia’s “Central Statistical Office (CSO) estimated that there were 7 528 091 Zambians eligible to vote in the referendum.” *Id.* 3,345,471 voters participated in the referendum, which meant that “only 44.44% of eligible voters cast their ballots in the referendum,” a majority of which—i.e., 3,345,471 voters—voted in favor of the amendments—1,853,559. *Id.* The proposed amendment failed “since only 1 852 559 (24.6% of eligible voters) voted in favor of the proposed changes.” *Id.*

²¹ Constitution of Zambia (Amendment) Bill, 2016, Supplement to the Republic of Zambia Government Gazette (May 23, 2016), art. 15(3)-(4), available at https://constitutionnet.org/sites/default/files/zambia_bill_of_rights.pdf

²² Constitution of Zambia (Amendment) Bill, 2016, Supplement to the Republic of Zambia Government Gazette (May 23, 2016), art. 15(3)-(4), available at https://constitutionnet.org/sites/default/files/zambia_bill_of_rights.pdf

Constitution.²³ The government has not formally announced plans to hold another referendum.²⁴

12. The amendments to the Penal Code Act are not retroactive; existing death sentences will remain in place unless the President commutes them.²⁵ Zambia has continued efforts to commute existing death sentences, but people remain on death row.²⁶ Courts issued a significant number of death sentences in 2019 (101)²⁷ and 2020 (119),²⁸ and they issued at least 9 death sentences in 2021.²⁹ In January 2021, authorities commuted the death sentences of 246 persons to life imprisonment.³⁰ As of the end of 2021, however, 257 people remained on death row.³¹ On May 27, 2022, President Hichilema stated that he had commuted the sentences of 30 additional individuals.³² These figures suggest that more than 200 people currently remain on death row in Zambia, not accounting for new death sentences issued in 2022, if any. It is unclear whether the President issued any additional commutations in 2022 or whether further commutations are in process.

²³ *National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21: Zambia* (November 4, 2022), U.N. Doc. A/HRC/WG.6/42/ZMB/1 ¶ 153-154 (noting with respect to Theme D23: Death penalty that “[t]he State party has continued to engage various stakeholders and cooperating partners to solicit support to hold a referendum to amend the Part III of the Constitution in a bid to enhance the Bill of Rights.”)

²⁴ [Source on file with the Prisoners’ Future Foundation (2023).]

²⁵ [Source on file with the Prisoners’ Future Foundation (2023).]

²⁶ These individuals remain subject to execution if a death warrant is issued. Zambia Law Development Commission, *Review of the Penal Code Act, Chapter 87 of the Laws Of Zambia and the Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia* (2022) at 16, available at <http://www.zambialawdevelopment.org/download/reportreview-of-the-penal-code-act-chapter-87-of-the-laws-of-zambia-and-the-criminal-procedure-code-chapter-88-of-the-laws-of-zambia/> (“Section 305(4) of the CPC . . . states that the President will issue a death warrant to give effect to the death sentence. The warrant will state the place and time of execution and will give directions as to the place of burial of the body of the person executed.”) The CPC refers to the Criminal Procedure Code, Chapter 88 of the Laws of Zambia, which is separate from the Penal Code Chapter 87 of the Laws of Zambia, “[t]he primary Act that codifies criminal offences and provides for their corresponding penalties.” *Id.* at 5.

²⁷ Amnesty International, *Death Sentences and Executions 2019* (2020), at 11, 51, available at <https://www.amnesty.org/en/documents/act50/1847/2020/en/>. “The government of Zambia informed Amnesty International that no executions were carried out; 101 people . . . sentenced to death” and “393 people . . . were under the sentence of death at the end of the year. *Id.* at 51.

²⁸ Amnesty International, *Death Sentences and Executions 2020* (2021), at 12, available at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>. “The government of Zambia informed Amnesty International that no executions were carried out; 119 death sentences were imposed; and 495 people . . . were under the sentence of death at the end of the year. *Id.* at 54.

²⁹ Amnesty International, *Death Sentences and Executions 2021* (2022) at 6, 52, available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>. The figures indicate that Amnesty International believes there were additional death sentences yet was unable to confirm this. *Id.*

³⁰ Amnesty International, *Death Sentences and Executions 2021* (2022) at 59, available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

³¹ Amnesty International, *Death Sentences and Executions 2021* (2022) at 52, available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

³² Equal Justice Initiative (News) , *Zambia Abolishes the Death Penalty*, (updated December 26, 2022), available at <https://eji.org/news/zambia-abolishes-the-death-penalty/>

13. Zambia abstained from voting on the December 2022 UN General Assembly resolution calling for a global moratorium on the use of the death penalty,³³ as it did in 2020.³⁴
14. In its national report submitted in November 2022 for the fourth cycle Universal Periodic Review, Zambia recognized as outstanding the recommendation for ratification of the Second Optional Protocol and noted that “[t]he State party is consulting key stakeholders on the ratification of the instruments in line with the Ratification of International Agreements Act No. 34 of 2016.”³⁵ As of the date this report, however, Zambia has not ratified or signed the Second Optional Protocol.³⁶
15. In 2021 alone, Zambian courts exonerated three people who had been under sentence of death.³⁷ There is no information as to whether these people have received any remedies for their wrongful convictions or for their time on death row, or whether authorities have given them any assistance for reintegrating into society. As the State party noted in responding to the List of Issues, an exoneree must file a lawsuit to seek civil remedies.³⁸

II. Zambian authorities violate fair trial rights (List of Issues paragraphs 19-20).

16. In the List of Issues, the Committee asked about Zambia’s legislative framework to ensure the independence of the judiciary and effective access to justice. The Committee also asked about “steps taken to ensure access to the courts for persons who cannot afford legal counsel . . . and . . . details on the number and types of cases in which legal aid has been sought, granted and denied in recent years.”³⁹

³³ *Promotion and Protection of Human Rights: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms—Report of the Third Committee* (December 5, 2022), U.N. Doc. A/77/463/Add.2 ¶ 71 (indicating that Zambia abstained to draft resolution A/C.3/77/L.44/Rev.1, as amended, at the 49th meeting of the Third Committee on Nov. 11, 2022.); *Moratorium on the Use of the Death Penalty* (Revised Draft Resolution) (November 8, 2022), U.N. Doc. A/C.3/77/L.44/Rev.1. As a note, prior to the vote on the revised resolution, Zambia affirmatively voted to approve an amendment to the draft resolution, *Promotion and Protection of Human Rights: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms—Report of the Third Committee* (December 5, 2022), U.N. Doc. A/77/463/Add.2 ¶ 64, amendment inserted “a new operative paragraph” of: “*Reaffirms* the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations.” *Moratorium on the Use of the Death Penalty* (Amendment to Revised Draft Resolution) (November 3, 2022), U.N. Doc. A/C.3/77/L.54

³⁴ U.N. Digital Library, *Moratorium on the Use of the Death Penalty: Resolution / Adopted by the General Assembly* (United Nations Voting Records), available at <https://digitallibrary.un.org/record/3894866?ln=en>

³⁵ *National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21: Zambia* (November 4, 2022), U.N. Doc. A/HRC/WG.6/42/ZMB/1 ¶ 153–54

³⁶ U.N. Human Rights Office of the High Commissioner, *Ratification Status for Zambia*, U.N. Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=194&Lang=EN (accessed January 10, 2022).

³⁷ Amnesty International, *Death Sentences and Executions 2021*, (May 24, 2022), at 14, available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

³⁸ Human Rights Committee, *Replies of Zambia to the list of issues in relation to its fourth periodic report*, (Dec. 8, 2022), U.N. Doc. CCPR/C/ZMB/RQ/4, ¶ 38.

³⁹ Human Rights Committee, *List of issues in relation to the fourth periodic report of Zambia*, (Jan. 20, 2021), U.N. Doc. CCPR/C/ZMB/Q/4, ¶ 19-20.

17. Zambia's replies to the List of Issues explain that the country "is still undergoing consultations on the Anti-Torture Bill" and "working on the amendment of the Penal Code which shall include provisions relating to torture."⁴⁰
18. Zambia ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1989,⁴¹ but authorities have failed to domesticate the Convention.⁴² Zambia also has not yet ratified the Optional Protocol to the Convention against Torture.⁴³
19. Article 15 of the Constitution of Zambia prohibits torture.⁴⁴ The Penal Code, however, does not define or criminalize torture. As a result, prosecutors face challenges in enforcing Article 15.⁴⁵ In 2019, Zambia's Human Rights Commission said it remained concerned that perpetrators of torture were still being charged with lesser offenses of assault due to the absence of any criminalizing statute.⁴⁶
20. Zambian courts do not suppress most evidence obtained through torture. Regarding torture during interrogations, "[a]lthough the Zambian courts do not admit involuntary confessions into evidence, they do allow any evidence found as a result of the illegal confession."⁴⁷
21. The Commission has reported that during the Lungu administration (which was in power from 2015 to 2021), police frequently used disproportionate force. In June 2020, however, Zambian police, in cooperation with the Commission and the UN Development Program, adopted standard procedures to safeguard against violent behavior.⁴⁸
22. Nonetheless, there are reports that under the current administration, police continue to torture suspects in their custody. In February 2022, for example, Zambian police were accused of torturing former president Edgar Lungu's barber, S.C., when he was in custody on suspicion of murder.⁴⁹
23. Under Zambian law, indigent defendants are entitled to public defenders when the court determines that the defendant is not financially able to hire representation and justice requires

⁴⁰ Human Rights Committee, *Replies of Zambia to the list of issues in relation to its fourth periodic report*, (Dec. 8, 2022), U.N. Doc. CCPR/C/ZMB/RQ/4, ¶ 46.

⁴¹ Mirriam Chabala, *HRC urges govt to enact Law criminalizing torture*, News Diggers! (April 25, 2019), available at <https://diggers.news/local/2019/04/25/hrc-urges-govt-to-enact-law-criminalizing-torture/>.

⁴² Mirriam Chabala, *HRC urges govt to enact Law criminalizing torture*, News Diggers! (April 25, 2019), available at <https://diggers.news/local/2019/04/25/hrc-urges-govt-to-enact-law-criminalizing-torture/>.

⁴³ UN Treaty Body Database, United Nations Human Rights Treaty Bodies, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=194&Lang=EN.

⁴⁴ Constitution of Zambia art. 15.

⁴⁵ Mirriam Chabala, *HRC urges govt to enact Law criminalizing torture*, News Diggers! (April 25, 2019), available at <https://diggers.news/local/2019/04/25/hrc-urges-govt-to-enact-law-criminalizing-torture/>.

⁴⁶ Lusaka Times, *The absence of the law criminalizing torture in Zambia is still a concern-Human Rights Commission*, (April 24, 2019), available at <https://www.lusakatimes.com/2022/02/11/zambia-polices-response-to-allegations-of-torture-is-unacceptable-fred-mmembe/>.

⁴⁷ Frederick Ng'andu, *The Death Penalty in Zambia*, British Institute of International and Cooperative Law, available at https://www.biicl.org/files/2305_country_report_zambia_ngandu.pdf.

⁴⁸ Source on file with The Advocates for Human Rights.

⁴⁹ Lusaka Times, *Zambia Police's Response to Allegations of Torture is Unacceptable-Fred M'membe*, (February 11, 2022), available at <https://www.lusakatimes.com/2019/04/24/the-absence-of-the-law-criminalising-torture-in-zambia-is-till-a-concern-human-rights-commission/>.

representation.⁵⁰ But many defendants are not aware of their right to counsel, and the legal aid office and the Legal Resources Foundation, both of which provide legal services to some indigent arrestees, are unable to meet the demand.⁵¹ Even when counsel is provided, it is not provided in a prompt and timely manner.⁵²

24. While Zambia has made progress on the right to representation, the full implementation of such changes remains to be seen. In 2022, the Law Association of Zambia launched its pro bono policy framework, which aims to provide free access to criminal and civil justice representation to people from disadvantaged backgrounds.⁵³ Justice Minister Mulambo Haimbe has reportedly said that the government is “working hard to close the gap that limits access to justice for poor people in the country.”⁵⁴
25. As noted in paragraph 15 above, in 2021 alone, Zambian courts exonerated three people who had been sentenced to death. In May of 2022, President Hakainde Hichilema commuted the sentences of thirty death-row prisoners to life imprisonment after submitting the bill to end capital punishment.⁵⁵ There is no information as to whether any of these people have received any remedies for their time spent on death row.

III. Detention conditions for people in Zambia under sentence of death violate national and international human rights standards (List of Issues paragraphs 15-17).

26. In 2007, the Committee recommended that Zambia “significantly increase its efforts to guarantee the right of detainees to be treated with humanity and dignity, by ensuring that they live in healthy conditions and have adequate access to health care and food.”⁵⁶
27. In its 2021 List of Issues, the Committee asked for “updated information on the anti-torture bill and any legislative framework to prohibit, prevent and combat torture.”⁵⁷ The Committee also asked for “additional information on measures taken to reduce overcrowding in prisons, and their effectiveness to date,” as well as measures taken in detention centers “to improve sanitary conditions.” The Committee also asked Zambia to “comment on information received that prison conditions in the State party continue to be below the minimum standard, with overcrowding, poor ventilation, disease, poor hygiene and limited access to adequate health

⁵⁰ Zambia Legal Aid Act, sec 8(1), Laws of Zambia Ch. 34, Jul. 3, 1967, as updated to Dec. 1996, available at <https://zambialii.org/akn/zm/act/1967/30/eng%401996-12-31>.

⁵¹ Source on file with The Advocates for Human Rights.

⁵² Source on file with The Advocates for Human Rights.

⁵³ Lusaka Times, *Pro Bono service framework to provide access to criminal and civil justice launched*, (May 20, 2022), available at <https://www.lusakatimes.com/2022/05/20/pro-bono-service-framework-to-provide-access-to-criminal-and-civil-justice-launched/>.

⁵⁴ Lusaka Times, *Government is working hard to close the gap that limits access to justice for poor people*, (June 5, 2022), available at <https://www.lusakatimes.com/2022/06/05/government-is-working-hard-to-close-the-gap-that-limits-access-to-justice-for-poor-people/>.

⁵⁵ Death Penalty Information center, *Zambia, Central African Republic Move to Abolish Death Penalty*, (May 31, 2022), available at <https://deathpenaltyinfo.org/news/zambia-central-african-republic-move-to-abolish-death-penalty>.

⁵⁶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Zambia*, (Aug. 9, 2007), U.N. Doc. CCPR/C/ZMB/CO/3, ¶ 23.

⁵⁷ Human Rights Committee, *List of issues in relation to the fourth periodic report of Zambia*, (Jan. 20, 2021), U.N. Doc. CCPR/C/ZMB/Q/4, ¶ 15.

care, especially for female prisoners.”⁵⁸ The Committee also asked about “the measures taken to improve the conditions under which people on death row are kept. In this regard, please provide information on measures taken to reduce overcrowding for people under sentence of death, to prevent physical abuse by guards and to ensure that they have access to clean water and adequate medical care, bedding, food and sanitation.”⁵⁹

28. In its reply to the List of Issues, Zambia states that it was “committed to improving sanitary conditions in detention centers around the country” and it had “continued to modernize its detention centers.”⁶⁰ Zambia also states that it has implemented various healthcare programs, including mass screening and treatment of Tuberculosis, an assessment of HIV, TB, STIs, and Hepatitis B in correctional centers, and it has set up two “mini hospitals” within correctional centers.⁶¹ Zambia also states that it “domesticated the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) in 2020.”⁶² Zambia adds that it “has put in place measures to improve the conditions of inmates on death row, particularly, the provision of adequate lighting, ventilation and minimum floor space.”⁶³
29. Article 15 of the Constitution guarantees protection against inhuman and degrading treatment or punishment.⁶⁴ On December 9, 2019, the Supreme Court of Zambia ruled that the rights under Article 15 of the Constitution, which prohibits torture, include the right to be free from “overcrowding, poor ventilation, disease, poor hygiene, and limited access to adequate health care” in prisons.⁶⁵
30. All individuals on death row live in Mukobeko Maximum Security Prison in a unit separate from general population.⁶⁶ The unit’s 48 cells are intended to hold a maximum of 96 individuals. Under current conditions, five or six individuals live in a 2.5m by 2m cell intended for only one or two people.⁶⁷ During the day, people on death row can leave their cells but are confined to an area approximately 3m by 30m.⁶⁸ In addition, a cell of 40 square meters may have 165 or more inmates locked from around 4-5pm to 7-8am.⁶⁹ Although Bill No. 25 of 2022 abolished the death penalty, people previously on death row remain in the above described conditions until their sentences are fully commuted.⁷⁰ As of January 2023, there are 372 men and 11 women under sentence of death.⁷¹ Although there has been a paradigm shift in Zambian

⁵⁸ *Id.* ¶ 16.

⁵⁹ *Id.* ¶ 17.

⁶⁰ Human Rights Committee, *Replies of Zambia to the list of issues in relation to its fourth periodic report*, (Dec. 8, 2022), U.N. Doc. CCPR/C/ZMB/RQ/4, ¶¶ 50-51.

⁶¹ *Id.* ¶¶ 51-52.

⁶² *Id.* ¶ 55.

⁶³ *Id.* ¶ 56.

⁶⁴ Constitution of Zambia art. 15.

⁶⁵ *Mwanza and Another v Attorney General*, 2019 ZMSC 33 (9 Dec. 2019).

⁶⁶ Cathal Gilbert, *On Africa’s Death Row: Hidden Consequences of Colonial Part [Blog]*, International Business Tribune, (Oct. 12, 2012), available at <https://www.ibtimes.co.uk/death-penalty-hidden-consequences-africa-blog-393642>.

⁶⁷ Newton Sibanda, *Death Penalty-Zambia: Inmates Plead for Deliverance*, Inter Press Service, (May 20, 2008), available at <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

⁶⁸ Newton Sibanda, *Death Penalty-Zambia: Inmates Plead for Deliverance*, Inter Press Service, (May 20, 2008), available at <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

⁶⁹ [Source on file with the Prisoners’ Future Foundation (2023).]

⁷⁰ [Source on file with the Prisoners’ Future Foundation (2023).]

⁷¹ [Source on file with the Prisoners’ Future Foundation (2023).]

Prisons from “Prison” to “Correctional” institutions, prison authorities have not implemented rehabilitation and reformation programs.⁷² People on death row describe the conditions as “painful and degrading,” “traumatic,” “torturous,” and “hell on earth.”⁷³ Cells contain only two mattresses for five or six people to share.⁷⁴ Cells lack adequate ventilation and sanitation and people are forced to improvise “chambers (toilets) by cutting up five- or two-and-a-half-litre plastic containers for human waste.”⁷⁵ A person who had been released from death row explained that these conditions lead individuals to pray for “the waiting hangman to carry out his job speedily.”⁷⁶ Another person who had spent time on death row said, “most people on death row die of depression. Others would just die in their sleep; others would just collapse.”⁷⁷ Some Zambian prisons participate in open air farms, which involve the production of food.⁷⁸ In these open air farms, it is common for officers and inmate captains to beat detained persons.⁷⁹ When involved in farming and food production in open air farms, people in detention do not benefit from the foods they produce as much of it is sold on the market to ensure recapitalization.⁸⁰

31. Zambia has taken a few steps to improve its prison conditions, but inhumane conditions persist.⁸¹ In its Fourth Periodic Report, Zambia stated that it had constructed four new prisons and it was in the process of constructing two more prisons to help reduce prison overcrowding.⁸² This report also noted that Zambia had implemented measures to decongest overcrowded prisons, including the establishment of a national parole system and an order allowing individuals convicted of minor offences to pay fines or complete a community service requirement as an alternative to imprisonment.⁸³ Presidential pardons have also helped reduce

⁷² [Source on file with the Prisoners’ Future Foundation (2023).]

⁷³ Newton Sibanda, *Death Penalty-Zambia: Inmates Plead for Deliverance*, Inter Press Service, (May 20, 2008), available at <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

⁷⁴ Newton Sibanda, *Death Penalty-Zambia: Inmates Plead for Deliverance*, Inter Press Service, (May 20, 2008), available at

<http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>; Prudence Phiri, *Its Neighbors Ban the Death Penalty, but Zambia Has 252 – and Counting – on Death Row*, Global Press Journal, Aug. 29, 2018, <https://globalpressjournal.com/africa/zambia/neighbors-ban-death-penalty-zambia-252-counting-death-row/>.

⁷⁵ Newton Sibanda, *Death Penalty-Zambia: Inmates Plead for Deliverance*, Inter Press Service, (May 20, 2008), available at <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

⁷⁶ Newton Sibanda, *Death Penalty-Zambia: Inmates Plead for Deliverance*, Inter Press Service, (May 20, 2008), available at <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

⁷⁷ Prudence Phiri, *Its Neighbors Ban the Death Penalty, but Zambia Has 252 – and Counting – on Death Row*, Global Press Journal, (Aug. 29, 2018), available at <https://globalpressjournal.com/africa/zambia/neighbors-ban-death-penalty-zambia-252-counting-death-row/>.

⁷⁸ [Source on file with the Prisoners’ Future Foundation (2023).]

⁷⁹ [Source on file with the Prisoners’ Future Foundation (2023).]

⁸⁰ [Source on file with the Prisoners’ Future Foundation (2023).]

⁸¹ Source on file with The Advocates for Human Rights.

⁸² Human Rights Committee, *Fourth periodic report submitted by Zambia under article 40 of the Covenant, due in 2011*, (July 17, 2020), U.N. Doc. CCPR/C/ZMB/4, ¶ 80.

⁸³ Human Rights Committee, *Fourth periodic report submitted by Zambia under article 40 of the Covenant, due in 2011*, (July 17, 2020), U.N. Doc. CCPR/C/ZMB/4, ¶¶ 73-4.

the prison population,⁸⁴ and Zambia has offered medical training to prison officers so each prison can offer healthcare resources.⁸⁵

32. In November 2022, the Zambian and German governments partnered in the Zambia Correctional Service Prison Audit in an effort to accelerate the dispensation of justice.⁸⁶ The Audit aims to introduce a case-flow management system to enhance transparency and accountability within the system, but also to link all judicial institutions within the country.⁸⁷ As of November 2022, the prison system has a daily average population of around 24-25,000 individuals, with a capacity of 9,150 individuals, or an overpopulation of 163%.⁸⁸ Overcrowding in some Zambian prisons means that inmates must sleep sitting or cramped up beside each other head to foot, which results in physical ailments and high stress levels, and is an ideal environment for opportunistic infections.⁸⁹
33. Inadequate ventilation, temperature control, lighting, and basic and emergency medical care remain problems.⁹⁰ Furthermore, lack of potable water has resulted in serious outbreaks of waterborne and foodborne diseases, including dysentery and cholera.⁹¹ According to Zambia's Human Rights Commission, prison food is nutritionally inadequate, and people in detention have reported insufficient bedding and poor sanitation.⁹² Detained persons include small children (who are incarcerated with their mothers), who experience malnutrition.⁹³ During the COVID-19 pandemic, failure to remove or quarantine sick persons resulted in the spread of tuberculosis and other illnesses and the deaths of several people in detention.⁹⁴ As of January, 2023, Zambian prisons have the fourth highest prevalence in the world of latent TB in prisons.⁹⁵
34. In addition to poor sanitation leading to the spread of disease, Zambia's prisons also contain a disproportionately large population of people living with HIV/AIDS.⁹⁶ Out of 25,000 people

⁸⁴ Human Rights Committee, *Fourth periodic report submitted by Zambia under article 40 of the Covenant, due in 2011*, (July 17, 2020), U.N. Doc. CCPR/C/ZMB/4, ¶ 76.

⁸⁵ Human Rights Committee, *Fourth periodic report submitted by Zambia under article 40 of the Covenant, due in 2011*, (July 17, 2020), U.N. Doc. CCPR/C/ZMB/4, ¶ 77.

⁸⁶ Lusaka Times, *Government launches Prison Audit aimed at speeding up the dispensation of justice for citizens*, (Nov 9, 2022), available at <https://www.lusakatimes.com/2022/11/09/government-launches-prison-audit-aimed-at-speeding-up-the-dispensation-of-justice-for-citizens/>.

⁸⁷ Lusaka Times, *Government launches Prison Audit aimed at speeding up the dispensation of justice for citizens*, (Nov 9, 2022), available at <https://www.lusakatimes.com/2022/11/09/government-launches-prison-audit-aimed-at-speeding-up-the-dispensation-of-justice-for-citizens/>.

⁸⁸ Lusaka Times, *Government launches Prison Audit aimed at speeding up the dispensation of justice for citizens*, (Nov 9, 2022), available at <https://www.lusakatimes.com/2022/11/09/government-launches-prison-audit-aimed-at-speeding-up-the-dispensation-of-justice-for-citizens/>.

⁸⁹ [Source on file with the Prisoners' Future Foundation (2023).]

⁹⁰ Source on file with The Advocates for Human Rights.

⁹¹ Source on file with The Advocates for Human Rights.

⁹² Source on file with The Advocates for Human Rights.

⁹³ [Source on file with the Prisoners' Future Foundation (2023).]

⁹⁴ Source on file with The Advocates for Human Rights.

⁹⁵ Placeres et al, *Epidemiology of TB in prisoners: a metanalysis of the prevalence of active and latent TB*, 23 BMC Infectious Diseases, Article 20 (2023).

⁹⁶ Lusaka Times, *3,650 Prisoners in Zambia living with HIV/AIDS*, (Dec 1, 2022), available at <https://www.lusakatimes.com/2022/12/01/3650-prisoners-in-zambia-living-with-hiv-aids/>.

in Zambia's correctional facilities, 3,650 receive Antiretroviral Therapy;⁹⁷ and more infections are possible, as prisons often fail to provide adequate treatments against disease.

35. Detention facilities fail to accommodate people with psycho-social disabilities. A study conducted by the Department of Psychology at the University of Zambia in 2020 found that there is a high prevalence of psycho-social disabilities and related conditions among people living in Zambian correctional facilities, where there is a total absence of services targeted toward people with such disabilities.⁹⁸ The majority of these people are not screened and do not receive accommodations.⁹⁹ Staff at correctional facilities need greater training about and awareness of psycho-social disabilities and facilities need to provide appropriate services and accommodations for people with disabilities.¹⁰⁰

RECOMMENDATIONS

36. The coauthors suggest the following recommendations for Zambia:

- Review provisions of statutory law and ensure all provisions providing for the sentence of death are repealed, including Section 29 of the Defence Act.
- Ratify the Second Optional Protocol to the ICCPR.
- Immediately commute the sentences of all individuals currently on death row and institute a de jure moratorium on executions until the death penalty is entirely abolished.
- Take immediate steps to re-launch the Constitutional Reform process to amend the Bill of Rights in the Constitution of Zambia to explicitly prohibit the death penalty.
- Ratify the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Enact legislation to define torture, criminalize torture, and provide appropriate penalties for perpetrators.
- Instruct all judges to prohibit the use of any evidence discovered as a result of torture during interrogation, including coerced or otherwise unlawful confessions.
- Provide enhanced funding and human resources to the Zambian Legal Aid Department, the Legal Resources Foundation, and the Prisoners' Future Foundation to ensure that defendants who have limited financial means to defend themselves are afforded complete and effective legal assistance, including well qualified legal counsel and funding for carrying out an investigation to gather evidence for the defense, giving

⁹⁷ Lusaka Times, *3,650 Prisoners in Zambia living with HIV/AIDS*, (Dec 1, 2022), available at <https://www.lusakatimes.com/2022/12/01/3650-prisoners-in-zambia-living-with-hiv-aids/>.

⁹⁸ Jonathan Chinyama and Anitha Menon, PhD, *Mental Health and Healthcare Provision in Zambian Correctional Facilities*, *Medical Journal of Zambia*, Vol. 47 (3): 209-214 (2020).

⁹⁹ Jonathan Chinyama and Anitha Menon, PhD, *Mental Health and Healthcare Provision in Zambian Correctional Facilities*, *Medical Journal of Zambia*, Vol. 47 (3): 209-214 (2020).

¹⁰⁰ Jonathan Chinyama and Anitha Menon, PhD, *Mental Health and Healthcare Provision in Zambian Correctional Facilities*, *Medical Journal of Zambia*, Vol. 47 (3): 209-214 (2020).

priority to any person at risk of being sentenced to death.

- Direct law enforcement to provide persons suspected of criminal conduct with adequate information regarding their legal rights, as well as timely access to counsel, prior to any interrogation, prioritizing any person suspected of having committed a capital crime.
- Increase funding for the detention facilities and upgrade training for personnel to ensure conditions are consistent with the Nelson Mandela Rules, with particular emphasis on water and sanitation, food and other basic necessities, and prison-based health services.
- Provide training to staff at detention facilities about psycho-social disabilities and ensure people with such disabilities receive appropriate services and accommodations while they are detained.
- Ensure that all people in detention have access to skills training and post-release support, regardless of their sentence.
- Expand post-release support programs to include assistance for people exonerated from death row and ensure that exonerees receive remedies for their wrongful convictions and for their time on death row.