



United Republic of Tanzania's Compliance with International Covenant on Civil and Political Rights

Suggested List of Issues Prior to Reporting

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 Legal and Human Rights Centre

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental 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, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. 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.

Legal and Human Rights Centre (LHRC) is an independent, non-partisan and non-profit human rights organization, that seeks to promote internationally recognized human rights norms and standards in Tanzania. The organization specializes in legal and human rights monitoring, legal aid, civic awareness, research, advocacy for policy and legal reforms.

EXECUTIVE SUMMARY

1. This report addresses four main areas of concern relating to the death penalty in Tanzania. For each area of concern, the report suggests questions that the Committee should pose to the Tanzanian government in its List of Issues Prior to Reporting. The areas of concern are as follows:
2. Tanzania has observed a de facto moratorium on executions since 1994. Nonetheless, Tanzanian courts continue to sentence people to death, and the law mandates application of the death penalty. Tanzanian authorities have not implemented a 2019 judgment of the African Court on Human and Peoples' Rights, which held that the mandatory death penalty constitutes an arbitrary deprivation of the right to life.
3. In cases in which the defendant is at risk of being sentenced to death, Tanzania does not uphold its fair trial obligations under the Covenant. Defendants sometimes receive inadequate legal aid, resulting in wrongful convictions. In some jurisdictions, police officers parade suspected criminals before the media, undermining the right to be presumed innocent. Some defendants do not have adequate time or resources to prepare an adequate defense. And there are credible reports that courts admit evidence obtained under duress.
4. People under sentence of death face detention conditions that violate the Covenant. They face psychological torture or ill-treatment at the prospect of their execution. And along with the general prison population, they endure overcrowding, inadequate food, water, sanitation, and health care. Abuse of people held in prisons is reportedly widespread.
5. The procedures for requesting or obtaining a commutation of a death sentence or a pardon for a capital conviction are not transparent.

Tanzania fails to uphold its obligations under the International Covenant on Civil and Political Rights

I. Tanzanian courts continue to sentence people to death, and the Tanzanian Penal Code retains a mandatory death penalty, despite the continued de facto moratorium on executions

6. In its 2009 Concluding Observations, the Committee identified as a positive aspect Tanzania's "de facto moratorium on the death penalty which has been applied since 1994."¹ The Committee reiterated "its concern that courts continue to impose death sentences and [that there was a] high number of persons remaining on death row."² The Committee recommended that Tanzania "seriously consider abolishing the death penalty and becoming a party to the Second Optional Protocol of the Covenant."³

¹ Human Rights Committee, *Concluding observations on the fourth periodic report on the United Republic of Tanzania, adopted by the Committee at its 96th session (13–31 July 2009)*, U.N. Doc. CCPR/C/TZA/CO/4, ¶ 4 [hereinafter 2009 Concluding Observations].

² *Id.* ¶ 14.

³ *Ibid.*

7. On 9 December 2020, in commemoration of Tanzania’s Independence Day, President John Magufuli commuted the death sentences of 256 persons to life imprisonment.⁴ President Magufuli in 2017 publicly requested that courts “not . . . submit to me the list of names of the prisoners who are in line to be hanged to death. . . . [P]lease don’t bring the list of those people to me.”⁵
8. The Tanzanian Penal Code mandates a sentence of death for treason, “instigating invasion,” and murder.⁶ For example, article 197 of the Penal Code of Tanzania states: “Any person convicted of murder shall be sentenced to death.”⁷ Similarly, the Penal Act of Zanzibar provides that a person convicted of murder “shall be sentenced to death.”⁸ The only exception under Tanzanian law is for a pregnant person convicted of an offense punishable with death. Such a person is sentenced to life imprisonment.⁹ Breastfeeding mothers are not exempt from being sentenced to death.¹⁰
9. In November 2019, the African Court on Human and Peoples’ Rights upheld a challenge to the country’s mandatory death penalty. In *Ally Rajabu and Others v. United Republic of Tanzania*, five Tanzanian nationals who had been sentenced to death challenged their sentences on various grounds. The Court held that because the mandatory application of the death penalty “is automatic and mechanical,” and “as such, the provision of the sentence and its imposition do not permit consideration of mitigating factors; applies to accused persons without any distinction; takes away the discretion inherent in the exercise of the judicial function; and does not observe proportionality between the facts and the penalty,” and therefore it “does not uphold fairness and due process as guaranteed under Article 7(1) of the [African] Charter [on Human and Peoples’ Rights].”¹¹ The Court concluded that the mandatory death sentence in Section 197 of the Penal Code “constitutes an arbitrary deprivation of the right to life.”¹² The Court directed Tanzania to bring its Penal Code into compliance with the African Charter by eliminating the mandatory death penalty.¹³ The Court also awarded the applicants 4 million Tanzania Shillings each for moral damages, to be paid within six months of notification of the judgment.¹⁴ And the Court directed Tanzania to set aside the applicants’ death sentences and

⁴ Kizito Makoye, *Tanzania commutes death sentences of 256 convicts*, Anadolu Agency, 9 Dec. 2020, <https://www.aa.com.tr/en/africa/tanzania-commutes-death-sentences-of-256-convicts/2071191> (last visited 30 Dec. 2020).

⁵ Thalia Gerzso, *Tanzania: President Magufuli declares his position against the death penalty*, World Coalition Against the Death Penalty, 20 Sept. 2017, <http://www.worldcoalition.org/Tanzania-President-Magufuli-declares-his-position-against-the-death-penalty.html> (last visited 30 Dec. 2020).

⁶ Penal Code of Tanzania, arts. 39 (treason), 40 (instigating invasion), 196-97 (murder) (1945). Available online at <https://www.refworld.org/docid/3ae6b5de0.html>.

⁷ *Id.* art. 197 (emphasis added).

⁸ Penal Act of Zanzibar, art. 180, Act No. 6 of 2018, Mar. 16, 2018.

⁹ *Ibid.*

¹⁰ Zuwena Shame, *Society calls upon govt to amend the Penal Code*, IPP Media, 3 Oct. 2020, <https://www.ippmedia.com/en/news/society-calls-upon-govt-amend-penal-code%C2%A0> (last visited 30 Dec. 2020).

¹¹ *Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007-2015, Judgment on Merits and Reparations, Press Release, African Court on Human and Peoples’ Rights, 28 Nov. 2019, at 6, https://www.african-court.org/en/images/Cases/Judgment/Judgment_Summary_Application_007-2015-Ally_Rajabu_and_Others_v_Tanzania_Final.pdf.

¹² *Ibid.*

¹³ *Id.* at 7, 9.

¹⁴ *Id.* at 8.

replace them “with any other order that it will deem appropriate within its domestic processes.”¹⁵

10. Soon after the African Court issued its judgment, Tanzanian Attorney General Adelardus Kilangi told a news outlet that the Constitution took precedence over international judgments, thereby suggesting that Tanzania might disregard the judgment.¹⁶ On 21 November 2019, one week before the Court issued its judgment, Tanzania notified the African Union that it had withdrawn the right of individuals and non-governmental organizations to file cases directly against it at the African Court.¹⁷
11. In October 2020, Amnesty International reported that Tanzania had yet to implement the Court’s judgment.¹⁸
12. Tanzanian courts continue to sentence people to death. In September 2019, for example, a court sentenced seven people to death for killing a woman alleged to have been engaging in witchcraft.¹⁹ The Legal and Human Rights Centre documented 19 death sentences in 2019, up from 6 in 2018²⁰ and 15 in 2017.²¹ Tanzanian courts have sentenced at least 9 people to death in 2020. On 18 September 2020, the High Court in Dar es Salaam sentenced five men to death for a 2013 murder.²² On 24 December 2020, the High Court Mwanza Zone sentenced four people to death for a 2015 murder.²³
13. Tanzania has abstained from all eight resolutions in the General Assembly calling for a moratorium on the use of the death penalty, including the most recent resolution adopted on 16 December 2020. In its second-cycle Universal Periodic Review, Tanzania noted all recommendations relating to the death penalty.²⁴
14. During the interactive dialogue in 2016, the Tanzanian delegation stated that in capital cases, “measures, including mandatory representation and fair trial guarantees, were in place to

¹⁵ Id. at 9.

¹⁶ Faustine Kapama, *Tanzania: State Unhappy With Death Penalty Ruling*, Tanzania Daily News, 30 Nov. 2019, available at <https://allafrica.com/stories/201911300077.html> (last visited 30 Dec. 2020).

¹⁷ *Tanzania: Withdrawal of individual rights to African Court will deepen repression*, Amnesty International, 2 Dec. 2019, <https://www.amnesty.org/en/latest/news/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/> (last visited 30 Dec. 2020); *Death Sentences and Executions 2019*, Amnesty International (2020), at 51 n. 146, <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

¹⁸ *Africa: Positive death penalty decision undermined by continued executions*, Amnesty International, 10 Oct. 2020, <https://www.amnesty.org/en/latest/news/2020/10/africa-positive-death-penalty-decision-undermined-by-continued-executions/> (last visited 30 Dec. 2020).

¹⁹ Carmel Rickard, *Witchcraft trial adds 7 more to Tanzania’s death row*, African Lii, 10 Oct. 2019, <https://africanlii.org/article/20191010/witchcraft-trial-adds-7-more-tanzanias-death-row> (last visited 30 Dec. 2020).

²⁰ See Tanzania Human Rights Report 2018, Legal and Human Rights Centre & Zanzibar Legal Services Centre, at 21 (reporting five death sentences on the mainland), 272 (reporting one death sentence in Zanzibar) (April 2019), <https://www.humanrights.or.tz/assets/attachments/1557832171.pdf>.

²¹ Summary of the Tanzania Human Rights Report 2019, Legal and Human Rights Centre, at 5-6 (April 2020), <https://www.humanrights.or.tz/assets/attachments/1588571531.pdf>.

²² *Mvungi murder: Five city residents sentenced to death*, The Citizen, 19 Sept. 2020, available at <https://www.thecitizen.co.tz/news/Mvungi-murder--five-city-residents-sentenced-to-death/1840340-5625254-kjvtr4z/index.html> (last visited 30 Dec. 2020).

²³ *Four get death penalty for killing Chadema official*, The Citizen, 25 Dec. 2020, available at <https://www.thecitizen.co.tz/tanzania/news/-four-get-death-penalty-for-killing-chadema-official-3239484> (last visited 30 Dec. 2020).

²⁴ Report of the Working Group on the Universal Periodic Review, United Republic of The United Republic of Tanzania, 14 July 2016, A/HRC/32/12, ¶ 137.26-.32, .54-.62.

protect the rights of suspects.” The delegation added that people sentenced to death “had the right to appeal decisions.”²⁵

15. **Suggested questions** relating to the death penalty:

- What measures has the Tanzanian government taken to give effect to the judgment of the African Court on Human and Peoples’ Rights in the case of *Ally Rajabu and Others v. United Republic of Tanzania*?
- What steps have Tanzanian authorities taken to ensure the resentencing or commutation of death sentences for people sentenced under the mandatory death sentence provisions of the Penal Code?
- What guidance is given to sentencing authorities in Tanzania to ensure they consider all mitigating factors when determining whether to impose a sentence of death?
- Please provide comprehensive data providing the number of persons sentenced to death in Tanzania since 2009, disaggregated by crime of conviction, date of sentencing, demographic details of the defendant, whether the State provided the person with legal aid free of charge at trial and on appeal, status of any appeals or requests for commutation, date of any pardon or commutation, current sentence, and current location of detention (if any). Please indicate for each person whether they were sentenced to death by operation of penal code provisions mandating application of the death penalty.
- What steps have Tanzanian authorities undertaken to raise public awareness about the death penalty, international human rights standards relating to the practice, and alternatives to the death penalty?
- What impediments is Tanzania facing in instituting a formal, de jure moratorium on the death penalty, and becoming a party to the Second Optional Protocol to the Covenant?
- What measures are in place to ensure that a person who is breastfeeding is not sentenced to death?

II. Capital cases lack the fair trial guarantees required under the Covenant.

16. In 2019, the Legal and Human Rights Centre interviewed three people in the Njombe Region who had been pardoned and released from custody in 2017, years after being sentenced to death.²⁶ These people attributed their convictions to inadequate legal representation in court proceedings.²⁷
17. The Legal and Human Rights Centre in its 2019 annual report identified several practices undermining fair trial rights. LHRC identified as a “key concern” the practice of law enforcement officers parading suspected criminals before the media, in contravention of the

²⁵ Report of the Working Group on the Universal Periodic Review, United Republic of The United Republic of Tanzania, 14 July 2016, A/HRC/32/12, ¶ 77.

²⁶ *Death penalty in Tanzania: The story of pardoned death row inmates*, Legal and Human Rights Center, 25 Oct. 2019, <https://www.humanrights.or.tz/posts/b/news/death-penalty-in-tanzania-the-story-of-pardoned-death-row-inmates> (last visited 30 Dec. 2020).

²⁷ *Ibid.*

principles of due process and the presumption of innocence.²⁸ In September 2019, Inspector General of Police Simon Sirro cautioned Regional Police Commanders against this practice.²⁹

18. LHRC reports that people residing in rural areas face barriers to obtaining legal aid.³⁰ LHRC also notes that the judiciary faces a shortage of staff, magistrates, and judges, with 42.5% of needed positions remaining unfilled.³¹ LHRC has also documented “a tendency of threatening lawyers who see to represent their clients, particularly in criminal cases.”³² There are reports that “[a]uthorities did not always allow detainees sufficient time to prepare their defense, and access to adequate facilities was limited.”³³
19. Tanzania’s Constitution prohibits the use of torture,³⁴ but there are credible reports that law enforcement officers abuse, threaten, and otherwise mistreat suspected criminals, among others.³⁵
20. **Suggested questions** relating to the right to a fair trial in capital cases:
 - What remedies are provided to individuals found to have been wrongfully convicted and sentenced to death?
 - Please describe the procedures and practices in place for any person accused of a crime for which the death penalty may be imposed. What training does the State provide to attorneys who take on these cases through the legal aid scheme or on a *pro bono* basis? How does the State ensure that only qualified attorneys represent defendants in these cases? What financial support does the State provide to indigent defendants in capital cases to ensure that they are able to conduct a thorough investigation and mount an adequate defense at trial?
 - Please provide information about the provision of legal aid in rural areas, particularly in cases in which a person is accused of a crime for which the death penalty may be imposed. How does the State ensure that attorneys representing defendants in rural areas are able to meet regularly with their clients to prepare an adequate defense?
 - What legal recourse is available to persons sentenced to death who allege that they have been convicted based on inadequate or defective legal representation?

²⁸ Summary of the Tanzania Human Rights Report 2019, Legal and Human Rights Centre, at 9 (April 2020), <https://www.humanrights.or.tz/assets/attachments/1588571531.pdf>.

²⁹ Tanzania Human Rights Report 2019, Legal and Human Rights Centre, at 46-47 (April 2020), <https://www.humanrights.or.tz/assets/images/upload/files/Tanzania%20Human%20Rights%20%20Report%202019.pdf>.

³⁰ Summary of the Tanzania Human Rights Report 2019, Legal and Human Rights Centre, at 9 (April 2020), <https://www.humanrights.or.tz/assets/attachments/1588571531.pdf>.

³¹ Summary of the Tanzania Human Rights Report 2019, Legal and Human Rights Centre, at 10 (April 2020), <https://www.humanrights.or.tz/assets/attachments/1588571531.pdf>.

³² Tanzania Human Rights Report 2018, Legal and Human Rights Centre & Zanzibar Legal Services Centre, at 50 (April 2019), <https://www.humanrights.or.tz/assets/attachments/1557832171.pdf>.

³³ United States Bureau of Democracy, Human Rights and Labor, *2019 Country Reports on Human Rights Practices: Tanzania*, (Washington D.C.: United States Department of State, 2019), at 9-10. Also available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/tanzania/>.

³⁴ Constitution of the United Republic of Tanzania, art. 13.6.e.

³⁵ United States Bureau of Democracy, Human Rights and Labor, *2019 Country Reports on Human Rights Practices: Tanzania*, (Washington D.C.: United States Department of State, 2019), at 3. Also available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/tanzania/>.

- Please describe all measures implemented to ensure that law enforcement authorities cease the practice of parading suspected criminals before the media.
- What laws and procedures are in place to prevent courts from considering evidence obtained by means of torture or other cruel, inhuman, or degrading treatment in criminal proceedings other than proceedings seeking to prosecute the alleged perpetrator of such treatment?

III. People sentenced to death face detention conditions that violate articles 7 and 10 of the Covenant.

21. In its 2009 Concluding Observations, the Committee expressed regret about “the lack of sufficient information on the length of time that convicted persons have spent on death row, [and] their treatment in detention.”³⁶ The Committee recommended that Tanzania “ensure that conditions of detention on death row do not amount to treatment contrary to articles 7 and 10 of the Covenant.”³⁷
22. The Legal and Human Rights Centre has documented that over 480 persons were on death row in Tanzania as of the end of 2019.³⁸ Tanzania has the third-largest death row population in Sub-Saharan Africa, after Nigeria and Kenya.³⁹ LHRC has identified congestion in prisons as a “big problem.”⁴⁰
23. People under sentence of death are segregated from the rest of the prison population, but they live in several detention facilities spread across the country.⁴¹ One person who had spent considerable time on death row before being pardoned described life on death row as “terrifying,” and stated that he developed hypertension “because of thinking what is next for me.”⁴² Another person who had later been pardoned reported his fear after learning of the building in the prison compound where the gallows are kept: “my terror intensified. Even when you try to sleep the fear mounts.”⁴³
24. Prison conditions are reportedly “harsh and life threatening,” including pervasive conditions of “[i]nadequate food, overcrowding, poor sanitation, and insufficient medical care.”⁴⁴ Prison staff report “food and water shortages, a lack of electricity, inadequate lighting, and insufficient

³⁶ 2009 Concluding Observations, ¶ 14.

³⁷ 2009 Concluding Observations, ¶ 14.

³⁸ Summary of the Tanzania Human Rights Report 2019, Legal and Human Rights Centre, at 5 (April 2020), <https://www.humanrights.or.tz/assets/attachments/1588571531.pdf>.

³⁹ Death Sentences and Executions 2019, Amnesty International (2020), at 44-45, <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

⁴⁰ Summary of the Tanzania Human Rights Report 2019, Legal and Human Rights Centre, at 9 (April 2020), <https://www.humanrights.or.tz/assets/attachments/1588571531.pdf>.

⁴¹ Kizito Makoye, *Tanzania commutes death sentences of 256 convicts*, Anadolu Agency, 9 Dec. 2020, <https://www.aa.com.tr/en/africa/tanzania-commutes-death-sentences-of-256-convicts/2071191> (last visited 30 Dec. 2020).

⁴² *Death penalty in Tanzania: The story of pardoned death row inmates*, Legal and Human Rights Center, 25 Oct. 2019, <https://www.humanrights.or.tz/posts/b/news/death-penalty-in-tanzania-the-story-of-pardoned-death-row-inmates> (last visited 30 Dec. 2020).

⁴³ *Ibid.*

⁴⁴ United States Bureau of Democracy, Human Rights and Labor, *2019 Country Reports on Human Rights Practices: Tanzania*, (Washington D.C.: United States Department of State, 2019), at 3. Also available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/tanzania/>.

medical supplies.”⁴⁵ In 2018, President Magufuli told the Commissioner General of Prisons that the government would no longer feed people housed in prisons and suggested that they should cultivate their own food.⁴⁶ Subsequent to that statement, some detained persons “reported receiving no food from the prison authorities, relying solely on what family members provided.”⁴⁷

25. There are credible reports that physical abuse of people held in prisons is common.⁴⁸

26. **Suggested questions** relating to detention conditions:

- What steps has Tanzania taken to reduce the prison population, such as making all offenses bailable?
- Please describe the psychological care provided to people detained in Tanzania’s prisons who are under sentence of death.
- What steps has Tanzania taken to ensure that detention conditions comply with the Nelson Mandela Rules, particularly Rules 15-18 regarding sanitation and personal hygiene, Rule 22 regarding food and drinking water, Rules 24-35 regarding health care services and health inspections, Rule 43 regarding torture and other cruel, inhuman or degrading treatment or punishment, and Rules 83-85 regarding inspections?
- Please describe the food and water provided at each prison facility, including whether prison authorities provide regular and nutritionally adequate meals to persons being detained.
- What procedures are in place to respond to and investigate complaints of torture or ill-treatment in detention facilities?

IV. Procedures for commutation of death sentences are not transparent.

27. In its 2009 Concluding Observations, the Committee expressed regret about “the lack of sufficient information on . . . the procedures in place for the commutation of death sentences in light of the moratorium.”⁴⁹ The Committee recommended that Tanzania “consider the early commutation of death sentences of all persons currently sentenced to death.”⁵⁰

28. Article 45 of the United Republic of Tanzania Constitution 1977 as amended read together with section 3 of the Presidential Affairs Act Cap. 9 gives the president discretionary power to exercise his prerogative of mercy but there is no procedure stipulated.⁵¹

⁴⁵ Id. at 4.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ 2009 Concluding Observations, ¶ 14.

⁵⁰ 2009 Concluding Observations, ¶ 14.

⁵¹ See, e.g., Omari Issa Ndamungu, *The Paradox of the Presidential Power of Pardon: Tanzania in Perspective*, 10 Int’l J. of Sci & Rsrch Pubs. 197, 209-15 (Sept. 2020), available at https://www.researchgate.net/publication/346139886_The_Paradox_Of_The_Presidential_Power_Of_Pardon_Tanzania_In_Perspective.

29. **Suggested questions** relating to commutation of death sentences:

- Please describe the process by which a person may request commutation of a death sentence or a pardon from a capital conviction. Does the State provide legal aid for individuals seeking to make such requests?
- Please describe the process by which the President considers requests for commutation, pardon, and prerogative of mercy, particularly in capital cases.
- What procedure did the President use to select the 256 persons who benefitted from commutation of their death sentences in December 2020?