



**Zambia's Compliance with the International Covenant on Civil and Political Rights
Suggested List of Issues Relating to the Death Penalty**

Submitted by The Advocates for Human Rights

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

The World Coalition Against the Death Penalty

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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 160 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.

EXECUTIVE SUMMARY

1. This report addresses Zambia’s compliance with its human rights obligations with regard to its use of the death penalty. Zambia retains the death penalty and has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).
2. Zambia has failed to uphold its obligations under the ICCPR. Zambia has observed a de facto moratorium on executions since 1997, but a vast majority of Zambians maintain their support for the death penalty, and Zambian law authorizes application of the death penalty. Zambian law authorizes the death penalty for crimes that do not rise to the level of “most serious” under Article Six of the International Covenant on Civil and Political Rights (ICCPR).
3. Moreover, detention conditions for persons under sentence of death violate Article Seven of the ICCPR.

I. Despite a de facto moratorium on executions, Zambia continues to impose death sentences but may remain open to abolishing the death penalty.

4. In its July 2007 Concluding Observations, the Human Rights Committee expressed concern about the large number of persons on death row and encouraged Zambian authorities to commute all remaining death sentences.¹ The Committee recommended that Zambia review its Penal Code to ensure that the death penalty is authorized only for the most serious crimes. For instance, the Committee observed that “aggravated robbery with the use of [a] firearm” does not belong in this category.²
5. The Committee also recommended that Zambia ratify the Second Optional Protocol to the ICCPR and “ensure that public debate on the death penalty is conducted on the basis of a full presentation of all aspects of the matter.”³
6. In its 2020 State Party Report, Zambia states that domestic law still authorizes the death penalty, but the country has observed a de facto moratorium on executions since 1997. A total of 608 death sentences have been commuted.⁴
7. In Zambia, the death penalty is an available punishment for the following offenses: murder, treason, felony murder, and aggravated armed robbery.⁵ Aggravated armed robbery carries a mandatory death sentence for all participants, even if no death occurs or if only one person has a firearm.⁶ Nonetheless, courts may not impose a death sentence on an individual who was not armed during the robbery, who was not aware that the collaborators were armed, or in instances

¹ Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Zambia*, (Aug. 9, 2007), U.N. Doc. CCPR/C/ZMB/CO/3, ¶ 17.

² Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Zambia*, (Aug. 9, 2007), U.N. Doc. CCPR/C/ZMB/CO/3, ¶ 17.

³ Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Zambia*, (Aug. 9, 2007), U.N. Doc. CCPR/C/ZMB/CO/3, ¶ 17.

⁴ 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, ¶¶ 30, 32-6.

⁵ Penal Code secs. 43, 201, 294 [ZMB].

⁶ Penal Code sec. 294 [ZMB].

where the individual could not have reasonably foreseen that grievous harm might be inflicted during the robbery.⁷ Death sentences cannot be imposed on individuals who were minors at the time of the crime, pregnant women, people who have psycho-social disabilities, or people with mental illness.⁸

8. In 2016, Zambia held a constitutional review regarding the use of the death penalty.⁹ During this review, the government changed the name of the Zambia Prison Service to the Zambia Correctional Service to promote “the rehabilitation of inmates and [to mark] the end of years of punitive practices.”¹⁰ Most Zambians, however, expressed support for retaining the death penalty.¹¹
9. In 2019, Zambia saw an increase in the number death sentences pronounced. In 2018, Amnesty International estimated that over 21 individuals were sentenced to death,¹² but in 2019, that figure rose to 101 individuals (88 men and 13 women).¹³ Zambian authorities also exonerated 8 individuals and commuted the death sentences of 21 individuals in 2019.¹⁴
10. On 10 December 2019, the 71st anniversary of the Universal Declaration of Human Rights, Zambia’s Vice President urged the Zambian Human Rights Commission (HRC) “to scale up public sensitization on the possibility of abolishing the death penalty.”¹⁵ In August 2018, the HRC’s spokesperson stated that the HRC was using media campaigns to educate the public about the human rights violations involved with the death penalty, including the dehumanization of criminals.¹⁶

⁷ Penal Code sec. 294 [ZMB].

⁸ Penal Code sec. 12, 25 [ZMB].

⁹ 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/>.

¹⁰ 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/>.

¹¹ 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/>.

¹² Amnesty International, *Amnesty International Global Report: Death Sentences and Executions: 2019*, ACT 50/1847/2020, 2020. Also available at <https://reliefweb.int/sites/reliefweb.int/files/resources/ACT5018472020ENGLISH.PDF>.

¹³ Amnesty International, *Amnesty International Global Report: Death Sentences and Executions: 2019*, ACT 50/1847/2020, 2020. Also available at <https://reliefweb.int/sites/reliefweb.int/files/resources/ACT5018472020ENGLISH.PDF>.

¹⁴ Amnesty International, *Amnesty International Global Report: Death Sentences and Executions: 2019*, ACT 50/1847/2020, 2020. Also available at <https://reliefweb.int/sites/reliefweb.int/files/resources/ACT5018472020ENGLISH.PDF>.

¹⁵ Lusaka Times, “Zambia considering Abolishing the Death Penalty,” Accessed 12 Aug. 2020, <https://www.lusakatimes.com/2019/12/10/zambia-considering-abolishing-the-death-penalty/>.

¹⁶ 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/>.

11. Suggested questions relating to the death penalty:

- What steps have *Zambian* authorities taken to reduce the number of crimes eligible for the death penalty and to the limit the availability of the death penalty to the “most serious” crimes in accordance with Article 6, paragraph 2 of the Covenant?
- How many people are currently under sentence of death? What are the crimes for which they were convicted? How long have they been imprisoned on death row?
- Please provide disaggregated data broken down by age (including current age and age at the time of the offense), race and ethnicity, nationality, and sex relating to all persons sentenced to death during the reporting period, including: the crimes of conviction; location and date of arrest; duration of pre-trial detention; date legal counsel was provided or obtained; location, date, and duration of trial; date of sentencing; and location of post-trial detention.
- What steps has the State taken to collaborate with the Human Rights Commission and civil society to sensitize the public about the potential for abolition of the death penalty, alternatives to the death penalty, and international human rights standards that are relevant to the practice?
- For the individuals who had been sentenced to death and who were subsequently exonerated during the reporting period, please elaborate on the reasons for their wrongful convictions, the remedies provided to them, and the steps *Zambian* authorities are taking to ensure that no additional people will be wrongfully convicted and sentenced to death and to ensure that the people responsible for these wrongful convictions are held accountable.
- What procedures ensure that all persons under sentence of death are able to petition for commutation of their sentences?

II. Detention conditions for people under sentence of death violate national and international human rights standards.

12. In its July 2007 Concluding Observations, the Committee expressed concern about prison overcrowding and other detention conditions that may rise to the level of torture or other cruel, inhuman, or degrading treatment or punishment.¹⁷ The Committee recommended that *Zambia* take steps to reduce the prison population and to ensure that persons held in detention live “in healthy conditions and have adequate access to health care and food.”¹⁸ The Committee also recommended that *Zambia* effectively enforce the Prisons Act so that any act of violence “against a prisoner is duly prosecuted and punished.”¹⁹

¹⁷ Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Zambia*, (Aug. 9, 2007), U.N. Doc. CCPR/C/ZMB/CO/3, ¶ 20.

¹⁸ Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Zambia*, (Aug. 9, 2007), U.N. Doc. CCPR/C/ZMB/CO/3, ¶ 20.

¹⁹ Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Zambia*, (Aug. 9, 2007), U.N. Doc. CCPR/C/ZMB/CO/3, ¶ 23.

13. Article 12 of the Constitution of Zambia guarantees the right to life, stating that “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.”²⁰ Article 15 of the Constitution guarantees protection against inhuman and degrading treatment or punishment.²¹ On December 9, 2019, the Supreme Court of Zambia ruled these rights include the right to be free from “overcrowding, poor ventilation, disease, poor hygiene, and limited access to adequate health care” in prisons.²²
14. In its 2020 State Party 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.²³ This report also noted that Zambia implemented measures to decongest overcrowded prisons, including the establishment of a national parole system and an order allowing for individuals convicted of minor offences to pay fines or complete a community service requirement as an alternative to imprisonment.²⁴ Presidential pardons have also contributed to reducing the prison population,²⁵ and Zambia has offered medical training to prison officers so each prison can offer healthcare resources.²⁶
15. In its State Party Report, Zambia reported that the Prisons Act protects people in detention from any act of violence. Specifically, an offense against discipline occurs when a prison officer verbally assaults or uses unwarranted personal violence against a person in prison. This type of offense can be referred to the Subordinate Court if the offense is so grave that prisons authorities cannot punish the officer.²⁷
16. All individuals on death row live in Mukobeko Maximum Security Prison in a unit separate from general population.²⁸ As of late 2019, 393 individuals (370 men and 23 women) were on death row.²⁹ However, 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

²⁰ Constitution of Zambia art. 12.

²¹ Constitution of Zambia art. 15.

²² *Mwanza and Another v Attorney General*, 2019 ZMSC 33 (9 Dec. 2019).

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ 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.

²⁷ 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, ¶ 54.

²⁸ Cathal Gilbert, *On Africa’s Death Row: Hidden Consequences of Colonial Part [Blog]*, International Business Tribune, Oct. 12, 2012, <https://www.ibtimes.co.uk/death-penalty-hidden-consequences-africa-blog-393642>.

²⁹ Amnesty International, *Amnesty International Global Report: Death Sentences and Executions: 2019*, ACT 50/1847/2020, 2020. Also available at <https://reliefweb.int/sites/reliefweb.int/files/resources/ACT5018472020ENGLISH.PDF>.

one or two people.³⁰ During the day, people on death row can leave their cells but are confined to an area approximately 3m by 30m.³¹

17. People on death row describe the conditions as “painful and degrading,” “traumatic,” “torturous,” and “hell on earth.”³² Cells contain only two mattresses for five or six people to share.³³ 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.”³⁴ 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.”³⁵ 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.”³⁶
18. Overcrowding remains a problem on death row. To relieve congestion, President Edgar Lunga has used commutations to reduce congestion on death row, but courts continue to impose death sentences.³⁷ According to a 2014 government report, the parole system has been ineffective in addressing overcrowding.³⁸ One individual formerly on death row stated that “death row contributes to congestion, because everyone is lumped in the condemned section and for years are not hanged...[i]t takes time for them to be commuted. Until then, we are forced to be congested.”³⁹ Overcrowding is so severe that people who have tested negative for tuberculosis choose to live with individuals who have active cases of tuberculosis because their cells are less crowded.⁴⁰
19. During a 2015 visit to Mukobeko Maximum Security prison’s death row, President Edgar Lungu said that “it was unacceptable for a prison with a capacity of 51 inmates to house

³⁰ Newton Sibanda, *DEATH PENALTY-ZAMBIA: Inmates Plead for Deliverance*, Inter Press Service, May 20, 2008, <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

³¹ Newton Sibanda, *DEATH PENALTY-ZAMBIA: Inmates Plead for Deliverance*, Inter Press Service, May 20, 2008, <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

³² Newton Sibanda, *DEATH PENALTY-ZAMBIA: Inmates Plead for Deliverance*, Inter Press Service, May 20, 2008, <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

³³ Newton Sibanda, *DEATH PENALTY-ZAMBIA: Inmates Plead for Deliverance*, Inter Press Service, May 20, 2008, <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/>.

³⁴ Newton Sibanda, *DEATH PENALTY-ZAMBIA: Inmates Plead for Deliverance*, Inter Press Service, May 20, 2008, <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

³⁵ Newton Sibanda, *DEATH PENALTY-ZAMBIA: Inmates Plead for Deliverance*, Inter Press Service, May 20, 2008, <http://www.ipsnews.net/2008/05/death-penalty-zambia-inmates-plead-for-deliverance/>.

³⁶ 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/>.

³⁷ *Zambian president gives death row inmates life sentences*, Reuters, July 16, 2015, <https://af.reuters.com/article/topNews/idAFKCN0PQ18E20150716/>.

³⁸ 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/>.

³⁹ 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/>.

⁴⁰ *Zambia: Prison Conditions Endanger Inmates*, Human Rights Watch, April 27, 2010, <https://www.hrw.org/news/2010/04/27/zambia-prison-conditions-endanger-inmates>.

hundred” and that overcrowding “is an affront to basic human dignity apart from the health and sanitation challenges that it has created.”⁴¹

20. Other deplorable conditions present in Zambian prisons are widespread infections of tuberculosis, inadequate food, unclean water, and physical abuse.⁴² According to Human Rights Watch, “prison officers routinely beat prisoners, or force them naked into small, dark cells where they are given minimal food. Officers flood the cells with water to exacerbate the punishment. Prisoners are also frequently beaten by other inmates.”⁴³
21. In 2013, prison wardens killed nineteen people in Mukobeko prison after three individuals escaped.⁴⁴ According to a source, people in prison were angry after prison wardens tortured other individuals in attempts to gather information about the escape.⁴⁵ In response to such brutality, riots broke out, after which eight prisoners died from beatings by prison wardens, several were seriously injured, and 11 individuals died in the days following the riots.⁴⁶ The source alleged that the prison released the dead one by one to cover up the beatings, suggesting that people in prison had been forced to remain in cells with the corpses of inmates for several days.⁴⁷
22. **Suggested questions** relating to detention conditions for people under sentence of death:
- What is the State doing to: (a) investigate and respond to each case of alleged torture and cruel, inhuman, or degrading treatment in detention facilities; and (b) hold accountable the perpetrators of such acts?
 - What concrete steps is the government taking to reduce overcrowding for people under sentence of death and to ensure that they receive clean water and adequate medical care, bedding, food, and sanitation?
 - What mechanisms are in place by which a person in detention may raise allegations of torture or other cruel, inhuman, or degrading treatment at the hands of prison authorities?
 - Please provide detailed information about each complaint that authorities have received alleging that a person in detention has been subjected to torture or other cruel, inhuman, or degrading treatment or punishment. For each complaint, please describe how authorities responded, the results of any investigation, any remedy

⁴¹ *Zambian president gives death row inmates life sentences*, Reuters, July 16, 2015, <https://af.reuters.com/article/topNews/idAFKCN0PQ18E20150716/>.

⁴² *Zambia: Prison Conditions Endanger Inmates*, Human Rights Watch, April 27, 2010, <https://www.hrw.org/news/2010/04/27/zambia-prison-conditions-endanger-inmates>.

⁴³ *Zambia: Prison Conditions Endanger Inmates*, Human Rights Watch, April 27, 2010, <https://www.hrw.org/news/2010/04/27/zambia-prison-conditions-endanger-inmates>.

⁴⁴ *More information on Mukobeko prisoners murders emerge*, Zambian Watchdog, March 15, 2013, <https://www.zambiatewatchdog.com/more-information-on-mukobeko-prisoners-murders-emerge/>.

⁴⁵ *More information on Mukobeko prisoners murders emerge*, Zambian Watchdog, March 15, 2013, <https://www.zambiatewatchdog.com/more-information-on-mukobeko-prisoners-murders-emerge/>.

⁴⁶ *More information on Mukobeko prisoners murders emerge*, Zambian Watchdog, March 15, 2013, <https://www.zambiatewatchdog.com/more-information-on-mukobeko-prisoners-murders-emerge/>.

⁴⁷ *More information on Mukobeko prisoners murders emerge*, Zambian Watchdog, March 15, 2013, <https://www.zambiatewatchdog.com/more-information-on-mukobeko-prisoners-murders-emerge/>.

provided to the complainant, and any measures taken to hold the perpetrators accountable.

- What steps have prison authorities taken to implement the Zambian Supreme Court's December 19, 2019 ruling, so as to ensure that every person in prison has the right to life and to be free from inhuman and degrading treatment?
- Please provide information about every case in which an offense by a prison officer under the Prisons Act has been referred to the Subordinate Court for prosecution, and the outcome of each case.