



**Capital
Punishment
Justice
Project**



**Zimbabwe's Compliance with the International Covenant on Civil and Political Rights
Suggested List of Issues Prior to Reporting Relating to 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

Capital Punishment Impact Initiative

and

Capital Punishment Justice Project

130th Session of the Human Rights Committee

12 October – 6 November 2020

Submitted 17 August 2020

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.

Capital Punishment Impact Initiative (CPII)¹: In 2018, CPII joined forces with an Australian NGO, the Capital Punishment Justice Project, with a shared ambition to end the death penalty in Asia. Together, we formed the CPII. Over the coming five years, the CPII wants to see a significant shift in the debate about the death penalty, and capital punishment policy. Our long-term vision is to become the region's leading institute for evidence-based research, policy, network-building, and clinical case-work devoted to restricting and abolishing the death penalty. CPII is based at the Faculty of Law, Monash University (Australia).

¹ Mai Sato and Sara Kowal.

The **Capital Punishment Justice Project** (formerly Reprieve Australia) has been advocating for a world without the death penalty since 2001. We strive to be practical and effective by drawing upon networks of lawyers and experts in related disciplines to support local advocates who are working for change. Our projects began in the USA where we continue to assist lawyers in capital proceedings. In 2012, the scope of our work expanded to Asia in recognition of the persistence of the death penalty in our region. We are now an experienced participant in litigation, advocacy and professional development within Asia. We are committed to developing legal and policy solutions that will make a difference for people at risk of execution and create the conditions for abolition.

EXECUTIVE SUMMARY

1. Zimbabwe fails to meet its obligations under the International Covenant on Civil and Political Rights (ICCPR). In the absence of formal abolition of the death penalty, arbitrary arrest, torture of individuals in detention, and violations of the right to a fair trial and due process guarantees threaten the right to life in capital cases. Harsh detention conditions violate the right to life and the prohibition against torture and other forms of cruel, inhuman, or degrading treatment or punishment. Conditions include overcrowding and a lack of access to sanitation as well as inadequate food and medical care, and these conditions cause the spread of disease among individuals in detention. These conditions are sometimes life-threatening and are especially dangerous during the COVID-19 pandemic.

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

I. Zimbabwe has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty and maintains the death penalty as a legal form of punishment.

2. In 2012, the Government of Zimbabwe stated its intention to ratify the Second Optional Protocol to the ICCPR,² after accepting recommendations to do so during its first Universal Periodic Review.³ It has not yet ratified the Second Optional Protocol to the ICCPR and it noted similar recommendations in its second cycle UPR.⁴
3. In its 1998 Concluding Observations, the Human Rights Committee recommended that Zimbabwe “review its laws with a view to reducing the number of offences for which capital punishment can be imposed” in order to comply with Article 6 of the ICCPR.⁵
4. In its 1997 State Party report, Zimbabwe stated that it formally retains the death penalty, and that measures had been taken to ensure that it is imposed only for the most serious crimes.⁶ These reforms included the Criminal Law Amendment Act, which limited the range of crimes eligible for the death penalty and caused the death penalty to no longer be imposed for crimes

² The Death Penalty Project, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, Carolyn Hoyle, (2020), 11. <https://www.deathpenaltyproject.org/wp-content/uploads/2020/06/Zimbabwe-Opinion-Leaders-Report-2020.pdf>.

³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, (Dec. 28, 2016), U.N. Doc. A/HRC/34/8, ¶ 20.

⁴ Office of the High Commissioner for Human Rights, *UN Treaty Body Database*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx.

⁵ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Zimbabwe*, (Apr. 6, 1998), U.N. Doc. CCPR/C/79/Add.89, ¶ 20.

⁶ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Initial Reports of States Parties due in 1992: Addendum: Zimbabwe*, (Sept. 29, 1997), U.N. Doc. CCPR/C/74/Add. 3, ¶ 63.

related to terrorism.⁷ Zimbabwe stated that the Constitution provided individuals sentenced to death with the right to seek pardon or remission of their sentence.⁸

5. Zimbabwe's 2013 Constitution abolished the mandatory death penalty for murder in the absence of extenuating circumstances,⁹ and replaced it with a discretionary sentence restricting the death penalty to murder committed in "aggravating circumstances."¹⁰ In addition, the Constitution banned the death penalty for women¹¹ and for individuals below age 22 and over age 70.¹² Zimbabwe has not carried out executions since July 2005 and is considered to be *de facto* abolitionist.¹³
6. The Government of Zimbabwe sentenced 11 people to death in 2017 and at least 5 people in 2018.¹⁴ In 2018, President Emmerson Mnangagwa stated that the death penalty was "an affront to human dignity" and commuted the death sentences of all individuals who had been on death row for over ten years.¹⁵
7. In 2019, the Ministry of Justice, Legal and Parliamentary Affairs recommended that the death penalty be abolished, and reports suggested that the Government of Zimbabwe was in the process of implementing policies with a view to abolishing the death penalty.¹⁶
8. The Government of Zimbabwe reported that courts had sentenced six people to death in 2019 for "murder, murder and robbery, murder and attempted murder" and that 89 people were under sentence of death.¹⁷ Media reports suggest that in 2019, 34 death sentences were commuted to life imprisonment.¹⁸

⁷ Ibid.

⁸ *Id.* ¶ 68.

⁹ The Death Penalty Project, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?* Mai Sato, (2018), at 14. <https://www.deathpenaltyproject.org/wp-content/uploads/2018/05/12-Years-Report-1.pdf>.

¹⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, (Dec. 28, 2016), U.N. Doc. A/HRC/34/8, ¶ 20.

¹¹ The Death Penalty Project, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, Carolyn Hoyle, (2020), 11. <https://www.deathpenaltyproject.org/wp-content/uploads/2020/06/Zimbabwe-Opinion-Leaders-Report-2020.pdf>; The Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: a Global Overview of Women Facing the Death Penalty*, (Sept. 2018), <http://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

¹² The Death Penalty Project, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, Carolyn Hoyle, (2020), 11. <https://www.deathpenaltyproject.org/wp-content/uploads/2020/06/Zimbabwe-Opinion-Leaders-Report-2020.pdf>.

¹³ Ibid.

¹⁴ Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2017*, (2018), 7. <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>; Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2018*, (2019), 11. <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

¹⁵ The Death Penalty Project, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, Carolyn Hoyle, (2020), 11, <https://www.deathpenaltyproject.org/wp-content/uploads/2020/06/Zimbabwe-Opinion-Leaders-Report-2020.pdf>.

¹⁶ Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2019*, (2020), 51. <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

¹⁷ Ibid.

¹⁸ Ibid.

9. During Zimbabwe’s second UPR interactive dialogue November 2016, Emmerson Mnangawa, who was then Vice President, told the Human Rights Council that the country was not yet prepared to abolish the death penalty because most Zimbabweans who participated in the Constitution-making process favored the death penalty.¹⁹
10. Groundbreaking studies published in 2018 and 2020 by the Death Penalty Project and Veritas examined attitudes toward the death penalty among the general public and “opinion leaders” in Zimbabwe.
11. The 2018 report documented public attitudes about the death penalty in Zimbabwe and concluded that public opinion is not an impediment to abolition. The nationally representative survey of 1,200 Zimbabweans took place in July 2017.²⁰
12. The public opinion survey results show that even though 61% of respondents favored retention of the death penalty,²¹ only 4% of respondents demonstrated accurate knowledge of the status of the death penalty in the country, including the number of executions carried out in the past 10 years, the method of execution, and the offenses that are punishable by death.²² Only 17% of respondents were aware that there had been no executions carried out in the previous 10 years.²³ Of respondents supporting the death penalty, 80% said that they would accept abolition if the government adopted it as a policy, showing that abolition would not undermine the legitimacy of Zimbabwe’s criminal justice system.²⁴
13. Among respondents who support the death penalty, only 13% favored the execution of individuals with serious psycho-social disabilities.²⁵ And of all respondents, only 32% favored the execution of individuals with serious physical disabilities.²⁶
14. Supporters of the death penalty in Zimbabwe generally argue that it has a deterrent effect,²⁷ but when respondents were presented with seven different policies to reduce violent crime, only 8% identified the death penalty as their first choice—only restrictions on firearm possession received less support among the seven choices.²⁸ Respondents overwhelmingly favored “better moral education of young people,” poverty reduction, and longer prison sentences as more effective policy alternatives.²⁹ Moreover, respondents did not identify crime reduction as an important priority for the country; rather, “creating jobs and managing the economy were their top two choices.”³⁰

¹⁹ The Death Penalty Project, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?* Mai Sato, (2018), at 14. <https://www.deathpenaltyproject.org/wp-content/uploads/2018/05/12-Years-Report-1.pdf>.

²⁰ *Id.* at 15.

²¹ *Id.* at 16.

²² *Id.* at 20.

²³ *Ibid.*

²⁴ *Id.* at 34.

²⁵ *Id.* at 23.

²⁶ *Id.* at 24.

²⁷ *Id.* at 29.

²⁸ *Id.* at 33.

²⁹ *Ibid.*

³⁰ *Id.* at 34.

15. The complementary 2020 study on the views of opinion leaders examined, through in-depth interviews, the views of 42 Zimbabwean opinion leaders about the death penalty, their knowledge of the criminal justice system, the likelihood of abolition, and how abolition could be achieved.³¹ The opinion leaders included politicians, legal practitioners, religious leaders, leading members of civil society and academia, senior public servants, leading members of trade unions, war veterans, and the media.
16. The main finding indicates that 90% of persons interviewed supported abolition of the death penalty. Critically, this support is based on a good understanding of how the death penalty is applied in Zimbabwe, and of its limitations in bringing about reductions in violent crime—69% of interviewees believed that the death penalty has no deterrent effect. In relation to the opinion leaders’ trust in the criminal justice system, 64% of respondents did not trust the criminal justice system to prevent miscarriages of justice, and 79% believed wrongful convictions occur. The majority of the opinion leaders interviewed—64%—believed that the retention of the death penalty has damaged the country’s international reputation.
17. The report included a Foreword by President Mnangagwa, in which he reiterates his own wish that in the near future, Zimbabwe will formally end capital punishment by removing it from the statute books. Opinion leaders expressed strong support for an Act of Parliament as the appropriate mechanism to bring about abolition.
18. In 2020, President Mnangagwa again commuted the death sentences of all individuals who had been on death row for over ten years,³² and reiterated his belief that the death penalty is “a flagrant violation of the right to life and dignity.”³³
19. In March 2020, Dorcas Sibanda, a member of the opposition party, MDC, introduced a motion in Parliament on the abolition of the death penalty, and a call for moratorium on executions for all individuals currently on death row.³⁴

³¹ The Death Penalty Project, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, Carolyn Hoyle, (2020), <https://www.deathpenaltyproject.org/wp-content/uploads/2020/06/Zimbabwe-Opinion-Leaders-Report-2020.pdf>.

³² *Zimbabwe: Eight Death Sentences Commuted and 1.680 Inmates Released*, Hands Off Cain, 6 Apr. 2020, <http://www.handsoffcain.info/notizia/zimbabwe-eight-death-sentences-commuted-and-1-680-inmates-released-60306014>.

³³ The Death Penalty Project, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, Carolyn Hoyle, (2020), 5. <https://www.deathpenaltyproject.org/wp-content/uploads/2020/06/Zimbabwe-Opinion-Leaders-Report-2020.pdf>;

³⁴ *Death penalty should be abolished completely*, NewsDay, 30 Mar. 2020, <https://www.newsday.co.zw/2020/03/death-penalty-should-be-abolished-completely/>.

II. Violations of fair trial and due process rights threaten the right to life in capital cases.

20. In its 1998 Concluding Observations, the Committee expressed concern over legislation allowing the extension of pre-trial detention, observing that this practice facilitates the ill-treatment of detained individuals.³⁵
21. In its 2016 Universal Periodic Review, Zimbabwe accepted a recommendation from Chile to implement measures in the judicial system in order to “ensure equal access and due process and to fight impunity.”³⁶
22. In practice, the Government of Zimbabwe frequently violates due process rights guaranteed in the Constitution.³⁷ Authorities subject individuals to lengthy pretrial detention, and often violate rights relating to detention, searches, and seizures.³⁸ In 2016 and 2017, the judicial system failed to meet standards of independence and impartiality.³⁹ In 2018, court decisions suggested that the judicial system continued to lack independence from the executive branch and the Zimbabwe African Union-Patriotic Front.⁴⁰ In the absence of the formal abolition of the death penalty, due process violations threaten the right to life in capital cases.

III. Conditions of detention violate the right to life and the prohibition against torture and other forms of cruel, inhuman, or degrading treatment or punishment.

23. In its 1998 Concluding Observations, the Committee expressed concern about conditions of detention. These concerns included overcrowding and the spread of disease, resulting in high death rates among detained individuals.⁴¹
24. Most people under sentence of death live at Harare Central Prison, but due to space shortages, others live at Chikurubi Maximum Prison.⁴²

³⁵ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Zimbabwe*, (Apr. 6, 1998), U.N. Doc. CCPR/C/79/Add.89, ¶ 17.

³⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, (Dec. 28, 2016), U.N. Doc. A/HRC/34/8, ¶ 131.81.

³⁷ Freedom House, *Freedom in the World 2017: Zimbabwe*, <https://freedomhouse.org/country/zimbabwe/freedom-world/2017>; Freedom House, *Freedom in the World 2019: Zimbabwe*, <https://freedomhouse.org/country/zimbabwe/freedom-world/2019>.

³⁸ *Ibid.*

³⁹ United States Department of State, *2016 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/zimbabwe/>; United States Department of State, *2017 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/zimbabwe/>.

⁴⁰ Freedom House, *Freedom in the World 2019: Zimbabwe*, <https://freedomhouse.org/country/zimbabwe/freedom-world/2019>.

⁴¹ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Zimbabwe*, (Apr. 6, 1998), U.N. Doc. CCPR/C/79/Add.89, ¶ 18.

⁴² The Death Penalty Project, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?* Mai Sato, (2018), at 12. <https://www.deathpenaltyproject.org/wp-content/uploads/2018/05/12-Years-Report-1.pdf>.

25. In the 2016 Universal Periodic Review, Zimbabwe stated that whenever the prison population exceeds capacity, individuals are transferred to “spacious farm prisons,”⁴³ that it was finalizing a bill to improve prison conditions,⁴⁴ and that it was taking measures to impose punishments other than incarceration in order to ameliorate overcrowding in prisons.⁴⁵ Zimbabwe also described coordination efforts with civil society organizations to improve conditions of detention.⁴⁶
26. Despite these efforts, conditions in detention continue to be harsh.⁴⁷ Prisons and detention centers often are unsanitary and overcrowded, lack necessities such as running water in prison cells,⁴⁸ experience food shortages,⁴⁹ lack adequate access to medications,⁵⁰ and lack hygiene products and sufficient warm clothing and blankets.⁵¹ Individuals are often held in pre-trial detention before their bail hearings alongside convicted individuals, a practice that exacerbates overcrowding.⁵² Conditions in detention are often life-threatening and have led to the spread of disease such as HIV and tuberculosis.⁵³ As COVID-19 cases increase in Zimbabwe, these conditions cause an increased risk of infection and endanger the health of individuals in detention.⁵⁴
27. In March 2020, the Government of Zimbabwe acknowledged that 22,000 individuals were detained in facilities that have a capacity for only 17,000.⁵⁵ President Mnangagwa issued an

⁴³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Zimbabwe*, (Dec. 28, 2016), U.N. Doc. A/HRC/34/8, ¶ 29.

⁴⁴ *Ibid.*

⁴⁵ Human Rights Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Zimbabwe*, (Aug. 22, 2016), U.N. Doc. A/HRC/WG.6/26/ZWE/1, ¶ 24.

⁴⁶ *Id.* ¶ 97.

⁴⁷ United States Department of State, *2016 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/zimbabwe/>; United States Department of State, *2017 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/zimbabwe/>; United States Department of State, *2018 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/zimbabwe/>; United States Department of State, *2019 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/zimbabwe/>.

⁴⁸ *Prisoners in Zimbabwe at Grave Risk of Covid-19 Spread*, Human Rights Watch, (July 29, 2020), <https://www.hrw.org/news/2020/07/29/prisoners-zimbabwe-grave-risk-covid-19-spread>.

⁴⁹ Freedom House, *Freedom in the World 2017: Zimbabwe*, <https://freedomhouse.org/country/zimbabwe/freedom-world/2017>; Freedom House, *Freedom in the World 2019: Zimbabwe*, <https://freedomhouse.org/country/zimbabwe/freedom-world/2019>.

⁵⁰ United States Department of State, *2019 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/zimbabwe/>.

⁵¹ *Ibid.*

⁵² United States Department of State, *2018 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/zimbabwe/>; United States Department of State, *2019 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/zimbabwe/>.

⁵³ Freedom House, *Freedom in the World 2019: Zimbabwe*, <https://freedomhouse.org/country/zimbabwe/freedom-world/2019>; United States Department of State, *2019 Country Reports on Human Rights Practices: Zimbabwe*, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/zimbabwe/>.

⁵⁴ *Prisoners in Zimbabwe at Grave Risk of Covid-19 Spread*, Human Rights Watch, (July 29, 2020), <https://www.hrw.org/news/2020/07/29/prisoners-zimbabwe-grave-risk-covid-19-spread>.

⁵⁵ *Ibid.*

amnesty order that led to the release of 4,208 individuals from detention between March and June.⁵⁶

IV. Suggested questions for the Government of Zimbabwe:

- What steps has the Government of Zimbabwe taken to formally abolish the death penalty and to ratify the Second Optional Protocol to the Covenant? What is the status of the motion introduced by MP Dorcas Sibanda in March 2020 regarding abolition of the death penalty and a moratorium on executions?
- Are all of the aggravated murder offenses that are eligible for the death penalty limited to crimes in which the defendant intended to kill and did in fact kill, as required under Article 6, paragraph 2 of the Covenant? Please identify any offenses that are eligible for the death penalty that do not require, as elements of the crime, that the defendant intended to kill and did in fact kill.
- What steps has the Government of Zimbabwe undertaken to collaborate with civil society organizations to educate the public about the status of the death penalty in the country as well as about human rights issues related to the use of the death penalty and about alternatives to the death penalty?
- What initiatives has the Government of Zimbabwe undertaken to respond to the findings of the 2020 report, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, which found overwhelming support for abolition among Zimbabwe's opinion leaders?
- 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 or executed 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; location of post-trial detention; and location and date of execution, if applicable.
- What steps has the Government of Zimbabwe taken to ensure that detention conditions do not violate the right to life or the prohibition against torture or other forms of cruel, inhuman, or degrading treatment or punishment?
- What further steps has the Government of Zimbabwe taken to ameliorate overcrowding and improve conditions in prisons, and to ensure that detained individuals have access to adequate food, running water, sanitation, and medical care?
- What mechanisms are in place to ensure the independence and impartiality of the judiciary?

⁵⁶ Ibid.

- What steps has the government of Zimbabwe taken to hold accountable perpetrators of abuses including extrajudicial killings, arbitrary arrest and detention, and torture?
- How does the judicial system ensure respect for legal guarantees of due process in practice? What remedies are available to a person alleging that their due process or fair trial rights have been violated? Please provide information on all such allegations during the reporting period and how they have been addressed.