

THE DEATH PENALTY IN ZAMBIA
FREDERICK NG'ANDU*

I. INTRODUCTION

Zambia inherited the death penalty from the colonial era and successive constitutions have continued to provide for this penalty. The current constitution provides for the protection of the right to life except in execution of a sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted. The continued sanction of the death penalty by the Zambian Constitution evokes the deepest feelings in many people because of its severity and challenges the nation's sense of values. In the past few years the issue of the death penalty has generated a lot of debate among politicians, civil society, the academic fraternity and the general public.

This heightened interest in the death penalty resulted a few months ago, in the President commuting the sentences of 45 soldiers who were convicted of plotting to overthrow the government of former President, Dr. Frederick Chiluba. The death sentences imposed on these soldiers were substituted by prison terms ranging from twenty to ten years with hard labour or simple imprisonment. In addition to these soldiers, at least one person convicted of murder and aggravated robbery has been pardoned by the current President. President Mwanawasa's clear opposition to the death penalty was again demonstrated late last year when he appointed a Constitution Review Commission to collect submissions from Zambians on a new constitution for Zambia. Amongst the terms of reference for this Commission was to determine whether the death penalty should be abolished or maintained. This Commission is currently in the process of preparing its report after receiving submissions from all the nine provinces of Zambia.

It would be interesting to know at the conclusion of the Commission's work what the views are of the majority of Zambians regarding the death penalty. It should be observed that a similar term of reference was contained in the terms of reference for the Mvunga Constitution Review Commission set up by the first Republican President, David Kenneth Kaunda in 1990.¹ In its report, the Mvunga Commission concluded that, 'considering that the subject of the abolition of the death penalty poses fundamental questions, there should be further national debate to ascertain the national consensus'.

President Levy Patrick Mwanawasa's stance on the death penalty has continued to be demonstrated by his public statements that as long as he remains President of Zambia, he would not sanction the execution of any person who is on death row. On 7th May 2004, it was reported in the local media that the President had commuted death sentences for 15 people.²

II. INTERNATIONAL AND REGIONAL STANDARDS RELATING TO THE
DEATH SENTENCE

The relevant international standards in as far as the death penalty is concerned are the International Covenant on Civil and Political Rights of 1966 (ICCPR) and its Second Optional Protocol of 1989. Zambia has ratified the ICCPR and the First Optional Protocol to the ICCPR which provides for individual communications. Unfortunately, Zambia has not yet ratified the Second Optional Protocol which provides for the abolition of the death penalty.

Article 6 of the ICCPR provides that:

- (1) Every human being has the inherent right to life. No one shall be arbitrarily deprived of his life.
- (2) In countries that have not abolished the death penalty, a sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.

* National Coordinator, BIICL Death Penalty Project, Zambia. Frederick Ng'andu is Dean and Senior Lecturer of the School of Law at the University of Zambia.

¹ Statutory Instrument no. 135 of 1990.

² The Post Newspaper, Friday May 7, 2004, p. 2

The Human Rights Committee set up under the ICCPR to monitor state compliance with treaty obligations, in interpreting Article 6 has stated that:

(1) The right to life ... is the supreme right from which no derogation is permitted even in time of public emergency

(6) While it follows from Article 6(2) to (6) that states parties are not obliged to abolish the death penalty, they are obliged to limit its use to the most serious crimes. In this regard, states ought to consider reviewing their criminal laws in this light.³

III. THE CRIMINAL JUSTICE SYSTEM

The Zambian criminal justice system revolves around three levels of courts. At the bottom of the court hierarchy there are local courts established under the Local Courts Act. These courts have limited criminal jurisdiction and in particular, they cannot hear cases which attract the death penalty.⁴ Above the Local Courts are the Subordinate Courts whose criminal jurisdiction is provided for under section 19 of the Subordinate Courts Act.⁵ Under this section, subordinate courts have all the powers and jurisdiction conferred on them by the Criminal Procedure Code, the Subordinate Courts Act or any other law for the time being in force. In this regard, section 11(2) of the Criminal Procedure Code states that

No case of treason or murder or of any offence of a class specified in a notice issued under the provisions of subsection (1) shall be tried by a subordinate court unless special authority has been given by the High Court for such trial.

In practice no permission has ever been given for a trial in a murder or treason case to be tried in a subordinate court. The next higher court after the Subordinate Court is the High Court which among other things has original jurisdiction in murder and treason cases. All cases which upon conviction of the accused would attract the death sentence are heard in the High Court and appeals lie to the Supreme Court.

A. *Crimes attracting the Death Penalty*

Part III of the Zambian Constitution⁶ guarantees fundamental rights and freedoms of the individual. One of the rights guaranteed under this part of the Constitution is the right to life. However, under Article 12(1), the death penalty is permissible if it is 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'. Under the provisions of the penal code,⁷ three crimes are punishable by death. These are treason, murder and aggravated robbery.

1. *Treason*

Section 43 of the Penal Code deals with treason and states that

A person is guilty of treason and shall be liable to suffer death who:

- a) prepares or endeavours to overthrow by unlawful means the government as by law established; or
- b) prepares or endeavours to procure by force any alteration of the law or policies of government; or
- c) prepares or endeavours to procure by force the setting up of an independent state in any part of Zambia or the secession of any part of Zambia from the Republic; or

³ General comment 6(6), UN Doc. CCPR/C/21/Add.1, UN Doc A/37/40, Annex V

⁴ s11 of the Local Courts Act

⁵ c 28 of the Laws of Zambia

⁶ c 1 of the Laws of Zambia

⁷ c 87 of the Laws of Zambia

- d) prepares or endeavours to carry out by force any enterprise which usurps the executive power of the state in any matter of both a public and a general nature; or
- e) incites or assists any person to invade Zambia with armed force or unlawfully to submit any part of Zambia to attack by land, water or air, to assist in the preparation of any such invasion or attack; or
- f) in time of war and with intent to give assistance to the enemy, does any act which is likely to give such assistance.

However, this provision does not apply to non-Zambians who may have committed these acts outside Zambia, but Zambian citizens committing these offences outside Zambia may be tried and punished as though the offences had been committed within the jurisdiction of the court. It should be noted that the law makes it mandatory for the death penalty to be imposed for treason regardless of the circumstances under which the offence was committed.

2. *Murder without extenuating circumstances*

Section 200 of the penal code provides that, ‘any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.’ The penalty for this offence is provided for under section 201. This section states 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; provided that paragraph (b) of this subsection shall not apply to murder committed in the course of aggravated robbery with a firearm.

For purposes of this section extenuating circumstances are defined as ‘any fact associated with the offence which would diminish morally the degree of the convicted person’s guilt’.⁸ In deciding whether or not there are extenuating circumstances, the court shall consider the ‘standard of behaviour of an ordinary person of a class of the community to which the convicted person belongs’.⁹

However, there are no clear guidelines for determining whether or not extenuating circumstances exist. This leaves it to each Judge to decide what weight to attach to extenuating circumstances that may be presented to the court. It is therefore difficult to determine which defendant will receive the death sentence and which will not. There are many examples of instances where the trial Judge did not find extenuating circumstances and imposed the death sentence but on appeal the Supreme Court found extenuating circumstances and therefore allowed appeals against the sentence. Some examples of such circumstances include: (i) drunkenness - *Bwalya v The People*¹⁰, *Lemmy Bwala Shalu v The People*¹¹; (ii) the youthfulness of the defendant, who was 23 years old, and the fact that he had been involved in a fight - *Mwandama v The People*¹²; (iii) the intimate relationship between the defendant and the deceased and the alleged infidelity of the deceased - *Whiteson Simusokwe v The People*¹³, and (iv) the deceased having started the fight that led to the death - *The People v Bunda, Mumba & Kamwata*¹⁴.

3. *Aggravated robbery*

Under section 294(2) of the Penal Code, the penalty for the felony of aggravated robbery is death. Aggravated robbery is defined as a robbery in which the offensive weapon or instrument used is a firearm or where the offensive weapon is not a firearm but grievous harm is done to any person in the course of the

⁸ s201 (2)(a)

⁹ s201 (2)(b)

¹⁰ (1995-1997) ZR 168 (SC)

¹¹ (unreported) SCZ Appeal No. 122 of 1995

¹² (1995-1997) ZR 133 (SC)

¹³ (unreported) SCZ Appeal No. 15 of 2002

¹⁴ (1990-92)ZR 194

offence. However an accused person shall not be sentenced to death if the court is satisfied by the evidence in the case that the accused person was not armed with a firearm and that '(i) he was not aware that any of the other person's involved in committing the offence was so armed; or (ii) that he dissociated himself from the offence immediately on becoming aware' or if '[T]he court is satisfied by the evidence in the case that the accused person neither contemplated nor could reasonably have contemplated that grievous harm might be inflicted in the course of the offence'¹⁵.

Unlike in the case of murder, the law does not allow the court to take into account extenuating circumstances when sentencing a person convicted of armed robbery. This means that the death sentence is mandatory irrespective of the circumstances in which the offence has been committed. It should be noted that prior to 1974, aggravated robbery was punishable by a prison sentence of not less than 15 years. However, the spate of aggravated robberies in the early 1970s prompted the government in 1974 to amend the Penal Code to provide for a mandatory death sentence for aggravated robbery.

B. Procedure after Death Sentence has been Announced.

As soon as convenient after the sentence of death has been pronounced by the High Court or if there has been an appeal, as soon as such appeal is dismissed, the presiding Judge shall forward to the President a copy of the notes of evidence taken on the trial accompanied by a report in writing signed by him containing any recommendation or observations on the case as he may think fit to make.¹⁶ After receiving the advice of the Advisory Committee on the Prerogative of Mercy on the case, in accordance with the provisions of the Constitution, the President communicates to the said Judge, or his successor in office, the terms of any decision he has arrived at, and such Judge shall cause the tenor and substance thereof to be entered in the records of the court.¹⁷

This would be followed by either the President issuing a death warrant which shall state the place and time when the execution is to be carried out, or an order for the sentence of death to be commuted or a pardon. In this regard, Section 305(4) of the CPC states that:

The President shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the seal of the Republic, to give effect to the said decision. If the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial of the body of the person executed. If the sentence is commuted for any other punishment, the order shall specify that punishment. If the person sentenced is pardoned, the pardon shall state whether it is free, or to what condition (if any) it is subject.

The warrant may direct that the execution shall take place at such time and at such place, and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the warrant.

C. Persons not to be Sentenced to Death.

Under the Zambian Penal Code, pregnant women and persons under eighteen years of age cannot be sentenced to death but to life imprisonment or to detention at the President's pleasure. Section 25 of the Penal Code provides that:

(2) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that, at the time when an offence was committed, he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during the President's pleasure, and when so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct.

¹⁵ s 294 (2)(b)

¹⁶ s 305 (1) of the Criminal Procedure Code (CPC)

¹⁷ s 305 (3) of the CPC

(3) Where a woman convicted of an offence punishable with death is found ... to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death.

IV. THE DEATH PENALTY IN PRACTICE IN ZAMBIA

The death penalty has been applied by Zambian courts on a regular basis since independence in 1964. From that year until 1978, 406 people were sentenced to death, 34 of whom were executed.¹⁸ By the 1980s, 140 condemned prisoners remained on death row, 11 of whom were executed on 27 December 1985. Another 18 prisoners were executed in 1989.¹⁹

In the period 1998 to 2000, at least 97 people were sentenced to death, among which were 59 soldiers who were convicted of treason after the 1997 abortive coup attempt.²⁰ Some of the 59 soldiers won their appeals in the Supreme Court and were released while the rest have had their sentences commuted to terms of imprisonment ranging from 10 to 20 years with or without hard labour.

As stated earlier on, although many people have been sentenced to death in Zambia, it is clear that the two former Presidents and the current President have been reluctant to sign death warrants. In fact the current President has publicly stated that he will not do so as long as he remains President. The stance taken by President Mwanawasa coupled with his decision to put the question of abolition of the death penalty to the people of Zambia through the Constitution Review Commission is a step in the right direction and must be commended.

V. CONCERNS ABOUT THE DEATH PENALTY IN ZAMBIA

A. *Pre-Trial*

As in many other countries, those who are most likely to receive the death penalty are the economically disadvantaged. In the case of Zambia where at least 80 per cent of the population lives in poverty, the chances of a defendant facing the death sentence being able to afford to engage a lawyer who can adequately represent him or her are virtually nil. This situation is made worse by a lack of lawyers particularly in the rural provincial headquarters where most lawyers are reluctant to operate. The majority of the lawyers graduating from the only law school in the country prefer to operate from Lusaka or the other urban centers.

Article 7 of the ICCPR outlaws torture. Detailed provisions aimed at combating torture are found in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT), which Zambia ratified in 1999. The Zambian Constitution prohibits torture in Article 15 which states that, 'No person shall be subjected to torture or to inhuman or degrading punishment or other like treatment'. Furthermore, Article 15 of CAT expressly prohibits the admission of evidence obtained by torture. Under this Article '[A]ny statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.' Despite Zambia having ratified CAT and having a provision in the Constitution prohibiting torture, suspects are still tortured as can be seen from accounts made by accused persons during trial. Many of these accounts can be found in reported cases.

Although the Zambian courts do not admit involuntary confessions into evidence, they do allow any evidence found as a result of the illegal confession.²¹ For example if a murder weapon is found as a result of a confession obtained by torture, the court will exclude the confession but allow the murder weapon to be produced in court as part of the evidence. This clearly defeats the very purpose of the prohibition of involuntary confessions.

B. *Trial*

¹⁸ Kalombo Mwansa 'Aggravated Robbery and the Death Penalty in Zambia: An Examination of the 1974 Penal Code Amendment Act (No. 2)' Zambia Law Journal 73 (1984).

¹⁹ Amnesty International, *When the State Kills: The Death Penalty v Human Rights* (London, 1989), 237.

²⁰ Amnesty International Report 1998, London 1998, 364.

²¹ *Liswaniso v The People* (1976) ZR 277 (SC).

Since most defendants are unable to hire lawyers of their choice, they invariably turn to the only other alternative, namely the Department of Legal Aid. This department is mandated by law to provide legal aid to persons facing serious charges but who are financially unable to engage lawyers of their choice. Under the Legal Aid Act whenever any court commits a person for trial before the High Court and considers that person to be unable to engage a lawyer, it will automatically issue a legal aid certificate. This certificate enables the accused to receive legal representation from the department.²² However, this department has remained grossly under funded and under staffed. Currently the department has less than 10 lawyers who are responsible for representing defendants in virtually all serious cases before the High Court including all those that attract the death penalty. According to Amnesty International, it is estimated that at least 40 lawyers are required in order for the Legal Aid Department to be able to provide adequate representation to all who need its services.²³

In an attempt to solve the above problem, the Government enacted the Legal Aid Act in 2001. This Act made provision for lawyers in private practice to be paid by the Government on a case by case basis for sparing time from their practice to handle criminal cases on behalf of defendants who are unable to hire their own lawyers. This scheme has not worked as advertised because from time to time the Government has failed to pay the private lawyers on time. In any case the fees paid by Government under this scheme have not been enough to attract many lawyers to the scheme.

Furthermore, the lack of up to date legal materials makes researching the law by both the Judges and lawyers very difficult. Often lawyers argue their cases on the basis of outdated legal literature while Judges write their Judgments based on equally outdated materials.

Given all these constraints it is difficult to guarantee a fair trial to any defendant let alone to an indigent defendant. This lack of a fair trial inevitably leads to a defendant being denied the right to due process and if convicted of a capital offence, the right to seek legal redress for a wrongful conviction. As a result of this scenario, it is likely that many innocent people may have been sentenced to death.

Another matter of concern at the trial stage is the defence lawyer's delayed access to evidence. In most cases the defence does not have easy access to evidence gathered by the police and other investigating wings until the trial is well under way. In many other cases exhibits collected by the prosecution have been known to simply disappear as a result of the unprofessional manner in which evidence is handled by the police. Due to poor investigative skills, the police have in a number of cases resorted to extracting confessions from the accused by the use of excessive force or even torture. This coupled with other constraints stated above makes it difficult if not impossible for the death penalty to be fairly and consistently applied. A poorly prepared defence, missing evidence, and confessions extracted by force can all result in wrongful convictions. Such convictions are difficult to reverse particularly because appellate courts as a rule do not consider new evidence but confine themselves to points of law only.²⁴

C. Post-Trial

1. Appeal Procedure

Under the Zambian law, a person convicted of a capital offence is at liberty to appeal to the Supreme Court.²⁵ The lodging of an appeal automatically acts as a stay of execution.²⁶ International human rights standards on the other hand require that there is a mandatory appeal in all cases that attract capital punishment.²⁷ Under Article 6 of ECOSOC, the Safeguards Guaranteeing the Rights of Those Facing the Death Penalty, 'Anyone sentenced to death has the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.' Allowing a person convicted to appeal to the Supreme Court if they so wish is not a sufficient safeguard of the rights of the person. It is

²² s8 of the Legal Aid Act (c34 of the Laws of Zambia).

²³ Amnesty International, Zambia – 'Time to Abolish the Death Penalty' (July 2001) .3.

²⁴ Amnesty International, 'When the State Kills: The Death Penalty v Human Rights' (London 1989) 31.

²⁵ Rule 22 of the Supreme Court Rules.

²⁶ s18 (1) (a) of the Supreme Court of Zambia Act.

²⁷ Art 6 of ECOSOC, the Safeguards Guaranteeing the Rights of Those Facing the Death Penalty.

therefore necessary for the Zambian Government to review its legislation so as to provide for an automatic right of appeal for all cases where a death penalty has been imposed.

2. *Presidential Pardon*

Article 59 of the Constitution of Zambia empowers the President to pardon any convicted person or to reduce the sentence in any way he sees fit. In exercising this power the President relies on the advice of an Advisory Committee on the Prerogative of Mercy. The members of this Committee are appointed by the President who must refer all death sentences to it.²⁸ Section 305 of the Criminal Procedure Code lays down the procedure to be followed where the President exercises his powers of clemency. The procedure laid down is that:

- If no appeal is pending the presiding Judge must forward as soon as convenient, notes of evidence taken on trial with a report in writing signed by him containing any recommendations or observations on the case as he thinks fit. (Section 305(1) of the Criminal Procedure Code);
- The President must receive the advice of the Advisory Committee on each case where a convicted person is seeking clemency (ibid, section 305(3));
- The President must communicate his decision to the presiding Judge or his successor in office. The Judge shall cause the tenor and substance thereof to be entered in the records of the court. If clemency is declined, the President shall issue a death warrant (ibid, section 305(4)).

It is clear from the above procedure that the power of clemency is discretionary and that the President is not even obliged to follow the recommendation of the Advisory Committee. Moreover, the person applying for clemency is not given an opportunity to state his case with the aid of a lawyer. It is clear that such a procedure is not suitable for remedying any defects that may have occurred during the trial. This procedure needs to be reviewed so as to accord each person seeking clemency an opportunity to present his or her case to the Advisory Committee rather than letting the decision be arrived at in secrecy.

D. *Detention on Death Row*

1. *Prison conditions*

All condemned prisoners in Zambia are detained at Mukobeko prison, which is the only maximum security prison in the country. The section of this prison reserved for condemned prisoners was built during the colonial era and was intended to house a maximum of 50 prisoners. Currently however, this section of the prison houses more than 200 prisoners partly because there have been no executions since 1997.

There are numerous reports in the local media indicating that this section of the prison is in a poor state of disrepair and very unhygienic. Due to the unhygienic conditions in which prisoners are forced to live, there are reports of frequent outbreaks of contagious diseases such as tuberculosis which have led to the deaths of some of the condemned inmates. Since the department of prisons is under-funded, prisoners in this prison and indeed in other prisons do not have a proper uniform. In most cases prisoners wear what may be described as rags of materials crudely stitched together.²⁹

Article 10 of the ICCPR states that, 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. This has been construed by the Human Rights Committee as including 'the duty to provide adequate medical care, basic sanitary facilities, adequate food and recreational facilities for people held under sentence of death'.³⁰ The conditions in

²⁸ Art 60 of the Constitution of Zambia.

²⁹ Amnesty International, Zambia, 'Time to Abolish the Death Penalty', (n 25) 17.

³⁰ *Kelly v Jamaica*, (253/1987), 8 April 1991, Report of the HRC, UN Doc: A/E6/40, 1991, at 241) Henry and *Douglas v Jamaica*, 571/1994), 25 July 1996, UN Doc: CCPR/ C/37/D/571/1994 at para 3.8.

Mukobeko prison and other Zambian prisons do not satisfy this international standard as the Zambian Human Rights Commission observed in 1997 when it stated that:

The deplorable condition in which our prisons are is no longer news. Almost all are not fit for human habitation. Many other people have said so before the Human Rights Commission.³¹

2. *Length of stay on death row*

Since as stated above, few executions actually take place in Zambia despite many offenders being sentenced to death at every High Court session, there are at any one time a large number of prisoners awaiting execution. Some prisoners have been on death row for as long as 25 years.³² It has long been recognized that to hold a condemned prisoner on death row for a long time is inherently cruel, inhuman, and degrading (the death row phenomenon). For example, the Zimbabwe Supreme Court in *Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General*³³ held that being held for between four and six years under sentence of death constituted 'inhuman or degrading punishment'. There are many other examples where courts have considered the death row phenomenon as constituting inhuman and degrading punishment.³⁴

It is hoped that Zambian courts will take a leaf from these cases and declare prolonged stays on death row as constituting "inhuman or degrading punishment". Such a stand being taken by the courts may force the Government to commute the sentences of those who have been on death row for long periods.

VI. TRENDS IN HUMAN RIGHTS AND THE DEATH PENALTY

Many countries abhor the death penalty and have therefore made efforts to abolish it. These efforts have been undertaken at national, regional and international levels. At international level, the UN General Assembly adopted the Second Optional Protocol to the ICCPR in 1989. This Protocol requires all countries that have ratified it to ensure that no one within their jurisdiction shall be executed;³⁵ and to abolish the death penalty.³⁶

At regional level the Council of Europe adopted Protocol number 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty. It has been ratified by almost all members of the Council of Europe and came into force on 1st March 1985 effectively abolishing the death penalty in much of Europe. Similarly, in America the Organisation of American States adopted the Protocol to the American Convention on Human Rights which abolished the death penalty in those countries.

As far as Africa is concerned, there is no regional human rights instrument which abolishes the death penalty. However, a number of countries have unilaterally abolished the death sentence. Among these are Malawi, Namibia, South Africa, Angola, Mozambique, Djibouti, Cape Verde, Cote D'Ivoire, Guinea Bissau, Mauritius, Sao Tome and Principe and the Seychelles. In addition to this there are a number of countries that have maintained the death penalty but have adopted a policy of not actually executing those convicted of offences carrying the death penalty. These countries include Burkina Faso, Senegal, Gambia, Togo, Central African Republic, Mali, Niger, and Republic of Congo.

VII. CONCLUSION

The Zambian Constitution and other laws dealing with the death penalty violate international standards in so far as they fail to guarantee minimum international safeguards for defendants facing the death penalty. In practice Zambia has not been carrying out executions on a regular basis, suggesting that successive

³¹ Statement of the Permanent Human Rights Commission, Press Conference, Hotel Intercontinental, Lusaka, 1st December 1997, Annual Report 1997, p.77.

³² Amnesty International, Zambia: 'Time to Abolish the Death Penalty' (n 25) 18.

³³ Human Rights Law Journal 323(1993).

³⁴ See for example, *Pratt and Morgan v Attorney-General for Jamaica* (1994) 2 AC 1.

³⁵ Resolution 44/128 of 15 December 1989.

³⁶ art 1, Second Optional Protocol to the ICCPR.

Presidents have not been keen to sanction the executions. The current President has gone further publicly stating his opposition to the death penalty and declaring that during his tenure of office he would not sign any death warrant. However, the long periods which prisoners spend on death row constitutes cruel and inhuman treatment and is therefore unacceptable.

The issue of whether or not to abolish the death penalty in Zambia has now been put to the Zambian people to decide as part of the Constitution review process. Preliminary indications are that the majority of Zambians are in favour of the abolition of the death penalty. In view of this it is strongly recommended that Zambia should begin to take steps to accede to the Second Optional Protocol to the ICCPR on the Abolition of the Death Penalty.