

DEATH PENALTY ABOLITION

DEATH PENALTY ABOLITION BILL, 2023

MEMORANDUM

Section 48 of the Constitution protects the right to life but states that a law may permit a court, in limited circumstances, to impose the death penalty on men convicted of aggravated murder. Section 48 is permissive, and its effect is that Zimbabwean law does not have to provide for the death penalty, even for murder. The penalty has not in fact been carried out in Zimbabwe for more than 15 years.

This Bill will accordingly abolish the death penalty in Zimbabwe.

The individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause will prohibit any court from imposing the death penalty. It will also state that if the Supreme Court hears an appeal against the death sentence it must substitute some other appropriate penalty. The clause will also prohibit anyone from carrying out a death sentence that has previously been imposed.

Clause 3

This clause will amend the Criminal Procedure and Evidence Act by deleting references to the death penalty and repealing sections that set out how the penalty is to be imposed and carried out.

Clause 4

This clause will remove a reference to the death penalty from section 4 of the Genocide Act, which allows it to be imposed for the crime of genocide. Since the section allows the death penalty to be imposed even for conduct that does not amount to murder committed in aggravating circumstances, it is unconstitutional. For that reason alone the section needs to be repealed.

Clause 5

This clause will remove references to the death penalty from various sections of the Criminal Law Code. The effect of the clause is that the maximum penalty for murder will be imprisonment for life.

Clause 6

This clause will remove a reference to the death penalty from section 3 of the Geneva Conventions Act, which allows the penalty to be imposed for grave breaches of the Conventions, even if they do not involve murder.

Clause 7

This clause will provide for the re-sentencing of prisoners who are under sentence of death (i.e. awaiting execution) when the Bill becomes law. These prisoners will be brought before the High Court for re-sentencing, and the court will have power to impose any appropriate sentence on them, taking into account all the circumstances including the nature of the crimes they committed, the length of time they have been in prison awaiting execution, their health and the likelihood of their committing further crimes. The prisoners will be entitled, if they so wish, to appeal to the Supreme Court against their new sentences and to apply to the President for clemency under section 112 of the Constitution.

BILL

TO abolish the death penalty in Zimbabwe; to amend the Criminal Procedure
and Evidence Act [*Chapter 9:07*], section 4 of the Genocide Act
[*Chapter 9:20*], the Criminal Law (Codification and Reform) Act
5 [*Chapter 9:23*] and section 3 of the Geneva Conventions Act [*Chapter*
11:06]; and to provide for matters connected with or incidental to the
foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

10 This Act may be cited as the Death Penalty Abolition Act [*Chapter 9:26*].

2 Abolition of death penalty

Notwithstanding any other law—

- 15 (a) no court shall impose sentence of death upon a person for any offence,
whenever committed, but instead shall impose whatever other competent
sentence is appropriate in the circumstances of the case;
- (b) the Supreme Court shall not confirm a sentence of death imposed upon
an appellant, whenever that sentence may have been imposed, but instead
shall substitute whatever other competent sentence is appropriate in the
circumstances of the case;
- 20 (c) no sentence of death, whenever imposed, shall be carried out.

3 Amendment of Cap. 9:07

The Criminal Procedure and Evidence Act [*Chapter 9:07*] is amended—

H.B. 5, 2023.]

- (a) in section 336 (“Nature of punishments”) in subsection (1) by the repeal of paragraph (a);
- (b) by the repeal of sections 337 (“Sentence for murder”), 338 (“Persons upon whom death sentence may not be passed”), 339 (“Sentence of death”), 340 (“Copy of evidence to be transmitted to President”), 341 (“Examination of woman convicted of certain offences”) and 342 (“Manner of carrying out death sentence”); 5
- (c) in section 345 (“Periodical imprisonment”) in subsection (7) by the deletion of “a sentence of death or”;
- (d) in section 354 (“Recognizances to keep the peace and be of good behaviour”) in subsection (1) by the deletion of “not punishable with death”; 10
- (e) in section 355 (“Recognizances to appear for judgment”) by the deletion of “not punishable with death”;
- (f) by the repeal of section 377 (“President may commute sentence”). 15

4 Amendment of section 4 of Cap. 9:20

Section 4 (“Genocide”) of the Genocide Act [*Chapter 9:20*] is amended—

- (a) by the insertion after “and liable” of “to imprisonment for life”;
- (b) by the repeal of paragraphs (i) and (ii).

5 Amendment of Cap. 9:23 20

The Criminal Law (Codification and Reform) Act [*Chapter 9:23*] is amended—

- (a) in section 20 (“Treason”) by the deletion from subsection (1) of “death or to”;
- (b) in section 23 (“Insurgency, banditry, sabotage or terrorism”) in subsection (1)— 25
 - (i) by the insertion after “liable” of “to imprisonment for life or for any definite period”;
 - (ii) by the repeal of paragraphs A and B;
- (c) in section 47 (“Murder”)—
 - (i) in subsection (1) after “guilty of murder” by the insertion of “and liable to imprisonment for life or for any definite period”; 30
 - (ii) by the repeal of subsections (2), (3), (4) and (5).

6 Amendment of section 3 of Cap. 11:06

Section 3 (“Grave breaches of Scheduled Conventions”) of the Geneva Conventions Act [*Chapter 11:06*] is amended in subsection (2) by the deletion from paragraph (a) of “death or to”. 35

7 Transitional provisions

(1) In this section—

“fixed date” means the date of commencement of this Act;

“prisoner under sentence of death” means a person who, before the fixed date, was sentenced to death for an offence, which sentence has been confirmed by the Supreme Court on appeal. 40

(2) The Minister of Justice, Legal and Parliamentary Affairs, the Prosecutor-General and the Commissioner-General of the Prisons and Correctional Service shall do everything within their respective competences to ensure that, as soon as practicable 50

after the fixed date, every prisoner under sentence of death is brought before the High Court to be sentenced afresh for the offence for which the death sentence was imposed upon him or her.

5 (3) In proceedings for the sentencing of a prisoner brought before the High Court in terms of subsection (2)—

- (a) the prisoner shall be entitled to legal representation, whether at his or her own expense or provided by the State, in all respects as if he or she had been indicted for trial before the High Court on a charge of murder; and
- 10 (b) the State shall be entitled to be represented by the Prosecutor-General or any other person entitled to appear for the State in criminal proceedings in the High Court; and
- (c) the parties shall be heard, and the proceedings shall be conducted, as nearly as possible as if the presiding judge were sentencing the prisoner at the conclusion of a criminal trial.

15 (4) The High Court shall impose upon a prisoner brought before it in terms of subsection (2) whatever sentence, other than the death sentence, the court considers appropriate, taking into account all relevant circumstances including—

- (a) the nature and circumstances of the offence; and
- (b) the personal circumstances of the prisoner; and
- 20 (c) the interests of society; and
- (d) the length of time the prisoner has been under sentence of death, and the treatment accorded to him or her during that time; and
- (e) the likelihood of the prisoner committing further offences.

25 (5) Notwithstanding any other law, the High Court may direct that a sentence of imprisonment it imposes on a prisoner brought before it in terms of subsection (2) shall run from a date before that sentence was imposed.

(6) A sentence imposed upon a prisoner in terms of subsection (5) shall be subject to appeal in all respects as if the sentence had been imposed by the judge following a criminal trial.

30 (7) This section shall not be construed as limiting the power of the President to exercise the power of mercy under section 112 of the Constitution in respect of any person who is or was a prisoner under sentence of death.

