

TURNING A NEW PAGE: THE DEATH PENALTY IN ZIMBABWE ON DEATH ROW!

Introduction

On the 31st of December 2024, the **Death Penalty Abolition Act [Chapter. 9:26]** (“the Act”) was enacted, marking the abolition of the death penalty in Zimbabwe. **Section 2 of the Act** expressly provides the prohibition of imposition of the death penalty by any Court; the confirmation of the death penalty by the Supreme Court of Zimbabwe; and the carrying out of any death sentence, regardless of when it was imposed. In this short treatise, we delve into the intricacies of the Act and analyze whether it marks a true turning point in Zimbabwean law, sentencing & the death penalty.

Statutory Repeals and Amendments

The Act, in repealing the death penalty, goes about repealing and amending a number of statutes, in which the death penalty was codified, namely, **Criminal Procedure and Evidence Act [Chapter 9:07]**, the **Genocide Act [Chapter 9:20]**, the **Criminal Law (Codification and Reform) Act [Chapter 9:23]** and the **Geneva Conventions Act [Chapter 11:06]** have all been modified by the Act, effecting the abolition of the death penalty by either repealing the penalty itself in full, or amending the appropriate statutory provision to allow for life imprisonment, or in lieu thereof, bestowing power on a sentencing authority to impose an appropriate sentence.

Additionally, the **Defence Act [Chapter 11:02]**, is amended by the Act, to give effect to the provisions of **section 2** to accord a sentencing authority the power and wherewithal to impose an appropriate sentence in lieu of the death penalty.

However, the amendment of the **Defence Act** is noteworthy for one specific reason in particular: while the aforementioned amendments to other Acts give rise to the effective elimination of the death penalty, the **Defence Act** (as amended) only suspends the operation of the death penalty within its ambit and while it is clearly a positive cog in the abolitionist machine, it does allow for the reinstatement of the death penalty for the duration of any State of Public Emergency declared in terms of **section 113 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013** (hereinafter “the Constitution”). Upon the expiry of such a State of Public Emergency, the death penalty, per the dictates of the

Defence Act, shall once again be deemed suspended and rendered unavailable as an option for sentence.

Transitional Provisions

The Act, cognizant of the inescapable fact that the abolition of a sentencing regime that was available for the better part of half a century, offers transitional provisions meant to not only expedite, but also smoothen the process of abolition. For example, **section 8(2) of the Act** imposes a duty on the Minister of Justice, Legal & Parliamentary Affairs, the Prosecutor-General and the Commissioner-General of the Prisons and Correctional Service to ensure that every prisoner serving a death sentence be brought before the High Court for re-sentencing.

The factors for consideration are provided in **section 8(4) of the Act**, such as the nature and circumstances of both the offence and the offender, as well as societal interest. Such a sentence may be directed to run from a date prior to its imposition and, in terms of **section 8(6) of the Act**, be appealable in all respects.

Section 8(3)(a) of the Act accords the right to representation to such a prisoner, with the State enjoined to provide him or her with representation, should he be unable to secure his or her own, with the prisoner accorded the right to be heard in pursuance of his sentence.

Section 8(7) of the Act expressly delineates the Act as not infringing or limiting the President's power to exercise mercy in terms of **section 112 of the Constitution**, for any prisoner serving a sentence of death.

Conclusion

In summary, it is clear that the abolition of the death penalty under the Act signifies a significant step forward in the reconciliation of the sentencing regime in Zimbabwe, with multiple repeals giving effect to the same, save for the **Defence Act**, whose suspension of the penalty could be perceived as an attempt to find a tenable balance between the reconciliation of our sentencing regime and the protection and safeguarding of national security. Ultimately, the **Death Penalty Abolition Act** signifies a massive and positive step in Zimbabwean law and the death penalty abolitionist movement.

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