

A Critical Analysis of the Death Penalty Abolition Act [Chapter 9:26] and Its Constitutional Validity Under Section 117(2)(b) of the Zimbabwean Constitution

Ngonidzashe Walter Karasambudzi, Garikai Muchemwa*

University of Zimbabwe, Harare, Zimbabwe

*Corresponding Author

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ABSTRACT

This article critically examines the constitutionality and socio-political consequences of Zimbabwe's Death Penalty Abolition Act [Chapter 9:26], signed into law on the last day of 2024. While the legislation was hailed globally as a progressive stride towards aligning Zimbabwe's criminal justice system with international human rights norms, this article challenges the Act's legitimacy vis-à-vis Section 117(2)(b) of the Constitution of Zimbabwe. This section obliges the legislature to enact laws that promote peace, order and good governance. It is argued herein that the abolition of the death penalty fails to meet any of these benchmarks. Through a contextual, doctrinal and purposive analysis of Zimbabwean constitutional law, the paper posits that the Act poses a serious risk to socio-economic stability, erodes deterrence of aggravated crimes and undermines public confidence in the justice system. Drawing on comparative jurisprudence, socio-legal data and the principles of constitutional supremacy, the article calls for a reconsideration and potential reinstatement of capital punishment for the most heinous crimes. It concludes that progressive reform must be context-sensitive and constitutionally anchored, lest it compromise national peace, order and good governance.

Keywords: death penalty, peace, order, good governance

INTRODUCTION

The abolition of the death penalty in Zimbabwe, through the passage of the Death Penalty Abolition Act [Chapter 9:26], marked a watershed moment in the nation's legal history.¹ Its enactment on the eve of 2025 drew widespread acclaim from international human rights organisations, foreign governments and domestic civic society actors. The legislation signalled Zimbabwe's intention to align its penal policy with emerging global norms, which increasingly view capital punishment as an archaic and inhumane practice.² However, beneath the veneer of progressivism lies a constitutional paradox: whether the abolition of the death penalty advances or undermines the foundational goals of peace, order and good governance, as mandated by Section 117(2)(b) of the Constitution of Zimbabwe.³

Zimbabwe's legal architecture highlights constitutional supremacy.⁴ That is, all organs of the state, including the legislature, derive their authority from the Constitution. Section 117(1) unequivocally declares that legislative authority is vested in the legislature, composed of the Parliament and the President,⁵ but this authority is not

¹ Death Penalty Abolition Act [Chapter 9:26]

² "Zimbabwe: Historic Moment as President Signs into Law a Bill to Abolish Death Penalty for Ordinary Circumstances." Amnesty International. Accessed May 3, 2025. <https://www.amnesty.org/en/latest/news/2024/12/amnesty-international-applauds-zimbabwes-decision-to-abolish-the-death-penalty-for-all-crimes-but-regrets-the-possibility-of-its-reinstatement-during-state-of-emergency-under-the-defence-act/>

³ Section 117(2)(b) of the Constitution of Zimbabwe (2013)

⁴ J Pfumorodze, E Chitsove, "The Law in Zimbabwe." GlobalLex. Accessed May 3, 2025. <https://www.nyulawglobal.org/globallex/zimbabwe1.html>

⁵ Section 117(1) of the Constitution of Zimbabwe (2013)

unfettered, rather, it is circumscribed by explicit constitutional duties and obligations. Section 117(2)(b) instructs the legislature to enact laws that promote peace, order and good governance.⁶ Any legislative Act, therefore, must be assessed against these constitutional benchmarks to determine its legitimacy.

This article contends that the abolition of the death penalty, while *prima facie* noble, is fundamentally at odds with the aforementioned constitutional benchmarks. The analysis proceeds from the assertion that criminal justice in Zimbabwe must be not only rights-respecting but also context-sensitive, balancing individual rights and collective security. The paper further argues that, in the absence of capital punishment, Zimbabwe is ill-equipped to deter aggravated crimes such as serial murder, terrorism and politically motivated assassinations, which have the potential to destabilise the nation's fragile socio-economic order.

In examining this contention, the article adopts a multidisciplinary methodology combining doctrinal legal analysis, comparative jurisprudence, and normative theory. It interrogates the legal, ethical, and socio-political dimensions of the abolitionist movement and evaluates whether the move to eliminate capital punishment meets the standards prescribed by the Constitution. Furthermore, the article explores the potential dangers posed by the Act, including a possible erosion of public confidence in the justice system, increased impunity for serious crimes, and strain on the penitentiary infrastructure.

Ultimately, the paper issues a clarion call to the legislature to reassess the abolition of capital punishment in light of Zimbabwe's unique constitutional, cultural, and socio-political context. While international human rights standards are vital, they cannot displace the sovereign constitutional duties of a national legislature. Peace, order, and good governance must remain the touchstones of legal reform in Zimbabwe.

The Constitutional Mandate of The Legislature Under Section 117(2)(B) Of the Constitution of Zimbabwe

The Constitution of Zimbabwe is the supreme law of the land, and every law, conduct, or policy inconsistent with it is invalid to the extent of that inconsistency.⁷ This principle of constitutional supremacy is central to understanding the limits and obligations of legislative authority. Section 117 of the Constitution sets out the foundation of the law-making power in Zimbabwe. To be specific, Section 117(1) vests legislative authority in the legislature, which consists of Parliament and the President.⁸ Section 117(2)(b) elaborates that this authority is to be exercised for purposes that include enacting legislation that promotes "peace, order and good governance of Zimbabwe."⁹

This tripartite formula: peace, order, and good governance, encapsulates both procedural and substantive responsibilities of the legislature. It establishes a normative framework that transcends mere formal enactment of law. Thus, the validity of any legislation must be tested not only by procedural compliance but also by whether it advances one or more of these constitutional objectives. In essence, Section 117(2)(b) enshrines a functional purpose to law-making, tethering it to outcomes that preserve the fabric of Zimbabwean society.

To interpret this mandate properly, the judiciary and legal scholars have generally agreed that the literal rule is the starting point in construing constitutional provisions. Where language is clear and unambiguous, it must be given its ordinary meaning.¹⁰ Therefore, the terms "peace," "order," and "good governance" must be interpreted in their literal sense, unless ambiguity or absurdity necessitates a purposive reading. In this context, "peace" denotes the absence of conflict and violence, both within communities and across the state.¹¹ "Order" refers to the maintenance of social discipline and predictability in behaviour, often underpinned by law enforcement.¹²

⁶ n 3 above

⁷ Section 2(1) of the Constitution of Zimbabwe (2013)

⁸ n 5 above

⁹ n 2 above

¹⁰ P Abhinav, "Critical Analysis of Literal Rule of Interpretation." SSRN. Accessed May 5, 2025. <https://ssrn.com/abstract=3720368>

¹¹ P Diehl, "Peace: A Conceptual Survey." Oxford Research Encyclopedia of International Studies. Accessed May 5, 2025. <https://doi.org/10.1093/acrefore/9780190846626.013.515>

¹² K S Mboho, U A S Udoh, Social Order: Challenges and Prospects In Nigeria, North West Senatorial District Of Akwa Ibom State Perspective, 2019, Vol 7, No 6. *Global Journal of Arts, Humanities and Social Sciences*. 1-10.

“Good governance” implies accountable, transparent, and responsive policymaking, including the protection of public welfare and safety.¹³

Constitutional directives serve as interpretative signposts that anchor public power in the broader public interest.¹⁴ Zimbabwean courts have, in various judgments, recognised the supremacy of constitutional values and principles in evaluating legislative action. In *Combined Harare Residents’ Association and 4 Ors v The Minister of Local Government, Public Works And National Housing*, for instance, the Constitutional Court noted that in law-making, the legislature must align with constitutional objectives and values, including those entrenched in Section 117.¹⁵

From this standpoint, the Legislature’s role is not merely reactive or ceremonial but inherently custodial, it is charged with safeguarding the peace and order of society through the enactment of prudent, necessary, and responsive laws. This understanding situates Section 117(2)(b) of the Constitution of Zimbabwe as both a legislative compass and a constitutional limitation. It imposes a duty to ensure that legislation contributes positively to national stability and justice.

Thus, any law that potentially destabilises society, weakens legal deterrents, or diminishes the state’s capacity to preserve security, must be carefully scrutinised for constitutional fidelity. In the case of the Death Penalty Abolition Act, serious questions arise as to whether its effects and implications genuinely promote peace, order, or good governance. This article contends that it does not and may in fact undermine all three pillars simultaneously.

The Death Penalty Abolition Act [Chapter 9:26]: Overview and Context

On 31 December 2024, President Emmerson Mnangagwa assented to the Death Penalty Abolition Act [Chapter 9:26], formally ending the use of capital punishment in Zimbabwe’s criminal justice system.¹⁶ The enactment was widely celebrated as a human rights milestone.¹⁷ Zimbabwe thus joined a growing number of countries, particularly in the Global South, that have abolished the death penalty, either *de jure* or *de facto*. The Act repealed all statutory provisions authorising the imposition or execution of capital punishment, most notably within the Criminal Law (Codification and Reform) Act [Chapter 9:23].¹⁸

The policy rationale behind the abolition was twofold. On the one hand, it reflected a commitment to the right to life as enshrined in Section 48 of the Constitution,¹⁹ which, although it permits capital punishment in limited circumstances, implicitly supports its gradual phasing out, while on the other hand, the abolitionist agenda was driven by Zimbabwe’s desire to improve its international human rights image, re-engage with Western donors, and align with regional human rights protocols such as the African Charter on Human and Peoples’ Rights.²⁰

It is important, however, to distinguish between political expedience and constitutional compliance. While the Death Penalty Abolition Act was politically expedient and morally appealing to certain constituencies, its constitutional grounding remains questionable. Section 48(2) of the Constitution still recognises the death penalty in limited terms.²¹ It allows the imposition of capital punishment for murder committed under aggravating circumstances, albeit with certain safeguards, including exemption for women, juveniles, and the elderly. Thus, the

¹³ B Muronda, G van der Walddt, “A Good Governance Framework for State Institutions: The Case of the Government of Zimbabwe, 2023, Vol 31, No 4. *Administratio Publica*. 118-120.

¹⁴ N Hedling, ‘Principles and Cross-cutting Themes’ *A Practical Guide to Constitution Building*, 2011, 11.

¹⁵ *Combined Harare Residents’ Association and 4 Ors v The Minister Of Local Government, Public Works And National Housing* CCZ 8/16

¹⁶ n 1 above

¹⁷ “Zimbabwe Abolishes Death Penalty Nearly 20 Years After Last Execution.” United Nations. Accessed May 10, 2025. <https://www.un.int/zimbabwe/news/zimbabwe-abolishes-death-penalty-nearly-20-years-after-last-execution>

¹⁸ Criminal Law (Codification and Reform) Act [Chapter 9:23]

¹⁹ Section 48 of the Constitution of Zimbabwe (2013)

²⁰ African Charter on Human and Peoples’ Rights (1981)

²¹ Section 48(2) of the Constitution of Zimbabwe (2013)

Constitution neither mandates abolition nor prohibits retention. Rather, it creates space for a conditional, regulated form of capital punishment.

In this light, the Death Penalty Abolition Act appears to override, rather than implement, the Constitution's nuanced stance. A literal reading of Section 48(2) does not preclude the use of the death penalty, instead, it subjects it to specific criteria. Abolition, therefore, arguably subverts the original intent of the Constitution, which was to retain capital punishment in a restricted, rights-sensitive framework.

Furthermore, it must be observed that the legislative process leading to the Act's passage was arguably devoid of broad public consultation. While the Executive championed the Bill as a progressive reform, there was minimal parliamentary debate, limited civic engagement, and an absence of referendum to amend the Constitution's Section 48(2). This raises concerns about the democratic legitimacy of the Act, especially when measured against Section 117(2)(b), which envisages law-making as an act of representative deliberation serving national peace and order.

Historically, Zimbabwe's use of capital punishment has been marked by political manipulation and procedural irregularities, particularly under the Rhodesian and early post-Independence governments.²² However, the reforms introduced by the 2013 Constitution were designed to address these issues without necessarily eliminating capital punishment altogether. By codifying limitations and conditions, the drafters sought to balance justice with mercy, deterrence with dignity.

It is worth noting that despite the *de jure* retention of the death penalty prior to 2025, Zimbabwe had effectively observed a moratorium on executions since 2005.²³ Yet, the mere existence of the death penalty served as a legal and psychological deterrent against capital crimes. The abolition of this ultimate sanction removes what some criminologists regard as a necessary "penal reserve" for exceptional cases, such as serial killings, terrorism, or politically motivated assassinations.

Indeed, there have been worrying indications of increased violent crimes since the announcement of the abolition in early 2025. The Zimbabwe Republic Police (ZRP) reported a spike in ritual murders and armed robberies, raising public concern over the state's diminishing capacity to maintain order.²⁴ These developments cast doubt on the claim that abolition promotes peace and good governance. Instead, they may signify an erosion of deterrence, legal authority, and public trust.

In a nutshell, while the Death Penalty Abolition Act may be congruent with international human rights trends, it may not be constitutionally sound when analysed through the lens of Zimbabwe's domestic framework.²⁵ It appears to circumvent both the letter and spirit of Section 48 of the Constitution of Zimbabwe,²⁶ and fails to meet the standards set out in Section 117(2)(b) of the Constitution of Zimbabwe.²⁷ A critical examination is thus warranted.

Constitutional Supremacy and The Legislative Function

Zimbabwe operates under a system of constitutional supremacy. Section 2(1) of the Constitution of Zimbabwe is unequivocal in stating that "this Constitution is the supreme law of Zimbabwe, and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency."²⁸ This principle is not merely declaratory, but in fact, it imposes a substantive obligation upon all branches of government to ensure that their

²² A Novak, Abuse of state power: the mandatory death penalty for political crimes in Southern Rhodesia, 1963 – 1970, 2013, Vol 19, No 1. *Fundamina (Pretoria)*.

²³ "President reiterates stance on death penalty." The Herald. Accessed May 10, 2025. <https://www.heraldonline.co.zw/president-reiterates-stance-on-death-penalty/>

²⁴ "2025 First Quarter Crime Statistics Report." Zimbabwe National Statistics Agency (ZIMSTAT). Accessed May 30, 2025. <https://www.zimstat.co.zw/wp-content/uploads/demography/crime/2025/2025%20First%20Quarter%20Crime%20in%20Zimbabwe%20Report.pdf>

²⁵ n 1 above

²⁶ n 19 above

²⁷ n 3 above

²⁸ n 7 above

actions conform to the dictates of the Constitution. This supremacy is the cornerstone upon which democratic governance, rule of law, and human rights protection are built.

In this constitutional context, the legislature, although vested with primary law-making authority under Section 117, must exercise its powers within the bounds of constitutional principles. The doctrine of constitutional supremacy thus limits parliamentary sovereignty and repositions the Constitution as the ultimate yardstick for legality and legitimacy.²⁹

The death penalty debate in Zimbabwe offers a compelling case study in constitutional supremacy. As discussed earlier, Section 48 of the Constitution of Zimbabwe does not prohibit capital punishment outright.³⁰ Rather, it acknowledges its existence and permits it under narrowly defined conditions. Thus, the Constitution provides for a *conditional retention* model. The outright abolition of the death penalty through ordinary legislation, without a constitutional amendment raises critical questions about legislative overreach and potential unconstitutionality.

The legislature, as a creature of the Constitution, cannot validly enact laws that effectively amend or override the Constitution without following the procedures laid out in Section 328 of the Constitution, which governs constitutional amendments.³¹ The Death Penalty Abolition Act, by nullifying a constitutionally permissible form of punishment, arguably amounts to an unconstitutional legislative amendment. This is particularly concerning given that Section 48(2) expressly allows for capital punishment in specific circumstances, thereby establishing a constitutional baseline that cannot be abrogated by ordinary statute.

In *United Parties v Minister of Justice, Legal and Parliamentary Affairs*, the Supreme Court of Zimbabwe held that Parliament may not pass legislation that is inconsistent with constitutional provisions, and any attempt to do so renders the law invalid *ab initio*.³² Also, in *Madzimbamuto v Lardner-Burke* 1969 (1) AC 645 (PC), the Privy Council underscored the fundamental role of constitutional compliance in law-making, even during times of national crisis.³³

The tension between legislative activism and constitutional restraint becomes more pronounced when moral and political questions, such as the death penalty, enter the legal arena. While Parliament may be tempted to legislate in ways that please external actors or reflect prevailing global trends, it must resist any urge to do so in defiance of constitutional text or principle. The abolition of the death penalty in Zimbabwe thus reflects a troubling instance where internationalist aspirations appear to have supplanted constitutional fidelity.

Moreover, Zimbabwe's adherence to the separation of powers doctrine requires the legislature to defer to the Constitution as the primary source of legal authority. The Supreme Court sitting as a Constitutional Court in *Biti and Anor v The Minister of Justice, Legal and Parliamentary Affairs* correctly asserted that no person, authority or institution is above the Constitution, and every functionary must act within the four corners of the law.³⁴ This warning is particularly salient in the case of the Death Penalty Abolition Act, which risks setting a dangerous precedent wherein Parliament bypasses constitutional guardrails to enact substantively transformative policies through ordinary legislation.

The legal and moral complexity of the death penalty cannot be denied. Yet complexity does not warrant constitutional compromise. The supremacy of the Constitution demands that any alteration to fundamental aspects of Zimbabwe's criminal justice framework, especially one as irreversible as abolishing the death penalty, must pass the constitutionality test. Without a constitutional amendment, the Death Penalty Abolition Act appears to be an overreach that undermines the very supremacy from which the legislature derives its mandate.

²⁹ A Moyo, 'Basic Tenets of Zimbabwe's New Constitutional Order' *Selected Aspects of the 2013 Zimbabwean Constitution And The Declaration Of Rights*, 2019, 10.

³⁰ n 19 above

³¹ Section 328 of the Constitution of Zimbabwe (2013)

³² *United Parties v Minister of Justice, Legal and Parliamentary Affairs* 1997 (2) ZLR 254 (S)

³³ A Carroll, *Constitutional and Administrative Law 9th Edition*, Pearson, 2017. 65

³⁴ *Biti and Anor v The Minister of Justice, Legal and Parliamentary Affairs* SC 10/02

Interpreting ‘Peace, Order, And Good Governance’

Central to the critique of the Death Penalty Abolition Act is the contention that it violates Section 117(2)(b) of the Constitution by failing to promote peace, order, and good governance in Zimbabwe. To evaluate this claim, it is necessary to interpret the constitutional phrase “peace, order, and good governance” using the literal rule of statutory interpretation. According to this approach, words in a legal text should be given their ordinary, grammatical meaning unless doing so leads to absurdity or ambiguity.

A. Peace

The term “peace” is commonly understood as the condition in which there is no war, violence, or social disorder.³⁵ In constitutional jurisprudence, it encompasses both negative peace (the absence of conflict) and positive peace (the presence of justice and equity).³⁶ A legal system that allows for impunity in the face of egregious crimes undermines peace by eroding the rule of law and public trust in the state’s capacity to protect citizens.

The deterrence theory in criminal law, advocated by classical theorists such as Beccaria and Bentham, argues that certain severe punishments are necessary to maintain peace and deter would-be offenders.³⁷ In the Zimbabwean context, the abolition of the death penalty eliminates the most extreme form of deterrence available to the state, potentially emboldening violent actors and destabilising the social contract.

Empirical data from countries such as South Africa, where the death penalty was abolished in June of 1995, reveal mixed results regarding its impact on peace and violent crime. This paper puts across that abolition correlates with a rise in certain types of violent crime, particularly where the police and judicial systems are under-resourced. Zimbabwe, facing such institutional challenges, may be especially vulnerable to such effects.

B. Order

“Order” in this context refers to the structured functioning of society under the rule of law.³⁸ Laws that preserve public discipline, predictability, and security are considered to promote order. The removal of the death penalty for heinous crimes such as multiple murders, treason, and politically motivated killings risks undermining the societal order by reducing the proportionality and gravity of punishment.

Proponents of the proportionality principle argue that punishments must correspond to the severity of the crime.³⁹ When the gravest crimes no longer attract the gravest penalties, the legal system risks losing its normative coherence. This, in turn, can provoke public dissatisfaction, vigilante justice, or recourse to extrajudicial means, developments which compromise public order.

Abolishing the death penalty also places increased pressure on Zimbabwe Prisons and Correctional Services (ZPCS). Life imprisonment for capital crimes necessitates long-term incarceration, often under conditions of overcrowding and budgetary strain. The unintended consequence may be deteriorating prison conditions, increased violence within prisons, and recidivism among those granted parole, none of which promote order.

C. Good Governance

Finally, the term “good governance” is broad but generally denotes transparent, accountable, and effective man

³⁵ n 11 above

³⁶ “Theories of Peace.” George Washington University. Accessed May 15, 2025. <https://blogs.gwu.edu/ccas-panamericanos/peace-studies-wiki/categories/theories/>

³⁷ P. Schofield, “The first steps rightly directed in the track of legislation: Jeremy Bentham on Cesare Beccaria’s Essay on Crimes and Punishments.” ResearchGate. Accessed May 15, 2025. https://www.researchgate.net/publication/330410374_The_first_steps_rightly_directed_in_the_track_of_legislation_Jeremy_Bentham_on_Cesare_Beccaria's_Essay_on_Crimes_and_Punishments

³⁸ n 12 above

³⁹ H Dachak, The Principle of Proportionality of Crime and Punishment in International Documents, 2021, Vol 8, No 4. *International Journal of Multicultural and Multireligious Understanding*. 684

-agement of public affairs.⁴⁰ It includes respect for human rights, but also the maintenance of law and order, public safety, and the equitable administration of justice.

While the abolition of the death penalty may be perceived as a step towards aligning Zimbabwe with global human rights standards, it simultaneously reflects a form of governance that may be inattentive to local realities. Good governance is not only about normative alignment with international treaties; it is about ensuring that laws respond meaningfully to the concerns of the population and enhance their security and well-being.

Critics of the Death Penalty Abolition Act argue that the government failed to consult adequately with the Zimbabwean public, the majority of whom, according to Afrobarometer surveys, still support capital punishment for the most serious crimes.⁴¹ Imposing abolition without democratic consensus risks alienating citizens and reducing the legitimacy of the legislative process. This is antithetical to good governance, which is by nature participatory, responsive, and inclusive.

Human Rights Arguments Vs Domestic Constitutionalism

The abolition of the death penalty in Zimbabwe has been widely lauded by international human rights organisations, foreign governments, and multilateral institutions.⁴² This acclaim is grounded in the increasing international consensus that capital punishment constitutes a violation of fundamental human rights, particularly the right to life and the right to be free from cruel, inhuman, or degrading treatment or punishment.⁴³ Instruments such as the International Covenant on Civil and Political Rights (ICCPR),⁴⁴ especially its Second Optional Protocol, call for the abolition of the death penalty, and many United Nations (UN) General Assembly resolutions have reinforced this normative direction.⁴⁵

Zimbabwe is a party to several international human rights treaties, including the ICCPR and the African Charter on Human and Peoples' Rights. However, while these instruments encourage abolition, they do not expressly prohibit capital punishment. Article 6 of the ICCPR recognises the death penalty in limited circumstances for "the most serious crimes," provided certain due process safeguards are in place.⁴⁶ Similarly, the African Charter, though increasingly interpreted in favour of abolition, does not expressly outlaw the practice.

In *Soering v. United Kingdom* (1989) 11 EHRR 439, the European Court of Human Rights (ECtHR) established that exposing individuals to death row conditions could amount to inhuman treatment under Article 3 of the European Convention on Human Rights.⁴⁷ While persuasive, such jurisprudence must be contextualised within Zimbabwe's distinct legal framework and socio-political circumstances. Moreover, Zimbabwe has not ratified the Second Optional Protocol to the ICCPR, which explicitly prohibits the death penalty. Therefore, under international law, Zimbabwe retains the legal discretion to uphold capital punishment for the most serious crimes.

This international permissiveness, however, must be weighed against the growing normative force of the abolitionist movement. Regional instruments such as the Robben Island Guidelines, while not binding, encourage the minimisation and eventual abolition of the death penalty.⁴⁸ The African Commission on Human and Peoples' Rights has also adopted resolutions urging member states to impose moratoria on executions.

⁴⁰ n 13 above

⁴¹ "Majority of Zimbabweans support death penalty for serious crimes, Afrobarometer survey shows." Afrobarometer. Accessed June 1, 2025. <https://www.afrobarometer.org/articles/majority-of-zimbabweans-support-death-penalty-for-serious-crimes-afrobarometer-survey-shows/>

⁴² "PRESS RELEASE: Zimbabwe takes historic decision to abolish the death penalty." Death Penalty Project. Accessed June 1, 2025. <https://deathpenaltyproject.org/press-release-zimbabwe-takes-historic-decision-to-abolish-the-death-penalty/>

⁴³ G Muchemwa, C Chiridza, Assessing the Convergence of Constitutional Reform, Judicial Precedent and International Human Rights Norms on Zimbabwe's Abolition of Capital Punishment, 2025, Vol 4 No 2. *The Zimbabwe Ezekiel Guti University Journal of Law, Economics and Public Policy*. 328-349

⁴⁴ International Covenant on Civil and Political Rights (1966)

⁴⁵ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)

⁴⁶ ICCPR (n 44 above), Article 6

⁴⁷ *Soering v. United Kingdom* (1989) 11 EHRR 439

⁴⁸ Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (2008)

Nonetheless, the domestic legal framework remains paramount. Zimbabwe's Constitution is not subordinate to international treaties unless such treaties have been domesticated into national law through an Act of Parliament, in accordance with Section 327(2) of the Constitution.⁴⁹ This principle preserves national sovereignty and legislative independence in the face of global human rights pressures. The Supreme Court in *Shumba and Ors v Minister of Justice, Legal and Parliamentary Affairs and Ors* affirmed this view, holding that international obligations must yield to the Constitution in the event of conflict.⁵⁰

The reliance on international law to justify the abolition of capital punishment therefore raises serious constitutional concerns. While international norms can inform domestic jurisprudence, they cannot override express constitutional provisions. Section 48(2) of the Constitution of Zimbabwe clearly contemplates the use of the death penalty under specified conditions.⁵¹ As such, the legislature's decision to abolish capital punishment appears to exceed the permissible bounds of international influence and ignores the domestic legal constraints imposed by constitutional supremacy.

Moreover, the principle of subsidiarity in international human rights law recognises that domestic institutions are often best placed to interpret and implement human rights obligations in a context-sensitive manner. It follows that Zimbabwe's legislature must prioritise the constitutional standards of peace, order, and good governance, even as it engages with global human rights trends. When these imperatives are in tension, the Constitution must prevail.

The tension between international human rights norms and domestic constitutionalism is neither new nor unique to Zimbabwe. Jurisdictions such as Singapore, Japan, and the United States have retained the death penalty despite international criticism, citing their constitutional frameworks, public opinion, and domestic legal traditions.⁵² These countries demonstrate that alignment with global norms must not come at the expense of national constitutional values and democratic legitimacy.

In Zimbabwe's case, the wholesale abolition of the death penalty appears to have been more responsive to international image-building and donor appeasement than to genuine constitutional reform or societal consensus. While the international community's support is important, it cannot displace the constitutional obligation to enact laws that promote peace, order, and good governance. Legal reform must be both locally grounded and constitutionally sound.

The Socio-Economic Implications of Abolishing the Death Penalty

The impact of criminal justice policy extends far beyond courtrooms and correctional facilities; it shapes societal order, economic productivity, and state legitimacy.⁵³ The abolition of the death penalty in Zimbabwe, though framed primarily as a moral and legal issue, carries profound socio-economic consequences that warrant critical evaluation. This section explores the potential economic burdens, institutional strains, and social repercussions of the abolitionist turn.

A. Increased Financial Burden on the Correctional System

One of the most immediate and measurable consequences of death penalty abolition is the financial strain on the prison system. In the absence of capital punishment, individuals convicted of the most serious crimes, particularly murder committed in aggravating circumstances, are sentenced to life imprisonment or long custodial terms. Zimbabwe's correctional system, however, is already grappling with chronic overcrowding, underfunding, and

⁴⁹ Section 327(2) of the Constitution of Zimbabwe (2013)

⁵⁰ *Shumba and Ors v Minister of Justice, Legal and Parliamentary Affairs and Ors* CCZ4/18

⁵¹ n 21 above

⁵² A Y Y Yap, S J Tan, Capital Punishment in Singapore: A Critical Analysis of State Justifications From 2004 to 2018, 2020, Vol 9, No 2. *International Journal for Crime, Justice and Social Democracy* 133-151.

⁵³ J Jonathan et al, "Legitimacy and procedural justice in prisons." The London School of Economics and Political Science. Accessed June 12, 2025. https://www.sccjr.ac.uk/wp-content/uploads/2010/10/Legitimacy_and_procedural_justice_LSERO_version.pdf

infrastructural decay.⁵⁴

According to the Zimbabwe Prisons and Correctional Services (ZPCS), the country's prisons are operating well beyond their intended capacity. The addition of life-term inmates further exacerbates the burden on an already overstretched system. The cost of housing, feeding, securing, and providing medical care for inmates over extended periods is significantly higher than managing death row populations, particularly in a system with a *de facto* moratorium on executions.

Furthermore, the abolition of capital punishment removes a natural attrition mechanism from the correctional system. While morally contentious, executions historically served to reduce inmate populations in cases where rehabilitation was deemed impossible or impractical. The long-term warehousing of violent offenders contributes to prison congestion, which has knock-on effects for other inmates, prison officers, and ultimately public safety.

B. Undermining Public Confidence in the Justice System

The criminal justice system derives its legitimacy not only from legal compliance but also from public perception.⁵⁵ When the public believes that justice is not being served, especially in cases of brutal murders, ritual killings, or politically motivated violence, trust in the legal system diminishes. This erosion of trust can lead to increased vigilantism, social fragmentation, and political unrest.

Zimbabwean society remains deeply rooted in communal values that emphasise retributive justice. The cultural perception of justice, particularly in rural areas, still upholds the idea of proportional punishment, an “eye for an eye.” The abolition of the death penalty, especially in the absence of broad public consultation, may therefore be viewed as a betrayal of these normative expectations. The resentencing of Tafadzwa Shamba and Tapiwa Makore (Snr.) to life imprisonment for the aggravated murder of a seven-year-old has engendered a public perception that the commission of such a serious offence effectively entitles one to state-funded accommodation and meals at tax-payers' expense.

Moreover, public opinion surveys consistently reveal that a significant majority of Zimbabweans support the retention of the death penalty for heinous crimes. According to Afrobarometer data, up to 55% of Zimbabweans favour the use of capital punishment in cases of murder involving aggravating circumstances.⁵⁶ By disregarding this sentiment, the legislature risks alienating the very population it is constitutionally mandated to represent, thereby compromising the democratic legitimacy of its decisions.

C. Economic Instability and Investor Confidence

There is a growing recognition that legal and social stability are prerequisites for sustained economic growth and investor confidence.⁵⁷ Abolishing the death penalty without commensurate improvements in policing, prosecution, and incarceration capacities may result in an uptick in violent crime, particularly crimes of profit such as armed robbery, politically motivated violence, and corruption.

An increase in serious crimes, real or perceived, undermines Zimbabwe's attractiveness as a destination for investment and tourism. This is in view of the government's hunt for investors and tourists alike with the

⁵⁴ Parliament of Zimbabwe, “Report of the Portfolio Committee on Justice, Legal, and Parliamentary Affairs on the inquiry into the State of Affairs in Zimbabwe Prisons and Correctional Service Facilities and Living Conditions of Prisoners.” Veritas. Accessed June 12, 2025. https://www.veritaszim.net/sites/veritas_d/files/Comm%20Report%20-%20INQUIRY-INTO-STATE-OF-AFFAIRS-IN-ZPCS-AND-LIVING-CONDITIONS-OF-PRISONERS.pdf

⁵⁵ J Jackson et al, ‘Compliance with the Law and Policing by Consent’ *Legitimacy and Compliance in Criminal Justice*, 2012.

⁵⁶ n 41 above

⁵⁷ Z Hussain, “Can Political Stability Hurt Economic Growth.” World Bank. Accessed June 15, 2025.

<https://blogs.worldbank.org/en/endpovertyinsouthasia/can-political-stability-hurt-economic-growth>

‘Zimbabwe is open for business’ mantra,⁵⁸ and the recently launched Tourism and Hospitality Policy respectively.⁵⁹ Multinational corporations consider crime statistics and the effectiveness of legal deterrents when deciding to invest in emerging markets. If Zimbabwe is perceived as unable to contain violent crime due to a weakened deterrence regime, the country could suffer reputational and financial costs.

In addition, the economic cost of crime is borne disproportionately by the poor and vulnerable. In communities where law enforcement is weak or inaccessible, the absence of strong punitive measures emboldens criminal elements, exacerbating inequality and undermining developmental goals. By removing the ultimate penalty for the most egregious crimes, the state may inadvertently contribute to a cycle of insecurity that deters local enterprise and social mobility.

D. Strain on Victims’ Families and the Social Contract

Justice is not only about punishing the offender, it is also about recognising the suffering of victims and affirming societal condemnation of egregious conduct.⁶⁰ The abolition of the death penalty may be perceived by victims’ families as a form of state-sanctioned leniency, particularly where the crime involved calculated brutality, sexual violence, or child victims. A case in point is the pending case of Jaison Muvevi who allegedly went on a murder spree in the Hwedza area.⁶¹ With the absence of a death penalty option in the courts, the families of the deceased victims would view the state as an accomplice in the doing of injustice.

The state’s failure to provide what victims consider “just” retribution can rupture the social contract. Citizens may begin to question whether the state is truly committed to their safety and dignity, leading to disengagement from lawful means of dispute resolution. This breakdown in trust can manifest in reduced cooperation with law enforcement, retaliatory violence, or community-based justice systems, all of which threaten the rule of law.

Comparative Jurisprudence: Retentionist Vs Abolitionist States

Comparative constitutional analysis offers valuable insights into how different jurisdictions have approached the question of capital punishment. Zimbabwe’s decision to abolish the death penalty must be evaluated not only against international human rights rhetoric but also in comparison with the legal experiences of both retentionist and abolitionist states. This comparative lens can reveal the socio-legal conditions under which capital punishment continues to serve a useful function, as well as cautionary tales where abolition has created unintended consequences.

A. Retentionist Jurisdictions and the Constitutional Justification for Capital Punishment

Numerous countries, including some of the world’s most powerful democracies, retain the death penalty. The United States, Japan, India, Singapore and Zimbabwe’s neighbouring country, Botswana are notable examples. Each of these jurisdictions has upheld the constitutionality of capital punishment, generally framing it as a legitimate tool of criminal justice for the most egregious crimes.

In India, the Supreme Court in *Bachan Singh v. State of Punjab* developed the “rarest of rare” doctrine, affirming that the death penalty is constitutional where the alternative of life imprisonment is unquestionably foreclosed by the nature of the crime.⁶² The Indian Constitution guarantees the right to life under Article 21, but the judiciary has held that capital punishment, when imposed with due process, does not violate this right.

⁵⁸ “Zimbabwe is Open for Business.” Government of Zimbabwe. Accessed August 1, 2025. <https://www.zim.gov.zw/index.php/en/my-government/government-ministries/finance-and-economic-development/9-uncategorised/381-zimbabwe-is-open-for-business>

⁵⁹ M Ndlovu, “Zimbabwe’s Tourism Policy- a critical analysis.” Masvingo Mirror. Accessed August 8, 2025. <https://masvingo-mirror.com/zimbabwes-tourism-policy-a-critical-analysis/>

⁶⁰ “Handbook on Justice for Victims.” United Nations Office on Drugs and Crime. Accessed June 15, 2025. https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf

⁶¹ “Muvevi suspected of six more murders.” The Herald. Accessed on August 1, 2025. <https://www.heraldonline.co.zw/muvevi-suspected-of-six-more-murders/>

⁶² *Bachan Singh v. State of Punjab* AIR 1980 SC 898

Singapore, often celebrated for her low crime rates and strict law enforcement, has repeatedly defended its retention of capital punishment for offences such as murder and drug trafficking. Its courts have ruled that the death penalty, when applied with procedural safeguards and proportionality, aligns with constitutional principles and promotes national security and public order.⁶³

In Botswana, Zimbabwe's immediate neighbour, the courts have continued to uphold the legitimacy of the death penalty for murder with aggravating circumstances. Botswana's constitutional jurisprudence has consistently refused to interpret the right to life as excluding capital punishment, a stance reflecting both legal tradition and societal expectations.⁶⁴

These retentionist states underscore a fundamental point: capital punishment remains constitutionally and morally defensible when it is narrowly applied, procedurally fair, and socially justified. Zimbabwe's own Constitution mirrors this logic in Section 48(2), which permits capital punishment for murder in aggravating circumstances.⁶⁵ The outright abolition enacted by the Death Penalty Abolition Act disregards this nuanced constitutional compromise and places Zimbabwe at odds with similarly situated states that have preserved capital punishment as a means of safeguarding peace and public order.

B. Abolitionist States: Lessons from Comparative Experience

The abolitionist camp includes countries such as South Africa, Rwanda, Canada, and the United Kingdom. These nations have renounced capital punishment primarily on moral and philosophical grounds, often through judicial interpretation or constitutional reform.

In South Africa, the landmark case of *State v Makwanyane* marked the abolition of the death penalty.⁶⁶ The Constitutional Court held that capital punishment violated the right to life and dignity under Sections 9 and 11 of the Interim Constitution. The Court placed significant emphasis on the historical abuse of the death penalty under the apartheid regime and the need for a rights-based legal order. However, post-abolition South Africa has struggled with persistent violent crime, prompting public debates about the return of capital punishment.⁶⁷

Rwanda, in the aftermath of the 1994 genocide, abolished the death penalty in 2007 as part of its transitional justice and reconciliation framework. This move was linked to its willingness to cooperate with International Criminal Tribunals, particularly the ICTR, which required abolition before transferring suspects for trial.⁶⁸ Despite this moral positioning, Rwanda has since faced criticism for authoritarian practices and questions over the consistency of its justice system.

The United Kingdom abolished the death penalty in 1965 (for murder) and entirely in 1998. This was not a result of constitutional compulsion, Britain lacks a written constitution, but rather a political decision grounded in evolving public opinion and the risk of wrongful convictions. The stability of its institutions and the strength of its judiciary played a key role in mitigating public fears about abolition.

These abolitionist case studies share common features: robust institutions, reliable law enforcement, and alternative punitive regimes that maintain public confidence. Zimbabwe, however, lacks many of these institutional safeguards. The Zimbabwe Republic police is often under-resourced, the judiciary faces accusations of executive interference, and the prison system is dilapidated. The social and legal ecosystem necessary for safe abolition is therefore absent, making the importation of abolitionist models contextually inappropriate.

⁶³ n 52 above

⁶⁴ Section 7(1) as read with Section 7(2) of the Republic of Botswana

⁶⁵ n 21 above

⁶⁶ *State v Makwanyane* 1995 (3) SA 391 (CC)

⁶⁷ "Capital Punishment in South Africa. Was Abolition the Right Decision?" South African Institute of Race Relations. Accessed August 8, 2025. <https://irr.org.za/reports/occasional-reports/files/draft-2-irr-capital-punishment-in-sa-211116.pdf>

⁶⁸ "Transitional Justice and DDR: The Case of Rwanda." International Center for Transitional Justice. Accessed July 31, 2025. https://www.ictj.org/sites/default/files/ICTJ-DDR-Rwanda-ResearchBrief-2009-English_0.pdf

Comparative jurisprudence thus confirms the central argument of this paper: while abolition may be defensible in contexts where it is supported by strong legal institutions and public consensus, its imposition in fragile or transitional societies can undermine peace, order, and governance. Zimbabwe must forge its own constitutional path, grounded in domestic realities rather than mimetic adherence to foreign norms.

Arguments For the Reinstatement of Capital Punishment in Zimbabwe

Having demonstrated that the abolition of the death penalty contravenes Section 117(2)(b) of the Constitution and poses significant risks to socio-economic stability, this section advances a case for its reinstatement. This argument is grounded not in retribution alone but in the constitutional mandate of the legislature to promote peace, order, and good governance. Reinstating capital punishment for the most serious crimes, particularly murder committed in aggravating circumstances, serves this mandate.

A. Constitutional Compatibility

As noted earlier, Zimbabwe's Constitution in Section 48(2) does not prohibit capital punishment.⁶⁹ On the contrary, it explicitly allows for its imposition under tightly regulated conditions. This provision reflects a deliberate and balanced compromise between international human rights aspirations and domestic exigencies. The Death Penalty Abolition Act, by removing the option entirely, creates a conflict with the constitutional text.⁷⁰

The reinstatement of capital punishment would bring statutory law back into harmony with constitutional law, reinforcing the principle of constitutional supremacy. It would demonstrate that the legislature respects not only the letter of the Constitution but also its spirit, which envisages a criminal justice system that is both rights-conscious and responsive to serious threats to public safety.

B. Deterrence and Public Protection

While the empirical evidence on the deterrent effect of the death penalty remains contested, studies suggest that in high-violence societies with limited law enforcement capacity, the death penalty may have a marginal deterrent effect that cannot be dismissed outright.⁷¹ In Zimbabwe, where police resources are strained and conviction rates for violent crimes are low, the psychological weight of the death penalty can act as a final deterrent, particularly for premeditated crimes.

Reinstating capital punishment would also serve a protective function. Certain offenders, such as serial killers, terrorists, and repeat offenders, pose ongoing threats to society even when incarcerated. Life imprisonment does not eliminate the risk of prison escapes, inmate-on-inmate violence, or politically motivated prison breaks. In extreme cases, capital punishment may be the only means of ensuring permanent incapacitation.

C. Public Opinion and Democratic Legitimacy

The legitimacy of a legal system rests in part on its responsiveness to the moral intuitions and expectations of the society it governs.⁷² In Zimbabwe, public opinion strongly supports capital punishment for crimes involving children, multiple victims, or political assassination. Reinstating the death penalty would restore alignment between the law and the public's sense of justice, thereby enhancing the legitimacy of the criminal justice system.

The legislature has a duty to represent the will of the people within the bounds of constitutional propriety. Abolishing the death penalty without widespread consultation subverts this democratic responsibility. A report from Parliament's Portfolio Committee on Justice, Legal and Parliamentary Affairs notes that 866 citizens participated

⁶⁹ n 21 above

⁷⁰ n 1 above

⁷¹ "Arguments for and against the Death Penalty." Michigan State University and Death Penalty Information Center. Accessed July 14, 2025. <https://dpic-cdn.org/production/legacy/arguments.PDF>

⁷² n 55 above

in the consultation process.⁷³ However, a figure of 866 citizens in a country with over thirteen million people is paltry given the sensitivity of the death penalty subject.

D. Symbolism and Rule of Law

Capital punishment, when applied judiciously, also serves a symbolic function. It affirms the state's intolerance for extreme forms of criminality and reinforces the moral boundaries of the legal order. In cases involving acts of terrorism, ritual killings, or attacks on public officials, the death penalty can serve as a solemn declaration that certain crimes lie beyond the pale of civilised society.

This symbolic function reinforces the rule of law by communicating that even in a rights-based system, justice must be assertive in protecting the innocent and deterring the wicked. Reinstating capital punishment would therefore serve as a reaffirmation of the state's commitment to uphold justice, not merely as abstract principle, but as lived reality.

CONCLUSION AND RECOMMENDATIONS

This article has critically examined the constitutionality and policy implications of the Death Penalty Abolition Act [Chapter 9:26] in Zimbabwe. While the Act has been celebrated as a progressive measure aligned with evolving international human rights norms, this paper contends that its passage is fundamentally at odds with the core constitutional obligations of the Zimbabwean legislature, particularly those articulated in Section 117(2)(b) of the Constitution of Zimbabwe. That provision obliges lawmakers to enact legislation that promotes peace, order, and good governance, a tripartite mandate that must be interpreted literally and applied rigorously.

The Act,⁷⁴ by abolishing capital punishment in all circumstances, disregards the nuanced and conditional acceptance of the death penalty preserved in Section 48(2) of the Constitution.⁷⁵ It further undermines the constitutional doctrine of supremacy by effectively overriding a constitutional provision without the requisite constitutional amendment. This represents not only a jurisprudential flaw but a violation of the separation of powers and constitutional restraint.

Moreover, from a socio-economic and public policy perspective, the abolition of capital punishment introduces new threats to peace and security. It diminishes deterrence, erodes public confidence in the justice system, and imposes unsustainable financial burdens on Zimbabwe's correctional infrastructure. It also disrespects the prevailing moral intuitions of the Zimbabwean public, who according to consistent polling, support capital punishment for the most heinous crimes. In societies with fragile legal institutions and limited law enforcement capacity, the removal of the most severe sanction creates dangerous gaps in deterrence and enforcement.

Comparative jurisprudence has shown that successful abolitionist models often rest on the foundation of strong judicial institutions, effective policing, robust correctional systems, and broad public consensus. Zimbabwe does not yet enjoy such institutional maturity or civic convergence. The uncritical emulation of foreign abolitionist policies, especially without democratic legitimacy or constitutional coherence, risks importing instability rather than achieving substantive justice.

This article has not advocated for a blanket return to punitive excess or unreflective retribution. Rather, it has argued for a cautious, constitutional, and context-sensitive criminal policy that respects both human dignity and the imperatives of public safety. Reinstating capital punishment for narrowly defined "most serious crimes" such as murder committed in aggravating circumstances would restore constitutional harmony, affirm public trust, and preserve the legitimate deterrent function of the criminal law.

⁷³ Parliament of Zimbabwe, "Portfolio Committee on Justice Legal and Parliamentary Affairs Report on the Death Penalty Abolition Bill [H.B 5, 2023]." Veritas. Accessed July 14, 2025. https://www.veritaszim.net/sites/veritas_d/files/REPORT%20ON%20DEATH%20PENALTY%20ABOLITION%20BILL.pdf

⁷⁴ n 1 above

⁷⁵ n 21 above

RECOMMENDATIONS:


1. **Reinstate Capital Punishment Through Constitutional Compliance:** The legislature should enact an amended law reinstating the death penalty for specific categories of crimes in full compliance with Section 48(2) of the Constitution, ensuring exemptions for juveniles, women, and persons over 70.
2. **Constitutional Challenge to the Abolition Act:** Interested stakeholders, including legal scholars, public interest litigants, or political actors, should consider mounting a constitutional challenge to the Death Penalty Abolition Act under Section 2(1) and 117(2)(b) of the Constitution.
3. **Establish National Consultations or Referendum:** Before revising such a consequential part of the criminal code, the state should conduct nationwide consultations or even a public referendum to ensure that penal policy reflects the will of the people.
4. **Strengthen Safeguards and Fair Trial Rights:** Any reinstatement of the death penalty must be accompanied by improved due process protections, higher evidentiary thresholds, and automatic appeals to the Supreme Court to mitigate the risk of wrongful convictions.
5. **Monitor and Report Violent Crime Trends:** The Ministry of Justice, Legal and Parliamentary Affairs and the Zimbabwe Republic Police should produce annual reports tracking the incidence of aggravated crimes post-abolition to empirically assess the law's effects on peace and order.
6. **Integrate Deterrence with Rehabilitation:** Zimbabwe's penal policy should not rely exclusively on the death penalty but must integrate long-term rehabilitative strategies for offenders while preserving capital punishment for the most exceptional cases.

In the final analysis, this paper has aptly demonstrated that peace, order, and good governance are not abstract ideals, they are constitutional imperatives that must guide all legislative action. The Death Penalty Abolition Act, though well-intentioned, falls short of these standards and jeopardises Zimbabwe's constitutional integrity and public safety. A careful, lawful, and principled reconsideration of capital punishment is not merely advisable, it is constitutionally mandated.

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