

The Death Penalty, National Security and the Zimbabwe Constitution

The Zimbabwe government through the inclusive government is currently carrying out rigorous outreach programs in Zimbabwe and abroad over the contents of the new proposed Zimbabwe Constitution. The proposed draft constitution will be presented as referendum to the people of Zimbabwe who will choose to either accept it or reject it.

One of the fundamental issues that has raised sentiment amongst Zimbabweans at home and abroad has been the issue of the death penalty. The death penalty consists of legally putting a convicted felon to death for a prescribed offence. Under our current Zimbabwe Lancaster house constitution, two offences immediately come to mind that attract the death penalty. Notably unmitigated first degree murder and high treason. Those calling for the abolition of the death penalty in Zimbabwe have sighted reason ranging from the barbaric nature of the act of putting another human being to death and that the process of putting somebody to death maybe riddled with loopholes as in some instances the actual perpetrator of the crime goes free whilst an innocent person is put to death. Valid arguments one might say, but are they sufficient in the context of our situation as Zimbabweans.

The death penalty put into context has been used since time immemorial. In the holy bible, the death penalty was used for crimes ranging from murder, witchcraft and kidnapping. The United States of America, China and a myriad of African countries including Zimbabwe still use the death penalty. In the United States half of all death penalties are carried out in the state of Texas. The electric chair or lethal injection is used following long periods of incarceration of convicted felons, the infamous “death row”. In China the death sentence has been used more frequently recently for drug trafficking offences. In fact a few of our Zimbabwean nationals have been caught in this net.

In Zimbabwe we have tended to use the death penalty to remove the worst criminals from society making our country safer for those who live within the confines of the law. It is an acceptable truth that a dead criminal can not commit further murders. Those who calling for the abolition of the death penalty need to realise that taking another persons life is no small matter. Also committing high treason is no small matter either. Zimbabweans who are campaigning for the abolition of the death penalty tend to conveniently forget that we are all going to die and most of us are made aware of this truism well in advance. For instance a person diagnosed with a terminal disease like cancer. It seems apparently acceptable to us Zimbabweans to be sentenced to death by our family doctor when we have not committed a crime, yet find it totally unacceptable to be sentenced by a Judge to death for a prescribed offence which in most cases involves the taking of another person’s life.

In Zimbabwe the death sentence has been used sparingly. High Court records show the number on death row totals 47. A person convicted and sentenced to death in Zimbabwe gets an automatic appeal to the Supreme Court. This gives the accused person(s) any opportunity to introduce evidence that may have been either overlooked or not considered in the court of first instance. Failure to get relief from the Supreme

Court, a convicted felon has another chance to apply for a pardon from the president of Zimbabwe. These checks and balances in the Zimbabwean legal system minimises any chances of miscarriages of justice.

In the event that a convicted felon fails to get a presidential pardon it must naturally follow under the law that the death penalty must be exercised. Zimbabwe is a country that is in an economic lock jam as a result of the illegal sanctions that have been imposed by western nations. The government does not have the resources to spend on criminals in jails indefinitely. Money is not an inexhaustible commodity and the government may very well better spend our (limited) resources on the old, the young and the sick etc., rather than on the long term imprisonment of murderers, rapists, etc.

However, I believe the most important reason for keeping the death penalty in our statute books relates to matters of national security. Zimbabwe is a country coming out of a revolution. The land reform exercise that began in earnest in the year 2000 left a lot of people disgruntled such that high treason against an elected government can not be ruled out. The Constitutional Amendment Act No. 17 of 2005 empowered the government of Zimbabwe to seize or expropriate farmland without compensation and bars courts from adjudicating over legal challenges filed by dispossessed and aggrieved white farmers. Section 2(2) of the above amendment provides that 'all agricultural land – (follows the description of such agricultural land identified by the Government)...is acquired by and vested in the State with full title therein...; and...no compensation shall be payable for land referred to in Paragraph (a) except for any improvements effected on such land before it was acquired'.

The practical implications of the Constitutional Amendment Act No. 17 resulted in farm seizures, where the majority of the approximately 5000 white farmers were forcibly ejected from their properties with no compensation being paid for the land, since, according to the Zimbabwe Government; it was stolen in the first place.

The dispossessed white farmers could resort to armed conflict and the fear of that happening is a reality. The realisation that the SADC tribunal or any other Court has no jurisdiction over Zimbabwe without the consent of the Parliament of Zimbabwe is slowly sinking in. High treason in Zimbabwe is not something new and we can not expose ourselves by legislating against our interests. In 2004 Zimbabwe was used by coup plotters Simon Mann and his cronies as a transit point on their way to Equatorial Guinea to try and topple a democratically elected government. This serves to confirm that the sentiment for high treason in Africa is well and alive.

Zimbabwe has just discovered that it is rich. In fact Zimbabweans have just discovered that they rich. The same farms that we have expropriated have yielded more than just crops. Diamonds have been found in Marange and elsewhere. The discovery of these diamonds makes Zimbabwe a prime target for treasonous activity. Morgan Tsvangirai, the leader of the main opposition party Movement for Democratic Change (MDC) has been charged with treason three times, the last just ahead of the 2002 presidential elections. This trial lasted almost two years. It ended with a surprise

acquittal.

Ndabaningi Sithole, the leader of the Zimbabwe African National Union (ZANU) was also charged with plotting to overthrow the government. This was just ahead of the 1996 presidential elections. But he was found guilty. He was sentenced to five years in prison, but released because of failing health.

The discovery of diamonds in Zimbabwe may actually raise the stakes in the Zimbabwean political arena. Zimbabwe is going towards any election. In the event of political parties and those who back them, fail to carry the people's mandate treasonous actions may become the norm. Politics will become a zero sum game. It is this fight for the distribution of our resources that will make Zimbabwe a sitting duck if we abolish the death penalty. The death penalty in our constitution will serve as a deterrent to those who might be tempted to temper with our sovereignty.

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