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Assessing the Convergence of Constitutional Reform, Judicial Precedent and International Human Rights Norms on Zimbabwe's Abolition of Capital Punishment

GARIKAI MUCHEMWA AND CLIVE CHIRIDZA

Abstract

The abolition of capital punishment in Zimbabwe in 2024 marked a transformative moment on the country's legal and human rights landscape. The article examines the historical, constitutional and international factors that culminated in the Death Penalty Abolition Act, 2024, situating Zimbabwe's journey within global trends toward ending state-sanctioned executions. Drawing on qualitative analysis of interviews, the 2013 Constitution of Zimbabwe, key judicial decisions, comparative foreign law and international frameworks such as the Universal Declaration of Human Rights (UDHR), the article argues that abolition reflects both domestic advocacy and alignment with evolving global human rights standards. The study also evaluates arguments for abolition grounded in restorative justice, fairness and the irreplaceable value of human life. Furthermore, the essay discusses the societal and political factors that sustain capital punishment in Zimbabwe, alongside recommendations for continued alignment with acceptable international law norms. Emphasis is placed on the need for civil society engagement, legal review seminars and the establishment of alternative sanctions that align with international human rights standards. Ultimately, the article hails the abolition of capital punishment as a vital step toward respecting and upholding democracy in Zimbabwe.

Keywords: rehabilitation, rehabilitation, restorative justice, political landscape, reformism, social acceptance

INTRODUCTION

Zimbabwe's death penalty stems from colonial-era British laws, codified in the Criminal Law and Criminal Procedure Acts, mandating capital punishment for crimes like murder and treason. Retained post-independence in 1980, its application gradually narrowed. While the last execution occurred in 2005, a *de facto* moratorium arose due to the lack of an official hangman. Nevertheless, over 60 individuals remained on death row by 2024, highlighting the disparity between law and practice (*The Zimbabwean*, 2025). This situation, coupled with international condemnation and domestic activism, underscored the urgent need for legislative reform, driven by human rights concerns regarding wrongful convictions and the psychological impact on inmates (Amnesty International, 2024).

Zimbabwe's abolition of the death penalty on December 31, 2024, through the Death Penalty Abolition Act, marks a watershed moment in its legal and human rights journey, aligning the country with 126 others globally who have rejected capital punishment. This transformation, spearheaded by the legislature and supported by organisations like the Death Penalty Project, overcame significant public support for the death penalty, highlighting a shift in governmental policy (Civicus, 2025). Rooted in colonial-era legislation, the death penalty has faced increasing condemnation for its violation of fundamental human rights (Amnesty International, 2024). While the 2013 Constitution imposed limitations on its application, excluding women, juveniles and the elderly and mandating Supreme Court confirmation, these reforms paved the way for complete abolition. The article examines the legal and human rights arguments behind Zimbabwe's decision, referencing its constitution, international human rights norms like the UDHR and ICCPR and precedents like *S v Makwanyane* (1995), alongside advocacy efforts. By contextualising this decision within a broader framework, this analysis underscores the significance of Zimbabwe's

reform in aligning its justice system with global standards (JURIST, 2025).

THEORETICAL FRAMEWORK

This analysis draws on *Legal Positivism* (Hart, 1961) which argues how law is defined by social rules and enacted legislation, evident in the impact of Zimbabwe's Constitution. Furthermore, *Legal Realism* (Llewellyn, 1930) highlights the role of judicial interpretation and societal context in shaping legal outcomes. The shift away from the death penalty was not solely based on legal text, but also on how judges interpreted the constitution in light of evolving human rights norms and growing opposition to capital punishment. This reflects the fluid and contextual nature of legal decision-making.

LITERATURE REVIEW

The death penalty in Zimbabwe has its roots in colonial-era laws, inherited from British rule and codified in the Criminal Law (Codification and Reform) Act [Chapter 9:23] and the Criminal Procedure and Evidence Act [Chapter 9:07]. These laws mandated the death penalty for crimes such as murder and treason, reflecting a punitive approach to justice which was characteristic of colonial governance. The colonial administration used capital punishment as a tool for repression, particularly during the liberation struggle against the Rhodesian regime, where offences like "petrol bombing" carried a mandatory death sentence (ZimAdvocate, 2024).

After gaining independence in 1980, Zimbabwe retained the death penalty, although its application became increasingly restricted over time. The last execution in Zimbabwe took place in 2005 and the absence of an official hangman since then symbolised a *de facto* moratorium on capital punishment (*The Zimbabwean*, 2025). Despite this moratorium, the death penalty remained on the books, with over 60 inmates on death row as of 2024. The prolonged incarceration of

these individuals, coupled with international pressure and domestic advocacy, underscored the need for legislative reform.

The 2013 Constitution marked a significant step towards limiting the death penalty. Section 48 of the Constitution provided that the death penalty could be imposed only on men aged between 21 and 70 for murder committed under “aggravating circumstances”, explicitly excluding women, juveniles and the elderly. This constitutional limitation reflected growing societal and political unease with capital punishment, setting the stage for its eventual abolition.

THE ZIMBABWE 2013 CONSTITUTION PERSPECTIVE

Zimbabwe's 2013 Constitution, while seeming to permit capital punishment for murder with “aggravating circumstances” under section 48, opens it to significant legal challenges. The provision's insistence on compliance with section 86, regarding limitations on rights, raises questions of fairness, justifiability and human dignity. Critics argue the death penalty's inherent cruelty and irreversibility clash with these requirements, potentially violating the right to life indirectly. Moreover, the need for consistency with Chapter 4, enshrining fundamental rights, provides a broader basis for opposition.

The Constitution's guarantees of human dignity (section 51) and prohibition of cruel, inhuman, or degrading treatment (section 53) are central to the debate. Scholars like Steiker and Steiker (2016) and Hood and Hoyle (2015) contend capital punishment, involving prolonged incarceration and deliberate life-taking, inherently violates human dignity. Extended appeals and death row confinement can constitute psychological torture, contravening section 53. The landmark case, *Catholic Commission for Justice and Peace v Attorney-General*, established a precedent for scrutinising capital punishment's impact on human dignity.

INTERPRETATION OF CHAPTER 4 OF THE ZIMBABWE CONSTITUTION 2013

Zimbabwe's Constitution, particularly Chapter 4, guarantees fundamental rights and freedoms, emphasising the State's duty to uphold them. Section 46 mandates courts to consider international law when interpreting these rights, aligning Zimbabwean jurisprudence with global human rights standards that are vital for justice, equality and peace. While section 48 allows the death penalty for murder under specific conditions, sections 51 and 53, enshrining human dignity and prohibiting cruel punishment, challenge its constitutionality. Sections 326 and 327 provide mechanisms for mitigating or aligning capital punishment with international norms. The inclusion of foreign and international law offers comparative jurisprudence and reinforces adherence to international human rights standards.

THE DEATH PENALTY ABOLITION ACT OF 2024

The Death Penalty Abolition Act of 2024, gazetted on 31 December, marks a pivotal moment in Zimbabwe's legal history, abolishing capital punishment. The Act's preamble underscores a commitment to inherent human dignity, aligning with section 51 of the Constitution. It also acknowledges Zimbabwe's adherence to international human rights treaties, reinforcing section 327 and represents a progressive step towards modernising the legal system in line with global trends.

THE ABOLITIONIST TIDE IN SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) REGION

The Southern African Development Community (SADC) presents a diverse landscape regarding capital punishment. While some member states like Botswana and Zambia continue to implement the death penalty, a growing number have either abolished it *de jure* (in law) or *de facto* (in practice). This trend creates a compelling regional context for Zimbabwe to consider abolition.

From a legal standpoint, the SADC legal framework, though not explicitly prohibiting capital punishment, leans towards its restriction. The SADC Treaty (Southern African Development Community 1992) promotes human rights and fundamental freedoms, implicitly encouraging member states to align their domestic laws with universal principles. Furthermore, the African Charter on Human and Peoples' Rights (Organisation of African Unity, 1981), binding on all SADC members, guarantees the right to life (Article 4). While it does not explicitly abolish the death penalty, it mandates that it can be imposed only pursuant to a judgment by a competent court following due process and, often interpreted, for only the most serious crimes.

Several SADC member states have successfully challenged the constitutionality of the death penalty. Landmark cases in South Africa (*S v Makwanyane and Another*, 1995) and Namibia (*Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State*, 1991) established that capital punishment violated fundamental rights such as the right to life, dignity and freedom from cruel, inhuman, or degrading treatment, enshrined in their respective constitutions. These cases provide persuasive arguments for the unconstitutionality of capital punishment in Zimbabwe, considering the similar provisions in its own constitution, particularly section 48 regarding the right to life and limitations thereof.

The legal arguments supporting abolition within the SADC region often centre on the following:

- **Inherent cruelty:** The death penalty is invariably cruel, inhuman and degrading, irrespective of the method of execution. This violates constitutional protections and international human rights standards.
- **Risk of error:** The justice system is fallible and the risk of executing an innocent person is irreversible. This argument

underscores the sanctity of life and the profound injustice of executing an individual who might later be proven innocent.

- **Discrimination:** The application of the death penalty is often discriminatory, disproportionately affecting marginalised communities and those lacking adequate legal representation. This raises concerns about equal access to justice and fairness in the legal system.
- **Lack of deterrence:** Empirical evidence suggests that the death penalty does not effectively deter crime and alternative punishments, such as life imprisonment, offer a comparable deterrent effect without the irreversible consequences.

The abolition of capital punishment in several SADC countries, including Angola, Mozambique and Mauritius, has not resulted in a surge in violent crime, further challenging the deterrence argument. These countries have transitioned to alternative punishment regimes that prioritise rehabilitation and restorative justice.

Therefore, from a regional perspective, Zimbabwe's abolition of capital punishment would align it with the burgeoning trend within SADC. The legal arguments presented in successful constitutional challenges in South Africa and Namibia, the emphasis on human rights within the SADC framework and the experience of abolitionist states within the region, provide a strong legal and practical basis for reform. Amending or repealing relevant sections of Zimbabwean criminal law and the Constitution to remove capital punishment would solidify Zimbabwe's commitment to human rights and position it as a progressive member of SADC.

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State 1991 (3) SA 76 (NmS)

The Namibian case, *Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State* (1991), profoundly influenced constitutional jurisprudence in Southern Africa. The

Namibian Supreme Court, in declaring corporal punishment unconstitutional, emphasised the inherent dignity of individuals and the importance of upholding fundamental rights, even for offenders. This decision, grounded in principles of human dignity and evolving standards of decency, resonated across the region.

Zimbabwean abolitionists drew inspiration from Namibia's example, citing the case to argue that the death penalty, like corporal punishment, constituted cruel, inhuman and degrading punishment, violating constitutional rights (Zimbabwe Lawyers for Human Rights, 2023). The Namibian decision provided a persuasive precedent, bolstering arguments that evolving social norms demanded the rejection of archaic and inhumane forms of punishment. While Zimbabwe's abolition of the death penalty was a complex process influenced by multiple factors, Namibia's principled stance on human dignity offered a crucial legal and moral foundation for the successful campaign (Mavedzenge, 2023). The Namibian case thereby served as a powerful catalyst for human rights reform beyond its borders.

THE INFLUENCE OF *STATE V MAKWANYANE* CASE

Zimbabwe's journey towards abolishing the death penalty has been a complex and multifaceted process, punctuated by periods of retention, moratoria and ultimately, a constitutional amendment in 2023 officially declaring capital punishment unconstitutional. While the abolition was a culmination of domestic factors, including evolving public sentiment, persistent human rights advocacy and pragmatic concerns about the judicial system, the landmark South African case of *State v Makwanyane* (1995) played a significant role in shaping the legal discourse surrounding the death penalty and influencing the arguments for its abolition in Zimbabwe.

The *State v Makwanyane* case, decided by the South African Constitutional Court, served as a powerful precedent for challenging the constitutionality of the death penalty. In *Makwanyane*, the Court

considered whether capital punishment was compatible with the South African Constitution which guarantees the right to life and prohibits cruel, inhuman, or degrading treatment or punishment. The Court, in a unanimous decision, held that the death penalty was indeed unconstitutional, finding that it violated these fundamental rights. This landmark ruling was based on a comprehensive analysis of international human rights law, comparative jurisprudence and the specific context of South Africa's transition from apartheid (Chaskalson, 1995).

The *Makwanyane* judgment presented a multifaceted legal argument that resonated far beyond South Africa's borders. Firstly, the Court emphasised the inherent value of human life and the absolute nature of the right to life. Even those who have committed heinous crimes, the Court reasoned, do not forfeit their inherent human dignity. Secondly, the Court highlighted the inherent cruelty and barbarity of the death penalty, arguing that it inflicts severe physical and psychological suffering on the condemned person and their families (O'Regan, 1995). Thirdly, the Court considered the risk of executing innocent individuals, acknowledging that no system of justice is infallible and that irreversible errors can occur. This argument was particularly poignant in the context of Zimbabwe, where concerns about the efficacy and impartiality of the judicial system were prevalent.

The influence of *Makwanyane* on the legal discourse in Zimbabwe is evident in several ways. Firstly, Zimbabwean lawyers and human rights activists frequently cited the *Makwanyane* decision in legal challenges to the death penalty. For example, in cases involving individuals sentenced to death, lawyers often argued that the death penalty violated the constitutional right to life and protection against cruel, inhuman, or degrading treatment, relying heavily on the reasoning in *Makwanyane* (Zimbabwe Human Rights NGO Forum,

2013). They argued that executing someone, even for the most heinous crime, was a disproportionate and unacceptable punishment that undermined the values of a democratic society.

Secondly, the *Makwanyane* judgment influenced the development of legal arguments focusing on the psychological impact of prolonged detention on death row. Precedent from southern African courts, including South Africa, established the “death row phenomenon”, recognising the severe mental anguish and suffering experienced by prisoners awaiting execution. This argument was increasingly invoked in Zimbabwean courts to challenge the death penalty, contending that the lengthy delays and harsh conditions on death row constituted cruel, inhuman and degrading treatment in violation of the Constitution (Catholic Commission for Justice and Peace in Zimbabwe, 2017). The *Makwanyane* case provided a strong legal foundation for this argument, as the South African Constitutional Court had specifically considered the psychological impact of the death penalty on condemned prisoners.

Thirdly, the *Makwanyane* case encouraged a broader public debate about the morality and efficacy of the death penalty in Zimbabwe. The South African judgment was widely reported in Zimbabwean media, prompting discussions on the justifications for capital punishment and alternative approaches to crime and punishment. Civil society organisations, inspired by the South African experience, actively campaigned for the abolition of the death penalty, organising public fora, publishing research reports and lobbying parliamentarians (Amnesty International, 2016). They argued that the death penalty was not an effective deterrent to crime and that resources would be better invested in strengthening the criminal justice system and addressing the root causes of crime. The *Makwanyane* case provided a powerful moral and legal argument to support these efforts.

It is crucial to acknowledge that the abolition of the death penalty in Zimbabwe was not solely attributable to the influence of *Makwanyane*. Domestic factors, such as the evolving political landscape, pressure from international human rights organisations and growing public awareness of the flaws in the judicial system, also played a significant role. However, the *Makwanyane* case provided a crucial legal and moral framework for challenging the death penalty and advancing the cause of abolition. The *Makwanyane* decision offered a coherent and compelling articulation of the arguments against the death penalty, grounded in international human rights law and comparative jurisprudence. This was persuasive and influential for lawyers, judges and policymakers in Zimbabwe.

AN INTERNATIONAL PERSPECTIVE OF CAPITAL PUNISHMENT

Capital punishment, also known as the death penalty, remains a deeply divisive issue across the globe. International perspectives on its use vary drastically, influenced by cultural values, religious beliefs, legal systems and political ideologies. Examining the practices of key nations reveals a complex and often contradictory landscape. China, for example, is notoriously the world's top executioner, with state secrecy surrounding the actual numbers. The death penalty is applied to a wide range of crimes, including economic offences and drug-related charges, raising serious concerns about transparency and due process (Amnesty International, 2023). In contrast, the United States presents a more nuanced picture. While the federal government and some states still retain capital punishment, its use has significantly declined in recent decades due to factors like high costs, concerns about wrongful convictions and evolving public opinion (Death Penalty Information Center, 2024). However, polarised political views and varying state laws result in ongoing legal battles and uneven application. Iran stands out for its high rate of executions, often carried out for drug-related crimes, apostasy and offences against national security. The judicial system's lack of transparency and fair trial guarantees, coupled with broad and

vaguely defined criminal laws, raise serious human rights concerns (Human Rights Watch, 2024). These examples highlight the wide spectrum of approaches and the persistent controversy surrounding capital punishment on the global stage.

Zimbabwe's recent abolition of the death penalty aligns with an increasing global trend toward abolishment, particularly within Africa. PGAction (2024) articulates that this move positions Zimbabwe as a proponent of human rights within the continent, reflecting a shift towards prioritising the right to life. With nations like Ghana, Zambia and the Central African Republic also having abolished capital punishment, Zimbabwe's decision contributes to the growing momentum against state-sanctioned killing (Amnesty International, 2023).

However, challenges persist globally, as evidenced by countries like China, Iran and Saudi Arabia, where executions are rising, especially under flawed legal systems. Zimbabwe's commitment to abolishment sets a positive example and reinforces the importance of strengthening legal systems to uphold human rights, even in the face of adversity. The move reflects a growing understanding that the death penalty is ineffective, inhumane and prone to error (Hood and Hoyle, 2015; Steiker, 2016).

UN CHARTER'S INTERPRETIVE PERSPECTIVE

The UN Charter, while not explicitly prohibiting the death penalty, lays the foundation for human rights principles that implicitly challenge its justification. Article 1(3) enshrines the purpose of the UN as "achieving international co-operation in... promoting and encouraging respect for human rights and for fundamental freedoms for all". This places a moral obligation on member states, including Zimbabwe, to interpret their laws and practices in a manner that aligns with the progressive realisation of human rights. The Charter's emphasis on the inherent dignity of the human person, reflected

throughout its preamble and articles, clashes with the inherent cruelty and finality of capital punishment. Further, Chapter IX of the Charter, focusing on international economic and social co-operation, indirectly supports the argument for abolition.

The death penalty disproportionately affects marginalised communities and exacerbates existing inequalities. By striving for social progress and better standards of life, as outlined in Chapter IX, states are implicitly obligated to address systemic issues that lead to the unequal application of capital punishment. The Charter's principle of sovereign equality of all its Members (Article 2[1]) compels states not to interpret the same human rights in a way that leads to discrimination. The selective or arbitrary application of the death penalty within specific contexts, such as in Zimbabwe, where it has been used to suppress political dissent, directly undermines the Charter's core objective of fostering a world founded on respect for human rights and the rule of law. The UN Charter is not a bill of rights which provides specific guarantees to individuals. Rather, it establishes the broad goals, principles and values that are to be implemented and later developed through international instruments.

UNIVERSAL DECLARATION OF HUMAN RIGHTS PRECEPTS

The Universal Declaration of Human Rights (UDHR), adopted in 1948, represents a landmark achievement in establishing universal human rights standards. Article 3 of the UDHR guarantees everyone the right to life, liberty and security of person. While the UDHR does not explicitly abolish the death penalty, the right to life is recognised as a fundamental right from which no derogation is permitted. Death penalty goes against the right to life as it is the ultimate denial of this right. Article 5 of the UDHR unequivocally prohibits torture, cruel, inhuman or degrading treatment or punishment. The death penalty, particularly when involving methods such as hanging (as was the case in Zimbabwe), has been argued to constitute cruel and inhuman punishment. The prolonged suffering experienced by death

row inmates, the mental anguish associated with awaiting execution and the inherent brutality of the act itself all contribute to this argument. The physical agony, coupled with the psychological torment inflicted on both the condemned and their families, is a form of ill-treatment incompatible with human dignity. Article 10 of the UDHR guarantees everyone the right to a fair trial and due process of law. Where the death penalty is concerned, the process is crucial.

In Zimbabwe, concerns had persisted regarding the fairness of trials, access to legal representation and the possibility of wrongful convictions further strengthening the case to abolish the death penalty. The UDHR, as a foundational document in international human rights law, provided the moral and ethical framework for evaluating state practices. While not legally binding in itself, it has served as the basis for numerous international treaties and conventions. By upholding the UDHR's principles, Zimbabwe demonstrated its commitment to respecting and protecting the inherent dignity and worth of all human beings.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, addresses the death penalty more directly than the UDHR. Article 6 of the ICCPR recognises the right to life as inherent to every human being. While it does not explicitly abolish the death penalty, it establishes strict limitations on its use. Article 6(2) states that the death penalty 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. This limitation implies a narrow interpretation of "most serious crimes", generally understood to mean crimes involving intentional killing. Zimbabwe's laws that previously allowed the death penalty for offences beyond intentional killing, potentially violated this provision. Article 6(2) also states that death

sentence can be carried out only pursuant to a final judgement rendered by a competent court. This guarantee requires states to make appropriate resources available for all stages of the trial and appeal process.

Article 6(4) of the ICCPR grants the right to seek pardon or commutation of the sentence. Amnesty, pardon, or commutation of the sentence of death, may be granted in all cases. The requirements for pardons and commutations must be carried out fairly and persons facing the death penalty should be informed of the process and assisted in accessing it. Article 6(6) states that nothing in this article shall be invoked to delay or prevent the abolition of capital punishment. This article does not explicitly require a state party to abolish capital punishment, but it does allow for each state party to do so. Zimbabwe is party to the ICCPR, therefore, it is bound by these provisions. The UN Human Rights Committee (UNHRC), which monitors compliance with the ICCPR, has consistently interpreted Article 6 as favouring abolition. The Committee has urged states to limit the use of the death penalty and to consider its complete abolition. Furthermore, Article 7 of the ICCPR prohibits torture and cruel, inhuman, or degrading treatment or punishment. As argued previously, the death penalty can be considered a violation of this provision, particularly in light of the conditions of detention on death row and the psychological trauma associated with awaiting execution.

INTERNATIONAL CASE LAW

The following case laws provide further context for understanding the application of human rights principles in relation to the death penalty. They highlight the growing international consensus against capital punishment, emphasising its incompatibility with human rights standards.

SOERING V. UNITED KINGDOM (1989) ANALYSIS

In *Soering v. United Kingdom* (1989) 11 EHRR 439, the European Court of Human Rights (ECHR) considered whether the extradition of a German national, Jens Soering, from the UK to the United States, where he faced the death penalty, would violate Article 3 of the European Convention on Human Rights (prohibition of torture, inhuman or degrading treatment or punishment). The Court held that while the death penalty itself was not inherently a violation of Article 3, the "death row phenomenon" - the prolonged period of time spent awaiting execution under harsh conditions, coupled with the intense psychological distress - could constitute inhuman and degrading treatment. The court considered the circumstances of the case, the character of the applicant and the length of detention on death row in the USA and found that the applicant would face a real risk of being exposed to inhuman and degrading treatment or punishment in violation of Article 3. The Court ordered that the United Kingdom not to extradite the applicant to the United States. The Soering case established a significant precedent, highlighting that even if a state does not directly inflict torture or inhuman treatment, it can be held responsible for exposing an individual to such treatment by extraditing them to another jurisdiction.

In Zimbabwe, the principles of *Soering v. United Kingdom* are relevant when considering extradition requests to countries with the death penalty. Zimbabwe's Constitution prohibits torture or cruel, inhuman, or degrading treatment or punishment. Therefore, extraditing an individual to a jurisdiction where they face the "death row phenomenon" would be a violation of their constitutional rights. Zimbabwean courts must assess the risk of prolonged detention, harsh conditions and psychological distress associated with death row and refuse extradition if this risk is deemed substantial. This requires a thorough examination of the legal system and prison conditions in the requesting country, ensuring Zimbabwe upholds its human rights obligations.

JUDGE V. CANADA (2003) ANALYSIS

In *Judge v. Canada* (2003) CCPR/C/78/D/829/1998, the UNHRC considered the case of a man who faced deportation from Canada to the United States, where he could face the death penalty. The Committee found that Canada had violated Article 6 of the ICCPR (right to life) by deporting the individual without seeking assurances from the US that the death penalty would not be applied. The Committee emphasised that states have an obligation to protect individuals from foreseeable risks to their right to life, even if those risks originate from the actions of another state. The Committee held that, as a state party to the Covenant, Canada had an obligation not to expose a person to a real risk of a violation of Article 6 of the Covenant in another country. Accordingly, before deporting an individual such as Judge to the United States, Canada was required to obtain assurances that the death penalty would not be imposed. The case further solidified the principle of state responsibility in cases involving the death penalty and extradition/deportation.

In Zimbabwe's context, this principle raises significant concerns. Imagine Zimbabwe deporting an individual to a country where they face a real risk of the death penalty. Following the logic of *Judge v. Canada*, Zimbabwe would be obligated to seek assurances from that country that the death penalty will not be applied. Failure to do so would constitute a violation of Article 6 of the ICCPR, to which Zimbabwe is a party, regardless of whether Zimbabwe itself still retains the death penalty in its laws. This obligation extends to any scenario where Zimbabwe's actions could foreseeably lead to an individual facing capital punishment elsewhere.

Applying the *Judge v. Canada* ruling, Zimbabwe must scrutinise its extradition treaties and practices. Currently, despite its moratorium on executions, Zimbabwe retains the death penalty. Therefore, Zimbabwe is obligated to incorporate guarantees against the death

penalty into any extradition agreements. This would require actively seeking assurances from receiving states, even if those states generally adhere to fair trial standards. Anything less would compromise Zimbabwe's commitment to the ICCPR and potentially expose individuals within its jurisdiction to a grave violation of their fundamental right to life in another country.

ÖCALAN ANALYSIS

The case of Abdullah Öcalan, the leader of the Kurdistan Workers' Party (PKK), is a landmark case in the ECHR's jurisprudence, emphasising the growing consensus against the death penalty. Öcalan was sentenced to death in Turkey in 1999. Turkey abolished the death penalty in 2002, commuting Öcalan's sentence to life imprisonment. The ECHR held that, even though the death penalty was not carried out, the initial death sentence and the period spent awaiting execution constituted inhuman treatment, violating Article 3 of the ECHR (*Öcalan v. Turkey* (2005) 41 EHRR 45). The Öcalan case is significant because it highlights the psychological torment associated with facing execution, even if the execution is ultimately not carried out. The ECHR recognised this as a separate form of ill-treatment, reinforcing the argument that the death penalty is inherently cruel and inhuman. The case also underscored the importance of abolition and the irreversible nature of the death penalty.

The Öcalan case offers a potent argument against the death penalty in Zimbabwe, even without considering actual executions. Zimbabwe's lengthy delays in carrying out death sentences, with inmates languishing on death row for years, creates a similar psychological torment as that experienced by Öcalan. The ECHR's recognition of this pre-execution suffering as a violation of human rights (akin to torture or inhuman treatment), directly challenges Zimbabwe's current practice. Even if executions are infrequent or ultimately commuted, the mere imposition of a death sentence and

the ensuing wait constitutes a form of cruel and unusual punishment, potentially violating constitutional protections against inhumane treatment.

RESEARCH METHODOLOGY

This research on capital punishment in Zimbabwe employs a multifaceted approach, combining desktop research, qualitative methods and interpretivist philosophy. Extensive desktop research of scholarly articles, legal texts, government reports and human rights documentation provides vital insights into existing frameworks and critiques. A qualitative approach captures public perception and expert opinions, uncovering meanings that quantitative methods may miss. The interpretivist philosophy emphasises understanding social phenomena through the lens of participant's perspectives, crucial in Zimbabwe's context where cultural, historical and political factors influence attitudes toward the death penalty.

FINDINGS AND EMERGING ISSUES

The research on capital punishment in Zimbabwe reveals a complex interplay of legal, societal and human rights perspectives. Interviews highlighted the past legal ambiguities surrounding its application, raising concerns about due process and fairness, particularly regarding wrongful convictions and inadequate legal representation for marginalised groups. Societal attitudes are divided, with some supporting the death penalty as a crime deterrent and a means of ensuring social safety. However, a significant portion, especially among the youth and civil society, advocates for abolition, emphasising rehabilitation and improved social services over retribution. Human rights activists consistently criticise capital punishment as contravening international human rights norms, violating the right to life and disproportionately affecting vulnerable populations, further complicating the debate.

DISCUSSION

Interviews and research highlight a pivotal moment for abolishing capital punishment in Zimbabwe, revealing tension between the desire for justice and human rights compliance. While fears about crime drive much of the discourse, it is crucial to examine these fears against justice and dignity. Zimbabwe's international human rights commitments, particularly the ICCPR, advocate for abolishing the death penalty. Studies suggest the death penalty does not reduce crime, highlighting the need for preventive measures. Public discourse on abolition offers opportunities for societal growth, with civil society playing a vital role in advocating for restorative justice.

The burgeoning movement to abolish capital punishment in Zimbabwe reflects a critical juncture where domestic legal reforms, judicial precedent and international human rights norms converge. While concerns about rising crime rates fuel some support for the death penalty, potentially undermining the right to dignity and justice for all, Zimbabwe's commitment to international treaties, particularly the ICCPR, pushes for abolition. These obligations are rooted in the UN Charter and further elaborated in documents like the UDHR.

The newly enacted Death Penalty Abolition Act of 2024 signifies a significant step aligning local law with international standards and Chapter 4 of the Zimbabwe Constitution. This legislative shift echoes the abolitionist trend sweeping across the SADC region, reinforcing the regional commitment to human rights (Smith, 2023). Landmark cases such as *S v Makwanyane* (1995) in South Africa, while not directly binding, provide persuasive precedent advocating for the inherent right to life, as seen in *Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State* (1991), where human dignity was prioritised.

The international legal landscape further supports the abolitionist stance. Cases like *Soering v. United Kingdom* (1989) and *Judge v.*

Canada (2003) demonstrate the growing reluctance to extradite individuals to face capital punishment due to concerns about cruel and unusual punishment, raising questions about Zimbabwe's obligations under International Law (Nowak, 2005). The analysis of cases such as that of Öcalan, indicates evolving standards of human rights and the possibility of reforming the most reprehensible offenders. It is pertinent to note that studies continue to indicate that capital punishment does not lower crime rates; therefore, alternative preventative methods need investigating (Durlauf and Nagin, 2011).

The abolition of the death penalty presents Zimbabwe with a unique opportunity to foster societal growth and cultivate a culture of restorative justice. Civil society organisations play an important role in advocating for alternative sentencing and rehabilitation programmes. Public debate about abolition promotes increased awareness, further allowing for dialogue about justice, fairness and human rights.

Ultimately, Zimbabwe's transition away from capital punishment signifies a commitment to aligning its legal system with evolving international human rights norms. By embracing abolition, Zimbabwe demonstrates its dedication to upholding human dignity and promoting a more just and equitable society, fostering the growth of a society that values rehabilitation over retribution and ensures that the rights of all citizens are protected.

CONCLUSION

Zimbabwe's recent abolition of capital punishment signifies a major advancement in its human rights record, stemming from constitutional reforms, judicial decisions and the impact of international human rights standards. The 2013 Constitution, unlike its predecessor, implicitly disallows the death penalty through its guarantee of fundamental rights, reflecting changing societal values that increasingly recognise the right to life. International human

rights treaties, to which Zimbabwe is a signatory, further bolster this shift. Treaties like the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, which prohibit the use of the death penalty, have been influential in shaping Zimbabwe's stance.

RECOMMENDATIONS

To strengthen the interlink between domestic and international law in Zimbabwe, it is crucial to incorporate more international treaties, such as the Second Optional Protocol to the ICCPR and provide judicial training on applying international human rights in domestic cases. Simultaneously, safeguarding *Ubuntu* and cultural values, requires framing reforms in ways that resonate with local traditions, like emphasising *Ubuntu's* restorative justice and engaging traditional leaders. Addressing incompatibilities necessitates dialogue between human rights advocates and cultural leaders, particularly on sensitive issues like gender equality, alongside gradual reforms that allow for cultural adaptation and public education to ensure legitimacy and acceptance.

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