

**PRESENTATION BY HONOURABLE E. D. MNANGAGWA,
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PARLIAMENTARY AFFAIRS ON THE OCCASION OF THE 9TH
INTERNATIONAL MEETING OF THE MINISTERS OF
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Salutations

Warm greetings to you all,

It is indeed an honour for me to be invited to such an auspicious occasion where leaders from various nationalities across the globe have converged to discuss one of the most profound and critical elements **universal** in most criminal justice systems of the world - the issue of the death penalty. Indeed, positive responses to your invitation as shown by the large numbers of the national leaders that have converged at this meeting is testament of the great importance the world attaches to the **right to life**.

Chairperson,

Like those who have spoken before me, let me also take this opportunity to thank the Sant Egidio Community for organizing this important event. I strongly believe the event provides the necessary platform for the exchange of views among the national leaders regarding the death penalty which in turn will help inform our national processes when

policy considerations on the subject matter at hand are taken. Let me also thank the framers of this year's working theme "**A World Without the Death Penalty – No Justice Without Life**", which in my humble opinion already provides the **impetus** that we need to take as nations in reforming our national criminal justice systems. Indeed it is not by accident that this event is taking place in Rome for we all know that legal traditions of most jurisdictions are firmly rooted in Roman law.

Chairperson, Dear Colleagues,

The discussions about the death penalty as a form of justice are as old as the origins of the law itself. One is always reminded of the Mosaic Law that says "*An eye for an eye and a tooth for a tooth*". It is unassailable that for many years the death penalty was almost universally accepted as one of the punishments available in the criminal justice systems for the committal of some horrible and heinous offences against mankind. However, because of the imperfections inherent in most criminal justice systems which in some countries led to the wrongful convictions and imposition of capital punishment, some countries started to move away from the death penalty. The call for total abolition of the death penalty, the world over, became more pronounced with the proliferation of human rights instruments at both regional and international level (such as the Universal Declaration of Human Rights) and also the subsequent

permeation of these international human rights norms in national legal systems.

Chairperson, Distinguished participants

With these few general comments, I now wish to turn to the Zimbabwean situation. Zimbabwe's national legal system in its statute books right from the supreme law of the land, the Constitution, to a number of Acts of Parliament, still recognises the death penalty. In 2013, the Republic of Zimbabwe adopted a new Constitution which was a product of the inclusive participation by all citizens. The 2013 Constitution making process offered a golden opportunity for the nation to decide on the abolition of the death penalty but the majority of the people, during the referendum for the adoption of this first **home-grown** Constitution, voted for the continued existence of capital punishment in our statute books. The Constitution in its section 48 provides for the right to life. It categorically states that "every person has a right to life". However, there is derogation to this right which restricts the death penalty to murder committed in "aggravating circumstances". The Constitution leaves the defining of what constitutes "aggravating circumstances" to an Act of Parliament.

Further, the Constitution in section 48 (c) excludes certain categories of persons from the death penalty. These are as follows:

a) Persons below 21years:

Any person who is below the age of 21 cannot be executed in terms of the Constitution. This is in conformity to Zimbabwe's international obligations as a party to the International Covenant on Civil and Political Rights (ICCPR), which prohibits the execution of juveniles.

b) Women

All women cannot be executed. The Criminal Procedure and Evidence Act used to limit this exception to pregnant women only. Again, this is in conformity with Zimbabwe's international obligations as a party to the ICCPR, which prohibits the execution of women.

c) The Elderly

Persons over the age of 70 cannot be executed.

The Constitution in section 112, further provides that any person sentenced to death has a right to seek a presidential clemency or commutation of the penalty. The President, in consultation with Cabinet, has the power to stay the execution of a prisoner under sentence of death. This is a right available to every prisoner facing a death sentence and indeed a significant number of prisoners have benefited from exercising their rights in terms of this provision. By way of statistics, from the year 2013 to date a total number of 4 prisoners had their

sentences commuted to life imprisonment after their pleas for presidential pardon were granted.

Distinguished Colleagues

In summary, I must hasten to say that a cursory examination of the legislative history of Zimbabwe in so far as the death penalty is concerned demonstrates that the country is making significant strides towards the elimination of capital punishment. The exclusion of all women and the increase of the minimum age of execution from 18 to 21 years under the current Constitution of Zimbabwe is a positive step towards the abolition of the death penalty in Zimbabwe. Under the old legal regime before the current Constitution was adopted, the exception to capital punishment only applied to pregnant women and persons below 18 years of age.

However, a lot of criticism has been levelled against the country to the effect that these constitutional provisions, instead of promoting gender balance under the criminal justice system, are actually discriminatory against male offenders. This discriminatory provision was maintained at the referendum after the realization by the majority that the most heinous and ruinous offences were actually at the instigation of the males than females. As leaders in government we take note of these concerns and at the opportune time, surely we will not hesitate to expunge capital

punishment from our laws. My Ministry has launched a campaign to educate the people about the Constitution. During these awareness campaigns, I always emphasise, on the need to abolish the death penalty.

Dear Colleagues,

Zimbabwe has 5 statutes that contain provisions on the death penalty and these are as follows:

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

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

The Genocide Act [*Chapter 9:20*]

Defence Act [*Chapter 11:02*]

The Geneva Conventions Act [*Chapter 11:06*]

The government, through my Ministry, is currently in the process of aligning all the laws of the country to be in conformity with the Constitutional provisions. The above cited laws are part of the alignment process but are at different stages of the process.

Chairperson, Distinguished Colleagues,

Zimbabwe is fully aware of, and committed, to its obligations under the various international human rights instruments she has ratified and acceded to. As noted earlier on in my presentation, several steps have been taken to ensure that the national law is in conformity with international human rights norms especially the ICCPR.

The country underwent the peer review process under the auspices of the UN Human Rights Council, wherein it accepted most of the recommendations to improve the human rights situation. One such recommendation it accepted was in relation to the abolition of the death penalty. The country also accepted recommendations to “consider ratifying” the Second Optional Protocol to the ICCPR and to “take measures” to abolish the death penalty. As I have alluded to above, the referendum for the adoption of the new constitution was a missed opportunity for the total abolition of capital punishment although some measure of progress towards this ultimate goal was achieved.

Ladies and Gentlemen,

I wish to conclude my presentation by quoting the words of wisdom from one eminent legal mind, Justice Chaskalson, who is a former Chief Justice of the South African Constitutional Court. In the historic opinion banning the death penalty under the new South African Constitution in the celebrated case of the State v Mkwanyane (1995), he had this to say,

The rights to life and dignity are the most important of all human rights And this must be demonstrated by the State in everything that it does, including the way it punishes criminals.

These words resonate well with our commitment as a country to eventually abolish the death penalty. This is becoming increasingly

important as the objective of the criminal justice system is now being viewed more from a rehabilitative point of view than an incarceration and retributive perspective. As we are going through the legislative review exercise, the Constitution will again be under the spotlight and the provisions on the death penalty will surely be revisited. I am still positive and hopeful that as a nation we will surely, in the not so distant future, be able to eradicate capital punishment from our statute books.

Having survived the death penalty myself, I know the tribulations faced by those on death row. The moment a sentence is pronounced that you are going down the trenches; the whole world collapses on you. It is a torrid moment, very unpleasant and frightening despite the evils one might have committed in one's life. I, therefore, strongly believe that taking of one's life, no matter the gravity of one's crime, does not serve any justice at all and only our Maker should have the right to decide our fate as human beings. The death penalty, in fact, is a flagrant violation of the right to life and dignity!

I thank you.