

Changing the Game: Striking Down Section 121 of Zimbabwe's Criminal Procedure and Evidence Act

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Abstract

The dawn of a new constitutional framework instils hope and expectation that pre-existing bad laws will be wiped off the legislative book or be aligned with the new constitutional order. In early 2013, Zimbabwe voted for a new Constitution which was eventually passed as Constitution of Zimbabwe Amendment No. 20. From a strictly legalistic perspective, section 121 of Zimbabwe's Criminal Procedure and Evidence Act (CPE) is seen as an embarrassing attack on the rights to liberty and fair trial deeply entrenched in Zimbabwe's criminal justice system. The esteemed value of these specific rights is acknowledged in most constitutions of the world and thus any debates about these rights no longer stir interesting controversies. However, it is the gradual erosion of these rights by section 121 of the CPE that causes discomfort; the implications of this section on Zimbabwe's constitutional landscape create deep anxiety and cause for concern, and for this reason, deserve critical analysis. This article provides a critical analysis of the implications of section 121 of Zimbabwe's Criminal Procedure and Evidence Act on Zimbabwe's constitutional geography. In particular, it examines the nature of the statutory provisions relating to bail proceedings as guaranteed in the Constitution of Zimbabwe and given statutory effect by the Criminal Procedure and Evidence Act. It will be argued that the section is not only difficult to justify in a society which purports to be founded on a constitutional system that respects fundamental rights and freedoms, but is an outdated relic of a repressive political and legal system that ceased to exist by the dawn of constitutional democracy in 1980.