



Zambia Law Development Commission

REVIEW OF THE PENAL CODE ACT, CHAPTER 87 OF THE LAWS OF ZAMBIA AND THE CRIMINAL PROCEDURE CODE ACT, CHAPTER 88 OF THE LAWS OF ZAMBIA

PROJECT REPORT



Plot No. 24F Cheetah Road, Kabulonga
P O Box 34670 LUSAKA



ZAMBIA LAW DEVELOPMENT COMMISSION

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ABOUT THE ZAMBIA LAW DEVELOPMENT COMMISSION

The Zambia Law Development Commission (ZLDC) is a body established by an Act of Parliament, the Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia. The primary mandate of the ZLDC is law reform.

The functions of the Commission are to:

- (i) recommend the revision and reform of the law in Zambia;
- (ii) recommend the codification of unwritten laws in Zambia;
- (iii) review and consider proposals for law reform referred to the Commission by the Minister or the members of the public;
- (iv) hold seminars and conferences on legal issues;
- (v) translate any piece of legislation into local languages; and
- (vi) to research and make recommendations on:
 - a) the socio-political values of the Zambian people that should be incorporated into legislation;
 - b) the anomalies that should be eliminated from the statute book;
 - c) new and more effective methods of administration of the law and the dispensation of justice that should be adopted and legislated;
 - d) the removal of archaic pieces of legislation from the statute book;
 - e) new areas of the law that should be developed which are responsive to the changing needs of the Zambian society.
- (vii) encourage international co-operation in the performance of its functions under this Act; and
- (viii) do all such things incidental or conducive to the attainment of the functions of the Commission.

The Zambia Law Development Commission is headed by a Commission comprising the following members:

- | | |
|---|---------------|
| Supreme Court Judge | - Chairperson |
| Representative of the Attorney General | -Commissioner |
| Representative, School of law Public University | -Commissioner |
| Permanent Secretary Legal Matters Ministry of Justice | -Commissioner |
| Representative, Ministry of Finance | -Commissioner |
| Representative Responsible for National Guidance | -Commissioner |
| Representative Law Association of Zambia | -Commissioner |
| Representative School of Law Private University | -Commissioner |
| Three Representatives from Research Institutions | -Commissioner |
| Two Persons with Knowledge of the ZLDC Act | -Commissioner |

The law reform project on the review of the Penal Code Act and the Criminal Procedure Code Act was led by a Technical Committee appointed by Cabinet, whose membership was as follows:

Honourable Mr. Justice Chalwe Mchenga	- Chairperson
Honourable Mr. Justice Kelvin Muzenga	-Member
Mr. Chipalo Bako	-Member
Ms. Maimbo S. Ziela	-Member
Mr. Tembo Simon M.	-Member
Mr. Raphael Mungole	-Member
Ms.Mwenya Bwalya	-Member

FOREWORD

The primary Act that codifies criminal offences and provides for their corresponding penalties is the Penal Code Chapter 87 of the Laws of Zambia (PC). The primary Act that prescribes the process to be followed during the course of criminal proceedings- the arrest, trial and sentencing of a person who has been accused of having committed a crime is the Criminal Procedure Code, Chapter 88 of the Laws of Zambia (CPC).

Besides the PC and CPC, there other Acts focused on particular areas of the law that provide for criminal offences and criminal procedure. These specialised Acts are concerned with, *inter alia*, money laundering; motor vehicle use; terrorism financing and proliferation activities; corruption; banking and financial services; tax; marriage; and narcotic and psychotropic substances.

In 2011, the Minister of Justice instructed the Zambia Law Development Commission (ZLDC) to undertake a project to review the Penal Code Act and the Criminal Procedure Code Act and related legislation. This review was prompted by an outcry from stake-holders in the criminal justice system who observed that criminal offences had been duplicated in different Acts and had conflicting penalties; and that the criminal legal framework in Zambia was inconsistent with international law and best practice.

In 2016, the Cabinet appointed a Technical Committee of experts in criminal law to provide oversight to the law review process and to make recommendations.

This report outlines the law review process which included a desk study; comparative study visits; focus group discussions in the form of stakeholder consultative meetings and stakeholder validation meetings; Technical Committee meetings; and meetings to draft legislative amendments. It further outlines the recommendations of stakeholders, the Technical Committee and the ZLDC.

It is our hope as a Technical Committee, and on behalf of the Commission that this process shall contribute to the development of a suitable legislative framework for the criminal justice system.

Honourable Mr. Justice Chalwe Mchenga

CHAIRPERSON TECHNICAL COMMITTEE ON THE REVIEW OF PENAL CODE ACT AND CRIMINAL PROCEDURE CODE ACT

ACKNOWLEDGMENTS

The Zambia Law Development Commission would like to thank the Ministry of Justice for entrusting it with the great responsibility of carrying out this law review process.

This report and the accompanying draft Bills are the outcome of consultations undertaken with stakeholders in the criminal justice system. The dedication of these stakeholders to the development of the criminal legal framework is commendable and highly appreciated.

The Commission is grateful to the United Nations Development Program and the German Agency for International Cooperation for facilitating the law review process through financial support. Their continued partnership with the ZLDC over the years has contributed to the development of the Zambian legal system.

The Commission would also like to acknowledge the input of the Technical Committee Chaired by Honourable Mr. Justice Chalwe Mchenga, who shared their immeasurable knowledge and experience working in the criminal justice system. Without the Committees guidance, the final outputs of this process would lack in quality and content.

**Hope M. Ndhlovu-Chanda (Mrs.)
Director/Commission Secretary**

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1. INTRODUCTION

Criminal law can be defined as a system of laws that consist of general directions telling people what they must or must not do, and the consequences for failure to follow the directions¹

The primary Act that codifies crimes and provides for their corresponding penalties is the Penal Code Chapter 87 of the Laws of Zambia (PC). Further, the primary Act that prescribes the process to be followed during the course of criminal proceedings- the arrest, trial and sentencing of a person who has been accused of having committed a crime is the Criminal Procedure Code, Chapter 88 of the Laws of Zambia (CPC).

Besides the PC and the CPC, there other Acts focused on particular areas of the law that codify criminal offences, provide for their penalties and provide for aspects of criminal procedure. These specialised Acts are concerned with, inter alia, trafficking and use of narcotic and psychotropic substances; corruption; money laundering; motor vehicle use; terrorism financing and proliferation activities; public gatherings; tax; marriage; environmental protection; electronic communications and transactions; and mining and exploration.

The criminal justice system is founded upon the Constitution of Zambia. Article 193 of the Constitution establishes the Zambia Police Service (ZPS) as a national security service, whose function is to detect and prevent crime. The ZPS is therefore concerned with the investigation of offences and the apprehension of suspects. Article 180 of the Constitution establishes the office of the Director of Public Prosecutions (DPP) as the chief prosecutor for the Government and head of the National Prosecutions Authority (NPA). It states that the DPP may institute and undertake criminal proceedings, take over and continue criminal proceedings, and discontinue criminal proceedings at any stage before judgement is delivered.

The ability to defend oneself in criminal proceedings is a human right. Article 18 of the Constitution states that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty. He/she shall be given adequate time and facilities for the preparation of his defence and shall unless legal aid is granted him, be permitted to defend himself before the court in person or at his own expense by a legal representative of his own choice.

¹https://www.law.cornell.edu/wex/criminal_law

Part VIII of the Constitution establishes the Judiciary. Article 119(2) states that one of the functions of the Judiciary shall be to hear criminal matters. The courts that have criminal jurisdiction include the Subordinate Court which is a court of original jurisdiction; the High Court which has both original and appellate jurisdiction; and the Court of Appeal and the Supreme Court which have appellate jurisdiction.

At the conclusion of trial, the court may find the accused person not guilty and acquit that person, or make a guilty finding and convict him or her. The punishments that may be inflicted by a court include death; imprisonment; fine; forfeiture; payment of compensation; finding security to keep the peace and be of good behaviour, or to come up for judgement; and deportation.² Where a person is sentenced to imprisonment, Article 193 of the Constitution establishes the Zambia Correctional Service as a national security service. It is responsible for, among other things, the custody of persons sentenced to imprisonment.

1.1. Background and Rationale of Investigation

The PC was enacted in 1931, replacing the English common law that had been in force up to that time. The CPC was then enacted in 1933 to facilitate the application of the PC. The PC and the CPC have never been comprehensively reviewed since they were enacted.

In 2011, the Minister of Justice instructed the ZLDC to undertake a project to review the PC and the CPC and related legislation. This review was prompted by an outcry from stake-holders in the criminal justice system who observed the following issues:

a. Archaic provisions

The PC and the CPC have never been comprehensively reviewed since they were enacted in 1930 and 1933 respectively. As a result, the Acts have archaic provisions that do not reflect contemporary times.

b. Duplicity

Over the years, numerous laws that contain criminal offences and penalties have been enacted without harmonising the same with the PC. This has resulted in duplicity of offences; and conflicting criminal procedure and penalties.

² PC, Section 24

c. Colonial legacy

The PC and the CPC were enacted by the colonial government. There was a need for the country to enact a law that is born out of, and reflective of the social and political values of the Zambian people.

d. Lacunae in the law

Stakeholders observed gaps in the two Acts, and the need to introduce appropriate provisions.

1.2. Objectives of the Project

The main objective of the law review process is to develop comprehensive criminal legislation.

The specific objectives are to:

- (i) address the question of whether to consolidate all offences in the PC and all criminal procedure in the CPC;
- (ii) identify and remove archaic provisions in the PC and the CPC;
- (iii) identify lacunae in the law in order to introduce suitable provisions;
- (iv) harmonise the two pieces of legislation with other existing pieces of legislation;
- (v) identify and recommend the adoption of international and regional best practice; and
- (vi) recommend the domestication of international and regional instruments.

1.3. Methodology

In order to achieve the project objectives, the Commission used the qualitative method of data collection and analysis. This included a desk study, comparative study visits, focus group discussions in the form of stakeholder consultative meetings and stakeholder validation meetings; Technical Committee meetings and drafting meetings.

Under the desk study, the Commission reviewed data sources including international and national law. From international law, the Commission reviewed Declarations, Conventions and Covenants. At national level, the Commission reviewed the Constitution, subordinate legislation, subsidiary legislation, judicial precedents and policies. A review of related legislation in other jurisdictions with progressive criminal law

systems was also carried out to assist with the identification of international best practises.

At the request of the Commission, in 2016, Cabinet appointed a committee of experts in criminal law to provide oversight to the law review process and to make recommendations.³ Technical Committee meetings were held throughout the review process.

The ZLDC conducted stakeholder consultative and validation meetings, and issued a public call for submissions. The stakeholders that participated in the process included representatives from regional organisations, government ministries and departments, the Judiciary, the Law Association of Zambia, civil society organisations, and academia. These meetings were designed as a technical exercise to deliberate on problematic areas and to propose solutions.

Stakeholders identified Canada, Hong Kong, Australia, Uganda, South Africa and Zimbabwe as countries from which Zambia could adopt best practice. Comparative study visits to these countries were subsequently undertaken, and researchers conducted interviews with the relevant officials at the key institutions.

The Commission further constituted a team,⁴ to draft proposed amendments to the PC and the CPC. The draft PC and CPC Bills with amendments were subjected to stakeholder consultations, stakeholder validation meetings and were reviewed by the Technical Committee.

2. LEGAL FRAMEWORK

The ‘legal framework’ refers to the laws applicable to the country, that govern the rights and responsibilities of the government and the citizens. The legal framework is discussed under two components- international and regional instruments, and domestic legislation.

In terms of international and regional instruments, Zambia is a party to a number of instruments that embody principles and standards relating to the criminal legislation. These instruments serve as benchmarks and can provide a framework upon which the state can base evidence based practice.

³ See Annex 1

⁴ See Annex 2

In terms of domestic legislation, the state has enacted the PC and the CPC, as well as other specialised laws that proscribe certain acts as criminal, and provide for criminal procedure.⁵

2.1. INTERNATIONAL AND REGIONAL INSTRUMENTS

Zambia is a signatory to various international and regional instruments that impact on criminal legislation. This part discusses the instruments to which Zambia is a party, providing an analysis as to the adequacy of the domestic legal framework vis-à-vis the international and regional standards. This part further highlights the legal provisions in foreign countries that have domesticated the instruments.

The relevant international instruments include–

i. International Covenant on Civil and Political Rights

The Covenant commits State Parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, and rights to due process and a fair trial.

This is a legally binding instrument which Zambia is a party to.

Article 9

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

Article 14

- 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*

Article 19

- 1. Everyone shall have the right to hold opinions without interference.*

Comment-

(a) Non-Bailable Offences

⁵ The areas of focus under the international, regional and national law were informed by issues raised by stakeholders during the consultative process.

Section 123(1) of the CPC provides that a person charged with murder, treason, misprision of treason or treason felony, aggravated robbery and theft of motor vehicle (unless accused is a first offender), shall not be granted bail.

However, the Human Rights Committee, in General Comment number 35,⁶ stipulates that pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. It must be based on an individualised determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.

The laws in the United Kingdom and in South Africa are more consistent with the International Covenant on Civil and Political Rights as they provide for the general right to bail. However, in serious offences, in order to be granted bail, the accused person would have to show that special circumstances exist which justify admission to bail.

In the United Kingdom, s. 4 of the Bail Act 1976, provides that on each occasion that a person is brought before a court accused of an offence, or remanded after conviction for enquiries or a report, that person must be granted bail without condition if none of the exceptions to bail apply. The general right to bail does not apply where the accused person is charged with murder, manslaughter or a serious sexual offence, except where there are exceptional reasons to justify it.

In South Africa, section 59 of the Criminal Procedure Act states that an accused who is in custody in respect of any offence, other than an offences such as treason, sedition, murder, rape, arson and child stealing may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official. Section 60 provides that where the accused person is charged with the aforementioned offences, bail may only be granted by the Court where the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release.

(b) Mandatory Minimum Sentencing

The PC provides for mandatory minimum sentences, in, inter alia, section 138 prohibiting defilement, section 201 providing a punishment

⁶ ICCPR Article 9 (Liberty and security of person)

for the offence of murder, Section 275 prohibiting stock theft, section 281A prohibiting theft of a motor vehicle and section 294 prohibiting aggravated robbery.

The Law Council of Australia found that mandatory minimum sentences are inconsistent with international obligations, including the prohibition against arbitrary detention as contained in Article 9 of the ICCPR, because the sentence imposed can result in disproportionate sentences; and the provision that prison sentences must in effect be subject to appeal as per Article 14 of the ICCPR, as it prevents substantial review of the penalty⁷.

While many countries have maintained mandatory minimum sentences in their legislation, in some countries, the legislation allows the courts discretion to pass a sentence below the minimum mandatory sentence. This usually means that courts are permitted to consider mitigating factors relating to the offence or the offender, in some cases, as long as the judge provides written reasons for doing so⁸.

For instance, in South Africa, the law provides for minimum sentences for offences such as murder, rape, robbery and serious economic crimes. However, section 51(3)(a) of the Criminal Law Act contains a clause that allows the court to impose a lesser sentence in cases where substantial and compelling circumstances exist that justify the imposition of a lesser sentence. In ***S v. Malgas 2001 (1) SACR 469 (SCA)***, the Court held that if the prescribed sentence would result in an injustice, this would amount to a substantial and compelling circumstance.

In New Zealand the Sentencing Act 2002, provides for, inter alia, the principles of sentencing; types of sentences that may be imposed by the court; the impact of an offer or an agreement to make amends on sentencing; and additional consequences for repeated serious violent offending. Section 16 of the Act illustrates the country's disinclination for imprisonment. It states that “*When considering the imposition of a sentence of imprisonment for any particular offence, the court must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community*”. For serious offences like murder, section 104 of the Act provides for a mandatory minimum sentence of 17 years, unless the Court is satisfied that it would be manifestly unjust to do so.

⁷ Law Council of Australia Mandatory Sentencing Discussion Paper, May 2014

⁸ Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models retrieved from https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr05_10/p9.html on 18/01/22

In Queensland Australia, sentencing is regulated by the Penalties and Sentences Act, 1992. This statute contains the purposes of sentencing, as well as sentencing principles. It contains no mandatory minimum sentences of imprisonment. However, Western Australia, Northern Territory and Victoria do have mandatory minimum sentences.

(c) Criminal defamation/Insult laws

Section 68 of the PC prohibits insulting the national anthem; section 69 of the PC prohibits defamation of the President; section 71 of the PC prohibits defamation of foreign princes; and chapter XVIII of the PC provides for the offences of criminal defamation and libel.

The Human Rights Committee observed the following, in General Comment No. 34,⁹ -

“in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.

The Committee expresses concern regarding laws on such matters as, lese majesty, desecration, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned....

States parties should consider the decriminalisation of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”

It was found that there is a relatively recent trend to repeal criminal defamation in African countries. However, in some of these countries, repeal has been by way of a court decision that declares the provisions unconstitutional rather than legislative amendment.

For instance, Sierra Leone repealed its criminal defamation laws in 2020, through the repeal of the 1965 Public Order Act that criminalised libel and sedition. However, in Zimbabwe, in the case of ***Misa-Zimbabwe et al v Minister of Justice et al***, the Constitutional Court declared the offence of criminal defamation unconstitutional as it was inconsistent

⁹ ICCPR Article 19: Freedoms of opinion and expression

with the right to freedom of expression¹⁰. Similarly, in Lesotho, in the case of ***Peta v Minister of Law, Constitutional Affairs and Human Rights***, the Constitutional Court declared the provisions of the Penal Code Act void for being unconstitutional as they were in violation of the right to freedom of expression¹¹.

ii. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

This Protocol requires all state parties to take all necessary measures to abolish the death penalty within its jurisdiction. It is legally binding.

Zambia is not a party to the Protocol and therefore is under no obligation to domesticate it. However, the Protocol can serve as a benchmark and can provide a framework upon which the State can base evidence based practice.

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Comment:

The PC and the CPC have provisions allowing the court to pass the death penalty. These include-

PC

24. The following punishments may be inflicted by a court:

(a) death;...

CPC

303. When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead.

Section 305(4) of the CPC further states that the President will issue a death warrant to give effect to the death sentence. The warrant will state the place and time of execution, and will give directions as to the place of burial of the body of the person executed.

¹⁰ Constitutional Court of Zimbabwe, Case no. CCZ/07/15 (2015)

¹¹ Constitutional Court of Lesotho, Case no. CC 11/2016 (2018)

Whilst the courts continue to pass the death sentence in accordance with section 303 of the CPC, people who are sentenced to death are not executed but end up carrying out the equivalent of a life sentence¹². This is because no President has issued a death warrant under section 305(4) of the CPC, since 1997.

It was found that African countries are moving towards the abolishment of the death penalty following long periods of moratorium.

In 2021, the Sierra Leone Parliament unanimously voted in favour of a Bill to abolish the death penalty¹³. In South Africa, the death penalty was abolished by the Constitutional Court judgement in the case of ***The State V. Mukwanacase no.CCT/3/94***, where the Court held that the provisions of the Criminal Procedure Code Act which provided for the death penalty were inconsistent with the Constitution. Further, in Rwanda, the death penalty was abolished by Article 2 of the Organic Law n° 31/2007 of 25/07/2007.

iii. The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples Rights is a legally binding human rights treaty that guarantees certain human rights and fundamental freedoms for individuals. It also established the African Commission to oversee its implementation. Zambia is a party to this legally binding instrument.

Article 9

- 1. Every individual shall have the right to receive information.*
- 2. Every individual shall have the right to express and disseminate his opinions within the law.*

Comment-

Stakeholders submitted that offences relating to sedition in the PC compromise the freedom of expression. These provisions include-

57. (1) Any person who-

¹²In effect, inmates serve the 'life sentence' under death penalty restrictions, which include, wearing a white uniform; being confined separately from those serving other sentences; and not having access to reformatory amenities such as education and skills training as one is not intended to ever leave the Prison. However, they may be released from Prison by Presidential Pardon, which is provided for in the Constitution.

¹³ Sierra Leone Abolishes "Inhumane Death Penalty", retrieved from <https://www.france24.com/en/live-news/20211008-sierra-leone-abolishes-inhumane-death-penalty> on 18/01/22

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

(d) imports any seditious publication, unless he has no reason to believe that it is seditious;

is guilty of an offence and is liable for a first offence to imprisonment for seven years or to a fine not exceeding six thousand penalty units or to both; and any seditious publication shall be forfeited.

60. (1) A seditious intention is an intention-

(a) to advocate the desirability of overthrowing by unlawful means the Government as by law established; or

(b) to bring into hatred or contempt or to excite disaffection against the Government as by law established; or

(c) to excite the people of Zambia to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Zambia as by law established; or

(d) to bring into hatred or contempt or to excite disaffection against the administration of justice in Zambia; or

(e) to raise discontent or disaffection among the people of Zambia; or

(f) to promote feelings of ill will or hostility between different communities or different parts of a community; or...

The African Commission has said that any restrictions to freedom of expression should be the exception and are only allowed if a clear causal link can be demonstrated between the expression and the risk of harm to a legitimate interest. The authorities should not use laws, such as those concerning sedition (inciting others to rebel), against journalists or others who simply criticise government policies or publish well-documented accounts of corruption in government circles.¹⁴To ensure

¹⁴ A Guide to the African Charter on Human and Peoples' Rights, retrieved from <https://www.amnesty.org/download/Documents/76000/ior630052006en.pdf> on 2/06/21

that these laws are not subject to abuse, specific conditions must be satisfied therein.

In Ghana, the Criminal Code (Repeal of Criminal Libel and Seditious Laws) (Amendment) Act 2001 repealed the offences of criminal libel and sedition from the law, and executive powers in the Criminal Code that allowed the President to ban organisations, and to prohibit importation or publication of newspapers.

In the United States of America, in the state of Ohio, sedition is an offence. However, to protect against abuse, in the case of **Brandenburg v Ohio**,¹⁵ The court held that speech amounting to a seditious offence must satisfy the '*direct incitement and dangerous requirements*'. This test means that speech, on its own, is insufficient to invoke a seditious offence, the speech must be accompanied by additional conduct, such as the commission of other specific public order offences, in addition to general criminal law offences against person and property.

iv. United Nations Convention on the Rights of the Child

Through the adoption of this Convention, the United Nations fulfilled a promise to protect and fulfil the rights of children. Zambia is a party to this legally binding instrument.

Article 40(3)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

Comment-

Regarding the minimum age of criminal responsibility, the PC states that-

14. (1) A person under the age of eight years is not criminally responsible for any act or omission.

¹⁵ 395 US 444 (1969)

(2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

Although no age is stipulated in Article 40, the Committee on the Rights of the Child recommends that the minimum age of criminal responsibility be no lower than 14 years.

In General Comment No. 24 on children's rights in the child justice system, the Committee affirmed that "*documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention*".¹⁶

African countries that comply with the minimum age of criminal responsibility of 14 years include Congo (see Loi No. 4-2010 du 14 juin 2010 portant protection de l'enfant en République du Congo, in Article 73; and the Criminal Procedure Code, in Article 686), Rwanda (see the Penal Code Act, in Article 77) and Sierra Leone (see the Child Rights Act, in section 70.)

v. Declaration on the Elimination of Violence against Women

The Declaration on the Elimination of Violence against Women is the first international instrument explicitly addressing violence against women. It further provides a framework for national and international action. In the Declaration violence against women is defined as any act

¹⁶ General comment No. 24 (2019) on children's rights in the child justice system

of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Even though this instrument does not have the binding legal authority of a convention or treaty, it is universal in coverage and a strong statement of principle to the international community.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a)... **marital rape;**

Comment-

According to a study by the United Nations Secretary-General, “*the most common form of violence experienced by women globally is intimate partner violence*” including “*a range of sexually, psychologically and physically coercive acts.*” The World Health Organization reports that nearly one in four women in some countries may experience sexual violence perpetrated against them by an intimate partner. Other research suggests that approximately 40% of all assaulted women are forced into sex at one time or another by their male partners.¹⁷

The PC defines the offence of ‘rape’ as follows:

132. Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed "rape".

There is no provision in the PC that explicitly prohibits marital rape, and rape in the context of marriage has never been successfully prosecuted in Zambia. During stakeholder consultations, representatives from law enforcement agencies submitted that marital rape was not an offence.

¹⁷Criminalizing Sexual Violence Against Women in Intimate Relationships: State Obligations Under Human Rights Law, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/criminalizing-sexual-violence-against-women-in-intimate-relationships-state-obligations-under-human-rights-law/C5446B1270D4E947823B8E241F36D922> retrieved 19/11/19

This position is challenged by the Anti- Gender based violence Act,¹⁸ which recognises marital rape as a form of sexual abuse. Whilst this does not make marital rape an offence, a victim of marital rape could claim relief under the Act, which includes protection orders, and access to a shelter.

Marital rape is an offence in many countries, as it is prosecuted as rape. Some African countries have gone further to explicitly state that rape in the context of marriage is an offence.

For instance, in South Africa, section 5 of the Prevention of Family Violence Act specifically criminalises marital rape by stating that a husband may be convicted of raping his wife.

In Rwanda, the Law on Prevention and Punishment of Gender- Based Violence of 2008, establishes that both spouses have equal rights to sexual intercourse, reproductive health and family planning. It forbids sex with ones spouse without their consent.

In Lesotho, marital rape is specifically criminalised in the Penal Code Act. The Act further provides for the circumstances in which a spouse may withhold consent from sexual intercourse. These circumstances include, inter alia, sickness of a spouse, use of abusive language to acquire sexual intercourse, violence or threats to acquire sexual intercourse and sexual intercourse during separation from the husband or wife by judicial order.

vi. Convention on the Elimination of all Forms of Discrimination against Women

The Convention's aim is the elimination of all forms of discrimination against women, resulting from the activities or omissions on the part of States parties, their agents, or committed by any persons or organizations in all fields of life, including in the areas of politics, economy, society, culture, civil and family life. Its goal is the recognition and achievement of the de jure and de facto equality of women and men, which is to be achieved by a policy of elimination of all forms of discrimination against women incorporating all appropriate legislative and programmatic measures.

Zambia is a party to this legally binding convention.

Article 16

¹⁸ No 1 of 2011

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Comment-

With regards to the minimum age for marriage, under customary law, depending on the custom practised by a tribe, a child may marry upon puberty. Under statutory law, section 17 of the Marriage Act,¹⁹ states that where a party to an intended marriage is less than twenty-one years of age, the written consent of the parents or guardian shall be required before the marriage may be solemnised and a certificate issued.

Other relevant provisions to consider are the Penal Code Act on defilement and the Education Act on marrying and marrying off of a learner.

With regards to sexual intercourse with a child, the Penal Code Act states that-

138. (1) Any person who unlawfully and carnally knows any child under the age of sixteen years is guilty of a felony and is liable to imprisonment for life

With regards to marrying or marrying off of a child who is a learner, the Education Act stated that-

18. (2) A person shall not—

(a) marry or marry off a learner who is a child; or

(b) prevent or stop a learner who is a child from attending school for the purpose of marrying or marrying off the learner who is a child.

(3) A person who contravenes this section commits an offence and is liable, upon conviction, to imprisonment for a period of not less than fifteen years and may be liable to imprisonment for life.

It is apparent that for marriage contracted statutory law, there is no certain minimum age for marriage, except that there are restrictions when a party to an intended marriage is below the age of 21.

¹⁹ Chapter 50 of the Laws of Zambia

Further, under customary law, a person below the age of 16 years may marry. In reconciling this with the offence of defilement in section 138(1) of the PC, in the case of *R v Chinjamba*,²⁰ The court held that a man cannot be convicted of having unlawful carnal knowledge of a girl under the age of 16 if he is married to her. Therefore the term “unlawful” in the wording of the offence of defilement contemplates the lawful nature of sexual intercourse with a person below the age of 16 years, within the confines of a marriage.

The Education Act expressly prohibits a person marrying or marrying off a child (below the age of 16 years) that is enrolled at an education institution. The Education Act therefore complies with international law in as far as it prohibits marrying or marrying off of a child who is a learner. The law is inadequate in as far as it does not offer the same protection to a child that is not a learner.

It was found that many African countries are in a similar predicament as Zambia in relation to child marriage contracted under customary law. However, some countries have made strides to criminalise the vice.

In an effort to criminalise child marriages, the Child Rights Act of Nigeria, which was passed in 2003, sets the age of marriage at 18 years-old.

Similarly, in Malawi, the Constitutional Amendment Act No.36 amended the Constitution to the effect that 18 years would be the minimum age of marriage. This is also reflected in their Marriage, Divorce and Family Relations Act.

Kenya however, provides the most explicit provision against child marriages in the Children’s Act of 2001. Particularly, section 14 of the Act prohibits any person from subjecting a child to an early marriage or other cultural rites, customs or traditional practises that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development.

vii. Convention on the Rights of Persons with Disabilities

This Convention is a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with

²⁰ (1949) 5 N.R.L.R 394

disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms.²¹

Zambia is a party to this legally binding instrument

Article 4

General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

States are primarily responsible for transforming legislative, administrative and judicial practises, to empower persons with disabilities to exercise their rights.

However, section 139 of the PC states that:

“Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her in circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, is guilty of a felony and is liable to imprisonment for fourteen years.”

The terms ‘idiot’ and ‘imbecile’ are considered derogatory. Stakeholders further stated that the provision compromises the right to sexual and reproductive rights of persons with mental disabilities, because it is vague with regards to the type or extent of the disability.

In the United Kingdom, the Sexual Offences Act 2003, uses alternative and more acceptable terminology- “a mental disorder impeding choice”. Further, the sexual contact is only an offence where a person has a mental disorder impeding choice and the accused person could reasonably be expected to know this, and that because of it or for a reason related to it they are likely to be unable to refuse. “Unable to refuse” includes that the person lacks the capacity to choose whether to agree to the touching (whether because he/she lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or because they are unable to communicate such a choice to the accused person.

²¹Convention on the rights of Persons with Disabilities, retrieved from <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> on 4/06/21

vii. Principles on the Decriminalisation of Petty Offences in Africa

The African Commission on Human and Peoples' Rights has developed a number of instruments to aid in the interpretation and implementation of the African Charter on Human and Peoples' Rights, specifically relating to matters of criminal justice. In 2017, the Principles on the Decriminalisation of Petty Offences in Africa were adopted by the African Commission, becoming the latest development in a broader regional effort to articulate standards for acceptable human rights practices, specifically concerning matters of access to justice. This new soft law standard advocates for a holistic approach to the challenges that arise in Africa at the intersection between poverty, justice and human rights.

Whilst the Principles are not legally binding, they are a political commitment that can lead to law.²²

The Principles state that-

Petty offences are minor offences for which the punishment is prescribed by law to carry a warning, community service, a low-value fine or short term of imprisonment, often for failure to pay the fine. Examples include, but are not limited to, offences such as being a rogue and vagabond, being an idle or disorderly person, loitering, begging, being a vagrant, failure to pay debts, being a common nuisance and disobedience to parents; offences created through by-laws aimed at controlling public nuisances on public roads and in public places such as urinating in public and washing clothes in public; and laws criminalising informal commercial activities, such as hawking and vending. Petty offences are entrenched in national legislation and, in most countries, fall within the broader category of minor offences, misdemeanours, summary offences or regulatory offences;

3. Laws that create petty offences are inconsistent with the principles of equality before the law and non-discrimination on the basis that they either target, or have a disproportionate impact on, the poor, vulnerable persons, key populations or on the basis of gender.

Comment-

The PC provides for a number of offences that fall under the ambit of "petty offences". These include-

²² Soft Law, Dinah L. Shelton George Washington University Law School, retrieved from https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2048&context=faculty_publications on 4/06/21

178. *The following persons:*

(a) every common prostitute behaving in a disorderly or indecent manner in any public place;

(b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

(c) every person playing at any game of chance, not being an authorised lottery, for money or money's worth in any public place;

(d) every person wandering abroad and endeavouring by the exposure of wounds or deformity to obtain or gather alms;

(e) every person who, without lawful excuse, publicly does any indecent act;

(f) every person who publicly conducts himself in a manner likely to cause a breach of the peace; and

(g) every person who in any public place solicits for immoral purposes; are deemed idle and disorderly persons, and are liable to imprisonment for one month or to a fine not exceeding sixty penalty units or to both.

181. *The following persons:*

(a) every person convicted of an offence under section one hundred and seventy-eight after having been previously convicted as an idle and disorderly person:

(b) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(c) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself; and

(d) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose;

shall be deemed to be a rogue and vagabond, and are guilty of a misdemeanour and are liable for the first offence to

imprisonment for three months, and for every subsequent offence to imprisonment for one year.

It was found that some countries have repealed some petty offences, and have maintained others with wording that is less vague and discriminatory.

In Scotland, begging is not unlawful unless it is aggressive, in which case the police can intervene. Prostitution is prohibited, as is solicitation for sex in public, kerb crawling, and brothel-keeping, according to Section 46(1) of the Civic Government (Scotland) Act 1982.

In South Africa, Loitering is only an offence if it results in harassment, according to the Protection from Harassment Act 17 of 2011. Begging is not illegal in South Africa. Some provinces and areas have bylaws prohibiting begging on the streets and in public places to prevent "nuisances". The buying and selling of sex is illegal under Section 20 of the Sexual Offences Act of 1957.

2.2. DOMESTIC LEGISLATION

i. Constitution of Zambia

The Constitution is the supreme law of Zambia. It guarantees the enjoyment of human rights under the Bill of Rights for accused persons. Further, the Constitution forms the foundation for the criminal justice system.

The relevant provisions of the Constitution include the following:

Article 12: Protection of Right to Life

1. No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

Article 13: Protection of Right to Personal Liberty

1. No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases:

a. in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;

Article 14: Protection from Slavery and Forced Labour

2. No person shall be required to perform forced labour

3. For the purpose of this Article, the expression “forced labour” does not include—

a. any labour required in consequence of a sentence or order of a court;

Article 18: Provisions to Secure Protection of Law

1. If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

ii. Criminal Procedure Code Chapter 88 of the Laws of Zambia

This Act provides for the procedure to be followed in criminal cases. It states that all offences under the PC shall be inquired into, tried and otherwise dealt with accordance with its provision.²³

The first schedule of the Act outlines the offences for which arrest may be carried out without a warrant. These include: Murder; defamation of President; disturbing religious assemblies; rape; impersonation in general; and bigamy. Offences for which arrest shall be carried out with a warrant include: neglecting to provide for children; common assault; and defamation of foreign princes.

Section 33(1) of the Act states that when any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station may if it does not appear practicable to bring such person before an appropriate competent court within twenty-four hours after he was taken into custody release the person on his executing a bond, with or without sureties, for a reasonable amount, to appear before a competent court at a time and place to be named in the bond: but, where any person is retained in custody, he shall be brought before a competent court as soon as practicable.

The Subordinate Court and the High Court are courts of original jurisdiction as they have the power to hear and decide a criminal case

²³Section 3. (1)

before any appellate review.²⁴ Section 6 of the Act states that the High Court may pass any sentence or make any order authorised by law. Section 7 of the Act imposes limits on the sentences that a Subordinate Court may pass, for instance, a subordinate court presided over by a senior resident magistrate shall not impose any sentence of imprisonment exceeding a term of nine years. Section 11(1) states that the Chief Justice may, by statutory notice, order that any class of offence specified in such notice shall be tried by the High Court. These offences include murder and treason.

iii. Penal Code Chapter 87 of the Laws of Zambia

This Act outlines the different types of punishments that the Courts may impose, and provides for criminal offences and their corresponding penalties. According to the Act, the punishments that may be inflicted by a court include death; imprisonment; fine; forfeiture; payment of compensation; finding security to keep the peace and be of good behaviour, or to come up for judgement; and deportation.

iv. Anti-Terrorism and Non-Proliferation Act No. 6 of 2018

The purpose of this Act is to prevent the occurrence of acts of terrorism in this Republic, provide for measures for the detection of a terrorist attack, and proscribe acts of terrorism.

Section 38 of the Act states that-

38. (1) A person commits an offence if that person knowingly delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a Government facility, a public transportation system or an infrastructure facility with—

(a) intention to cause death or serious bodily harm; or

(b) intention to cause extensive destruction to the place, facility or system, where destruction results in or is likely to result in major economic loss.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to imprisonment for life.

Section 336 of the PC has a similar provision, which states that-

²⁴However, the High Court has appellate jurisdiction over cases heard and decided upon by a subordinate court.

Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

It can be observed that, for the same conduct, a person may be charged under the PC or the Anti-Terrorism Act. The penalty under the PC is a maximum of 14 years imprisonment, whilst that in the Anti-Terrorism Act is life imprisonment. This duplication results in unpredictability in the application of the law.

v. The Prohibition and Prevention of Money Laundering Act No. 14 of 2001

The Prohibition and Prevention of Money Laundering Act is the primary Act in the fight against money laundering in Zambia.

Section 10 of the Act proscribes the falsification of documents relevant to an investigation of the offence of money laundering. It states that-

Any person who knows or suspects that an investigation into money laundering has been, is being or is about to be conducted, falsifies, conceals, destroys or otherwise disposes of, causes or permits the falsification of material which is or is likely to be relevant to the investigation of the offence, shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and thirty nine thousand penalty units or to imprisonment for a term not exceeding five years or both.

A similar provision in the Penal Code states that-

326. Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the acts following with intent to defraud, that is to say:

(a) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document or account, or is privy to any such act; or....

is guilty of a felony and is liable to imprisonment for seven years.

It can be observed that, for the same conduct, a person may be charged under the PC or Prohibition and Prevention of Money Laundering Act. The penalty under the PC is a maximum of 7 years imprisonment, whilst that in the Prohibition and Prevention of Money Laundering Act is 5 years imprisonment. This duplication results in unpredictability in the application of the law.

vi. Zambia Wildlife Act No. 14 of 2015

This Act establishes the National Parks and Wildlife Department, which is responsible for among other things, the regulation of trophy hunting.

Section 132 of the Act proscribes wearing or being in possession of a uniform issued under the Act. It states that-

‘a person who without authority wears or is in possession of any uniform or part of a uniform or any badge mark or identity document issued by the Director to be worn or possessed by an authorised officer commits an offence’.

The general penalty under the Act is-

(a) for a first offence, to a fine of not less than four hundred thousand penalty units but not exceeding six hundred thousand penalty units or a term of imprisonment not exceeding seven years, or to both; and

(b) for a second or subsequent offence, to a fine of not less than five hundred thousand penalty units or to a term of imprisonment of not less than six years but not exceeding ten years, or to both.

Section 182 (3) of the PC has a similar offence. It states that-

Any person who, without authority, wears an official uniform, or any dress having the appearance or distinctive marks of such official uniform, is guilty of an offence and is liable upon conviction to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a term not exceeding two months, or to both.

It can be observed that, for the same conduct, a person may be charged under the PC or Wildlife Act. The penalty under the PC is a maximum of 2 months imprisonment, whilst that in the Wildlife Act is 7 years imprisonment for a first offender and 10 years for a second or

subsequent offender. This duplication results in unpredictability in the application of the law.

vii. The Anti-Corruption Act No.3 of 2011

The Anti-Corruption Act provides for the prevention, detection, investigation, prosecution and punishment of corrupt practices occurring within the Republic, and the protection of witnesses, victims and other persons assisting the Commission.

The Act proscribes the abuse of authority. It states that-

21 (1) A public officer commits an offence who —

(a) does, or directs to be done, in abuse of the public officer's position, office or authority any arbitrary act prejudicial to the rights or interests of the Government or any other person;

41. A person who is convicted of an offence under this Part, for which no penalty is provided, is liable —

(a) upon first conviction, to imprisonment for a period not exceeding fourteen years;

(b) upon a second or subsequent conviction, to imprisonment for a term of not less than five years but not exceeding fourteen year;

The PC has a similar provision in section 99. It states that-

99. (1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights or interests of the Government or any other person, is guilty of a misdemeanour. If the act is done or directed to be done for purposes of gain, he is guilty of a felony and is liable to imprisonment for three years.

It can be observed that, for the same conduct, a person may be charged under the PC or the Anti-Corruption Act. The penalty under the PC is a maximum of 3 years imprisonment, whilst that in the Anti-Corruption Act is 14 years imprisonment. This duplication results in unpredictability in the application of the law.

viii. The Narcotic Drugs and Psychotropic Substance Act No.35 of 2021

The objective of this Act is to incorporate into Zambian law certain international Conventions governing illicit drugs and psychotropic substances, and to control inter alia, the importation, exportation, distribution and use of narcotic drugs and psychotropic substances.

Section 19 of the Act makes it a criminal offence to impersonate a drug enforcement officer or police officer. It states that-

33. (1) A person shall not—

(a) impersonate an officer of the Commission or pretend to have any of the powers of an officer under this Act or under any authorisation or warrant issued under this Act; or...

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

The PC has a similar offence, proscribing the impersonation of a person employed in the public service. It states that-

102. Any person who-

(a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment;

is guilty of a misdemeanour and is liable to imprisonment for three years.

It can be observed that, for the same conduct, a person may be charged under the PC or the Narcotic and Psychotropic Substances Act. The penalty under the PC is a maximum of three years imprisonment,²⁵ whilst that in the Narcotic and Psychotropic Substances Act is a

²⁵Section 38 of the PC provides that the general punishment for a misdemeanour is a term not exceeding two years.

maximum of two years imprisonment. This duplication results in unpredictability in the application of the law.

ix. The Marriage Act Chapter 50

The Act provides for the solemnization of marriages.

Section 38 of the Act states that-

Any person who-

(a) contracts a marriage under this Act, being at the time married in accordance with African customary law to any person other than the person with whom such marriage is contracted;

(b) having contracted a marriage under this Act, during the continuance of such marriage contracts a marriage in accordance with African customary law;

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years:

A similar provision can be found in section 166 of the PC, which prohibits the offence of bigamy. It states that-

166. Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for five years:

It can be observed that, for the same conduct, a person may be charged under the PC or the Marriage Act. The penalty is the same, and therefore the offence need not be duplicated in two Acts.

x. Anti-Human Trafficking Act No. 11 of 2008

The primary legislation used in the fight against human trafficking in Zambia is the Anti-Human Trafficking Act No. 11 of 2008. It is an Act to, inter alia, provide for the prohibition, prevention and prosecution of human trafficking; provide for the filing of complaints and dealing with matters related to human trafficking; establish the Committee on Human Trafficking and provide for its powers and functions; establish centres for victims of human trafficking; establish the Human Trafficking Fund; and to domesticate the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,

supplementing the United Nations Convention against Transnational Organised Crime.

The Anti-Human Trafficking Act prohibits the act of trafficking in persons. It states that-

3. (1) Subject to subsections (2) to (11), a person who intentionally and unlawfully trafficks another person commits an offence and is liable, upon conviction, to imprisonment for a term of not less than twenty years and not exceeding thirty-years.

The PC has a similar offence, proscribing the buying or disposing of any person as a slave. It states that-

261. Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, is guilty of a felony and is liable to imprisonment for seven years.

It can be observed that, for the same conduct, a person may be charged under the PC or the Anti-Human Trafficking Act. The penalty under the PC is a maximum of 7 years, whilst that in the Anti-Human Trafficking Act is a minimum mandatory sentence of 20 years and a maximum of 35 years imprisonment. This duplication results in unpredictability in the application of the law.

xi. Education Act No. 23 of 2011

This Act regulates the provision of accessible, equitable and qualitative education, provides for the establishment, regulation, organisation, governance, management and funding of educational institutions in Zambia. It also provides for the establishment of education boards and for their functions, and domesticates the Convention on the Rights of the Child in relation to education.

The Act prohibits providing false information. It states that-

130. (1) A person who—

(a) fails, without reasonable excuse, to furnish any information required for purposes of this Act;

(b) provides false or misleading information in order to secure any approval, registration, enrolment or any other purpose;

(c) breaches any condition or requirement imposed under this Act;

(d) publishes or causes to be published, an advertisement of an educational institution which is not registered under this Act or which is de registered; or

(e) publishes, uses as part of the curriculum or distributes, in any manner whatsoever, any document, matter or material that is immoral, repugnant or contrary to the interests of learners or public policy;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

The PC has a similar provisions which states that-

125. Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause or knowing it to be likely that he will thereby cause such person-

(a) to do or omit anything which such person ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

(b) to use the lawful power of such person to the injury or annoyance of any person;

is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine of one thousand and five hundred penalty units or to both.

It can be observed that, for the same conduct, a person may be charged under the PC or the Education Act. The penalty under the PC is 6 months imprisonment, whilst that in the Education Act is a maximum of 2 years imprisonment. This duplication results in unpredictability in the application of the law.

3.0. ZLDC Findings and Recommendations

This part outlines the salient findings and recommendations of the Commission and the Technical Committee²⁶.

3.1. Findings

Based on the research that was undertaken, the Commission made the following findings:

In the Penal Code-

i. Conflicting Penalties

Besides the PC, there are other Acts focused on particular areas of the law that codify criminal offences and provide for their penalties. This has resulted in conflicting penalties for similar criminal conduct.

ii. Colonial Provisions

The PC, having been enacted in 1933, has provisions that are reminiscent of the colonial era. These provisions include, among others, those that were used in a manner to prejudice native Africans, and those that require the law to be interpreted in accordance with the Laws of England.

iii. Insult Laws

Insult laws in the PC include defamation, insulting the national anthem, and use of insulting language. Whilst defamation and insult are objectionable conduct, these provisions compromise freedom of expression and are inconsistent with international law.

Countries such as Sierra Leone, Zimbabwe and Lesotho have made strides to repeal these laws, particularly, with regards to criminal defamation.

iv. Derogatory Phrases

The PC and CPC use words and phrases that are derogatory and are contrary to international human rights law. These include ‘idiot’, ‘imbecile’, ‘vagabond’ and ‘prostitute’. In the United Kingdom, instead of “idiot and imbecile” the terminology of “mental disorder impeding choice” is used.

²⁶ A comprehensive list of findings from stakeholder consultations and recommendations for legislative amendment from the Technical Committee are in the Annex.

v. Mandatory Minimum Sentences

The PC has mandatory minimum sentences. Stakeholders submitted that this prevents the court from being able to determine an appropriate sentence based on the facts of a case, and exacerbates overcrowding in prisons and correctional facilities. These sentences are also inconsistent with international law which states that mandatory minimum sentences amount to arbitrary detention. It was found that in countries such as South Africa, New Zealand and Australia (Queensland), the Court has discretion to pass a sentence that is lower than the mandatory minimum, when it is in the interest of justice.

vi. Non-bailable Offences

The PC provides for non-bailable offences. Stakeholders submitted that this is inconsistent with the presumption of innocence, and they exacerbate overcrowding in prisons and correctional facilities. Non-bailable offences are also inconsistent with international law which provides that pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. In the United Kingdom and in South Africa, all accused persons have the right to bail except in very serious offences, where the accused person must show that special circumstances exist that justify admission to bail.

vii. Child Marriage

Whilst the Marriage Act and customary law do not provide a certain minimum age for marriage, the Education Act prohibits marrying and marrying off of a learner. The prohibition in the Education Act does not protect children that are non-learners from child marriage. Another relevant provision is the offence of defilement in the PC as consummation is an element of marriage. However, according to *TP v Chinjamba*, the effect of the word 'unlawful' in the definition of defilement, is that sex with a person below the age of 16 years does not amount to defilement where that person is your spouse. Under the comparative study, it was found that countries such as Nigeria and Malawi have set the minimum age of marriage at 18 years whilst Kenya provides for the prohibition of early child marriages in its legislation.

viii. Marital Rape

The PC is not perceived to criminalise marital rape. African countries such as South Africa, Rwanda and Lesotho explicitly criminalise marital rape in their criminal law.

ix. Petty Offences

Petty offences in the PC include sections 178 (Idle and Disorderly Persons), 179 (Use of Insulting Language) and 181 (Rogues and Vagabonds). These provisions, inter alia, criminalise economic status, previous conviction and exacerbate prison overcrowding, which is in conflict with regional human rights instruments such as the Principles on the Decriminalisation of Petty Offences in Africa.

x. Liability for Offences Committed By Foreigners Outside Zambia

Stakeholders submitted that section 6 liability for offences committed outside the jurisdiction, or partly within and partly beyond the jurisdiction is inadequate. It does not provide the court with jurisdiction to try a foreigner who commits an offence against a Zambian citizen outside Zambia, where that foreigner is in Zambia.

xi. Minimum age of Criminal Responsibility

The irrefutable minimum age of criminal responsibility in the CPC is 8 years, contrary to the acceptable age of 14 years under international law. Countries such as Rwanda and Congo have a minimum age of criminal responsibility of 14 years.

xii. Substitution of Penalties

Sections 30 and 31 of the PC provide the court with unfettered discretion to substitute a penalty provided for in legislation with compensation or security for good behaviour.

xiii. Bigamy

Stakeholders submitted that there was need to repeal the offence of bigamy, as it is a colonial legacy. Zambian customary law allows a man to marry more than one wife, and therefore, this should extend to statutory law.

In the Criminal Procedure Code-

xiv. Security for Keeping the Peace

Stakeholders submitted that sections 40 to 53 of the CPC relating to security for keeping the peace should be repealed as they provide the court with discretion to require a person who has not committed an offence to provide security for good behaviour upon a suspicion that they may commit an offence.

xv. Power of the DPP to Offer no Evidence

The criminal law principle of offering no evidence, as outlined in *Shamwana and 7 others v. The People (SCZ Judgement No. 12 of 1985)*, is not provided for in legislation. Stakeholders submitted that it should be provided for in order to ensure that the CPC is comprehensive.

xvi. Hostile Witness

The criminal law principle on how to proceed where a witness turns hostile is not provided for in legislation, but in case law, in *Munalula v. The people (SCZ Judgement No 15 of 1982)*. Stakeholders submitted that it should be provided for in order to ensure that the CPC is comprehensive.

xvii. Private Prosecutions

In the case of *Wang Shunxue v. The Attorney General and another CCZ 3 of 2021) [2021] ZMCC* the court held that a person may not conduct a private prosecution except with the permission of the DPP. Stakeholders submitted that this decision prejudices the intention of the law which is to provide a complainant with the opportunity to pursue a prosecution where the DPP fails or refuses to do so.

xviii. Victim Impact Statements

Section 302 of the CPC states that “*The court may, before passing a sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed.*” Stakeholders submitted that this provision is not often exercised, and that it could be used to receive victim impact statements if it was clearly drafted.

The impact statement assists the court to determine appropriate sentences; gives the victim an opportunity to participate in determining the outcome of a process that they are affected by; and may assist with the emotional well-being of the victim. Countries like Canada (section 722(2) of the Criminal Code R.S.C., 1985) and South Africa (section 274 of the Criminal Procedure Act 51 of 1977) provide for the procedure in detail in their legislation.

xix. Discovery

The CPC provides for discovery in the High Court but does not provide for discovery in the Subordinate Court. This has resulted in trial by ambush and has compromised the ability of accused persons to adequately prepare a defence, which is inconsistent with the Constitution.

xx. Sentencing Jurisdiction

Stakeholders submitted that the sentencing jurisdiction for Magistrates in the CPC is inadequate, with the maximum being 9 years imprisonment. Magistrates therefore preside over matters for which they do not have the jurisdiction to pass a sentence, such as defilement which has a minimum mandatory sentence of 15 years, or offences under the Anti-Human Trafficking Act which have minimum mandatory sentences of 25 years. The justification for the limited sentencing jurisdiction was that Magistrates were not qualified lawyers and lacked experience, which is no longer the case to a great extent.

xxi. Cognisable Offences

Most offences in the PC are cognisable and therefore, the First Schedule of the CPC which lists cognisable offences is unnecessary.

xxii. Video-link

The CPC has no provision that would allow the Court to allow an accused person or a witness to appear through video link.

xxiii. Abatement of Appeals

The law does not provide for the effect of the death of a convicted person prior to sentencing, on the criminal proceedings.

3.2. Recommendations

Based on the Commission findings, the following recommendations are made:

In the Penal Code-

- i. All criminal offences, with the exception of regulatory offences should be repealed from specialised Acts and incorporated into the PC, and all criminal procedures should be repealed from specialised Acts and incorporated into the CPC. This will prevent the duplication of offences, promote uniform application of the law, and ease administration of criminal law.
- ii. Repeal or amend as appropriate, provisions that are reminiscent of the colonial era. In the PC, these include, section 3 on the General rule of interpretation; section 34 on Deportation within Zambia; section 71 on Defamation of foreign princes; and section 73 on Piracy. In the CPC, these include section 36 on arrest by

magistrate²⁷ and section 260 on Practice of the High Court in its criminal jurisdiction. Amend the PC and CPC by using gender neutral language, updating the court structure in accordance with the Constitution, and replacing the phrase “carnal knowledge” with “sexual intercourse”; and revising penalty units upwards where necessary, in consideration of the prevailing economic climate.

- iii. Provisions relating to defamation should be repealed, as they compromise freedom of expression and are inconsistent with international law. Redress can be sought through civil litigation.
- iv. The words ‘idiot’ and ‘imbecile’ in the PC and CPC should be replaced with the more appropriate term of ‘a person with a mental disability’. Further, the phrase “rogue and vagabond” be replaced with “beggars and wanderers”.
- v. Whilst it is desirable to repeal minimum mandatory sentences, there is a need to first develop sentencing guidelines that would ensure consistent and proportionate sentencing.
- vi. Whilst the need to enhance legislation in relation to promoting the access to bail is recognised, there is need to first address administrative issues such as the ability to determine the true identity of accused persons; enhancement of the registration of previous offenders, and access to these records by the courts and other relevant stakeholders; and to enhance the capacity to monitor and access accused persons once released on bail, especially on serious offences.
- vii. Whilst the need to criminalise child marriage is recognised, there is need to first determine the minimum age for customary and statutory marriage in the Marriage Act, Chapter 50 of the Laws of Zambia.
- viii. Whilst the need to explicitly criminalise marital rape is recognised, stakeholders were of the view that this would compromise the sanctity of marriage. It is therefore recommended that sensitization on harmful cultural practises, and the occurrence and impact of sexual violence within intimate partner relationships should be carried out.
- ix. Whilst the need to repeal petty offences is recognised, stakeholders were of the view that these offences should remain in legislation up to the point when an alternative, administrative method of dealing with these vices is developed. Otherwise, this would result in a lacuna in the maintenance of law and order.

²⁷There is a need to separate the function of law enforcement from that of adjudication.

- x. Replace section 6 of the PC with section 3 of the Anti-Terrorism Act, which provides the Court with jurisdiction to try a matter where the accused person is a foreigner who commits an offence against a Zambian person, outside Zambia. This would address the similar issue that arose in the case of *Ngati and Others v The People (SCZ 14 of 2003)*.
- xi. Amend the PC to reflect a minimum age of 14 years, in accordance with the recommended international standard. This further means that there will not be a rebuttable minimum age for criminal responsibility or a separate age for criminal responsibility in sexual offences that is dependent on gender.
- xii. Amend these sections by developing a schedule of offences to which substitution of penalty with compensation or keeping good behaviour may apply. These may include certain felonies and misdemeanours.
- xiii. Repeal the offence of bigamy.

In the Criminal Procedure Code-

- xiv. Repeal sections 40-53 of the CPC.
- xv. Insert a provision on the power of the DPP to offer no evidence. This provision should be informed by the court's decision in *Shamwana and 7 others v. The People (SCZ Judgement No. 12 of 1985)*.
- xvi. Insert a provision outlining the procedure where a witness turns hostile. The provision should be informed by the court's decision in *Munalula v. The people (SCZ Judgement No 15 of 1982)*
- xvii. Insert a provision to the effect that a person shall not require the permission of the DPP to carry out a private prosecution.
- xviii. Redraft section 302 to clearly outline that a victim may, at his/her discretion, provide an impact statement after judgement but before sentencing.
- xix. Introduce a new section in the CPC to provide for discovery in the subordinate court. It should replicate the provisions for discovery in the High Court. It will allow the accused person to adequately prepare for his defence in accordance with Article 18(2)(c) of the Constitution.
- xx. Revise the sentencing jurisdiction of magistrates upwards as follows:
 - (i) a subordinate court presided over by a chief resident magistrate or a principal resident magistrate shall not impose any sentence of imprisonment exceeding a term of twenty-five years

(ii) a subordinate court presided over by a senior resident magistrate shall not impose any sentence of imprisonment exceeding a term of twenty years;

(iii) a subordinate court presided over by a resident magistrate shall not impose any sentence of imprisonment exceeding a term of fifteen years;

(iv) a subordinate court presided over by a magistrate of the first class shall not impose any sentence of imprisonment exceeding a term of ten years;

(iv) a subordinate court other than a court presided over by a chief resident magistrate, a principal resident magistrate, a senior resident magistrate, a resident magistrate or a magistrate of the first class, shall not impose any sentence of imprisonment exceeding a term of seven years.

- xxi. Insert a provision stating that all offences shall be cognisable except where otherwise provided. Repeal the 1st Schedule..
- xxii. Insert a provision that would allow for an accused person or a witness, on application to the court, to appear in court through video conferencing, where physical attendance is not practicable.
- xxiii. Insert a provision to the effect that where an accused person dies after sentencing but before judgement, the criminal proceedings will abate.

Annex 1- Composition of Technical Committee

The Technical Committee comprised of representatives of the following institutions:

- 1) Judiciary;
- 2) Zambia Open University;
- 3) National Prosecution Authority (2 members);
- 4) University of Zambia;
- 5) Legal Aid Board;
- 6) Zambia Police Service;
- 7) Anti-Corruption Commission; and
- 8) Law Association of Zambia.

Honourable Mr. Justice Chalwe Mchenga representing the Judiciary was Chairperson of the Committee.

Annex 2- Composition of Drafting Team

- 1) ZLDC
- 2) Legal Aid Board
- 3) National Legal Aid Clinic for Women
- 4) Ministry of Justice (Legislative Drafting Department)
- 5) University of Zambia

Annex 3- Submissions from Stakeholder Consultations

4.0. The local consultative meetings

The process that was undertaken by the ZLDC in reviewing the law has been consultative in nature. This is to ensure that the law is reflective of the social and political values of the Zambian people, and responds to the needs of stakeholders in the criminal justice system.

Stakeholders Consultative Group Discussions (SCGDs) were held with the following stakeholders in Lusaka:

- a) Magistrates of the subordinate court on 4th February 2014;
- b) State advocates from National Prosecutions Authority (NPA) on 7th February;
- c) Public Prosecutors from Zambia police and other agencies such as the Road Transport and safety Agency (RTSA) and Zambia revenue Authorities (ZRA) on 11th February 2014;
- d) Police officers from criminal investigations department and victim support unit on 13th February 2014; and
- e) Legal practitioners from law Association of Zambia and legal Aid Counsel from legal Aid Board on 14th February 2014

SCGD's were also held in Kitwe and Kabwe from 18th to 21st February and in southern province in Livingstone from 4th to 7th March 2014, where stakeholders from within Livingstone as well as Namwala, Choma, Mazabuka and Kalomo were in attendance.

A symposium for Judges of the Supreme Court and High Court was held in Lusaka on 24th February 2014 under the theme "Pushing the Boundaries: rethinking Zambia's criminal justice process." Three papers were presented as follows:

- a. The Criminal Justice System in Zambia: Challenges after the turn of the century presented by Mr. MutemboNchito, Director of Public Prosecutions;

b. The purpose of Criminal Punishment: Sentencing, Criminal Defamation and Sexual Offences, presented by Mr Justice Albert wood, A/JS.

c. Bringing about change: Use of modern Information, Communication and Technology in the Criminal Court, presented by Mr Justice Gregory Phiri, JS.

The objective of the symposium was to provide a for a for the Judges to input into the review of the Penal Code, CPC and other Criminal Justice Legislation especially in the areas covered by the papers presented.

A call for submissions was published in the local Daily Newspapers for the wider public to contribute to the process.

The following are the findings from the consultative process:

4.1 Submissions on the CPC Act

Section 3: Interpretations

The interpretations section is very poor and needs to be enhanced

Section 7: Sentencing Powers of Subordinate Courts

The challenge with regard to the powers of the Subordinate Courts mainly arose with regard to the cases which Subordinate Courts have powers over in terms of adjudication but where the powers for sentencing are restricted and therefore requiring confirmation by the High Court. It was generally submitted that the power of the Subordinate Courts needed to be enhanced to avoid and prevent delays with regards to sentencing. It was opined that history surrounding the restriction of the powers of Subordinate Courts was such that in the past, there were very few qualified Magistrates and therefore, a supervisory power by the High Court was needed to prevent injustices. However, at present, almost all the Magistrates have undergone legal training and are able to by and large apply the law and largely apply the law appropriately, and; that if the Magistrates misapply the law, the option of appeal is always available to the aggrieved party.

Section 8: Reconciliation

Section 8 of the CPC provides for reconciliation of the litigants in matters commenced before the Magistrate Courts. However, the opinion of the participants was that a combination of restorative and punitive sanctions must be considered. The general consensus was that matters

relating to common assaults could be considered for reconciliation. However, where the crime is of a grievous nature, there needed to be prescriptive provisions to prevent such an avenue from being used. Additionally, it was stated that there needs to be established institutional capacity and framework to allow for restorative justice.

Section 33: Detention of persons arrested without warrant

Section 33 of the CPC provides for circumstances where a person is taken into custody without a warrant for an offence other than an offence punishable with death. The officer in charge of the police station to which such person is taken MAY, IF IT DOES NOT APPEAR PRACTICABLE to bring such person before an appropriate competent court within TWENTY-FOUR HOURS inquire into the case and release the person, on his executing a bond, with or without sureties. Under this section, the concern was with regard to the accused not adhering to the bond conditions or disappearing altogether. It was proposed that the police must be allowed to make an application to extend a bench warrant to sureties. It was further proposed that if the accused signs the bond in his own recognizance this may prove problematic for arresting officers to track the accused. On the part of sureties, it was intimated that sureties must not be given the option of paying money but that they must be arrested. This was to ensure that sureties only sign for the accused persons who will appear before court.

The provision that the accused person must appear before court within 24 hours was still problematic because the police rarely brought accused persons within that time. It was therefore proposed that the police must be given 48 hours to bring the accused persons before court. Additionally, it was intimated that the police needed to do investigations first before arresting the accused persons. The police must not use the tool of arresting the suspects before they complete their investigations. In this regard, the police service must be empowered with the necessary tools and training to professionally complete their investigations before effecting arrests.

Section 81: power of DPP to enter nolle prosequi

Although the powers of the DP to enter a nolle prosequi are appreciated, it was observed that there was need to put in safeguards to ensure that such powers are not subject to abuse. It was observed that whilst national interest considerations could justify entering of a nolle prosequi, there was a need to clarify what constitutes issues of national interest. The nolle prosequi has also been criticised as a political tool within the justice system used to spare sacred cows; a two-edged sword;

this is against the background that the nolle is rarely used in some jurisdictions and further that in some jurisdictions there is a statute of limitation.

Varied recommendations were made:

- I. That the justice system should be rid of sacred cows and the DPP should give reasons for entering a nolle, and law should provide for time limit so that there is closure to the matter;
- II. A nolle prosequi needed to be accompanied by a requirement to give reasons to the presiding officer of court to act as a check on the excesses of application of discretion.
- III. The powers of the DPP as guaranteed by the constitution in this regard must be revisited and possibly changed. Reference was made to article 56 of the constitution as a case in point.

Section 85: Consent to prosecute from the DPP

There are some specific offences which require the DPP to give consent for their prosecution. In such cases, it is a requirement that the consent be given by the DPP under his own hand in some instances. However, with the proliferation of cases requiring the consent of the DPP to prosecute, this has caused inordinate delays and therefore causing injustice to the accused who may at this stage be in custody awaiting the consent by the DPP to proceed with the trial. In this vein, it was proposed that this requirement be done away with. The justification was that the FIAT coming from the office of the DPP did not have any significance on the issue of due process and justice dispensation. If there are some other considerations with regard to the use of the FIAT by the office of the DPP, the cases under a FIAT must go straight to the high court with safeguards to check the excesses in use of this power by the office of the DPP.

Section 88(a): Withdrawal from Prosecution

Stakeholders who were consulted opined that section 88 of the CPC was enacted in good faith but that the end users were seemingly abusing it. Respondents submitted that some prosecutors were using section 88 (a) to test the veracity of their evidence. It was also indicated that some prosecutors develop relationships with support staff at the Judiciary. They use these relationships to connive to delay cases. When the presiding officer puts their foot down, the matter is withdrawn under section 88A. This was said to be a doorway for corrupt practices. In this regard, it was proposed that there was a need to build in some safeguards to ensure that abuse of process is not perpetuated. This would prevent the prosecution from having a second bite at the cherrie’.

Although there are other considerations which may necessitate the police service to make an arrest before conducting investigations and building a case, the position was generally that the police service needed to conduct investigations first before bringing the accused before the court. In the United States the DA is responsible for the prosecution of criminal cases and takes part in criminal investigations, initiates the filing of charges against individuals or groups and is present at hearings and trials related to his districts. The U.S. Attorney's office works with referring agencies to provide direction and legal counsel during federal criminal investigations.

It was thus recommended that the establishment of the office of the District Attorney (DA) should be seriously considered. This will ensure that there is more input by a prosecutor at the investigation level and only the right cases are brought before the Criminal Court; thus not abusing the provision under this section.

It was also observed that the office of the DA would reduce operational problems, reduce costs such as per diems and dockets will be better prepared and stored. The DA's office would also prepare witnesses and follow up accused persons such those with mental incapacities.

Section 90: Institution of proceedings

With regard to matters commenced by way of a complaint, it was observed that the issue with regard to how to proceed was problematic in practice. It was stated that the law did not expressly provide a procedure to follow in matters commenced by way of a complaint.

The meetings had two views, others proposed that there is need to have an express provision on the procedure to follow when a matter commences by way of a complaint. In addition, powers of arresting officers or the police needed to be clarified with regards to this section. On the other hand, some respondents proposed that there needed to be clarity on what needs to be done without necessarily having an express provision in the CPC.

Section 199 and 203: Non - appearance of complainant

Section 199 provides for dismissal of a case where the accused person appears in obedience to the summons served upon him before the subordinate court. It was submitted that section 199 and the related section 203 of the CPC prove problematic because the dismissal of cases is not clear. What needs to be made clear is that this should stipulate whether the accused person would have been acquired under the

provisions of these sections. The accused must not be left in suspense not knowing whether or not they shall be rearrested. This provision is also prone to abuse by the police.

Section 175: Power of Court to order accused to pay compensation

The section gives power to the court to award compensation. It was said this is an important provision because often people opt to settle criminal matters outside court because there is no compensation to the victim. The victim's suffering should not be overlooked, and the criminal justice process should be alive to the rights of victims so that it is not centred on the accused. It was recommended that the provision be amended by deleting the proviso so the court can have leeway to determine the compensation.

Section 123: Bail

On the issue of bail and the list of non-bailable offences provided for under section 123 of the CPC, it was generally opined that Section 123 of the CPC seems inconsistent with Article 18 of the Constitution. In this regard, it was proposed that all offences must be bailable in line with the presumption of innocence until proven guilty.

With regard to the variation of conditions of bail as provided for under section 126 (3) of the CPC, the provision giving the High Court powers to vary or review the bail conditions was said to be inappropriate. In this regard, it was submitted that the subordinate courts needed to be given the powers to vary the conditions if the case was before such a subordinate court. It was submitted that the review of this part of the law needed to take cognizance of the decision in Benjamin and Others v. The Peoples 1992, ZR.

Section 191: Reports by Medical Officers

The issue with regard to medical reports is contentions because this leads to delays in trials arising from the definition of a medical officer under the provisions of section 191 (4) of the CPC which states that a medical officer shall mean a medical practitioner registered as such under the medical and allied professions Act. It was opined that this presented great difficulties because not all areas in Zambia were serviced by qualified medical practitioners as provided for under the Act. It was therefore suggested that medical reports must also be made by other health professionals such as nurses, clinical officers and so on. Further, it was suggested that the definition of a medical officer must be

consistent with the position as stated in the case of Maxwell Chanda v. the people 1971 ZR.

Section 192: evidence of analyst

Evidence of an analyst was observed to be contentions especially relating to issues of drug offences. Whilst the law as provided for under section 192 of the CPC is well-intended, it is not robust enough to take care of issues such as the chain of custody of samples for testing. It was therefore proposed that a mechanism needed to be put in place to ensure that the chain of custody of such evidence is properly secured. Since there is no mechanism in place to properly operationalise section 192, this leads to delays in trial because the evidence from the analysts usually comes very late. It was proposed that analysts needed to be placed at all police posts.

Section 99, 101, 199: who is the complainant?

The issue which needs revisiting in the Sections aforementioned is to do with the person who has a right to withdraw criminal cases as a complainant. It was submitted that the case of Paul Kampala v. the People was instructive on who the complainant was and therefore this must be provided for in the interpretation sections of the CPC and PC. In the Paul Kampata case, a complainant was said to be a person who lays a complaint before the Court on oath or the person who makes the complaint before the Police Station.

Section 201: Withdrawal of Complaint

Under section 201 of the CPC, the powers given to the complainant to withdraw the matter before Court are quite clear. However, the issue of who the complainant is remains a challenge. In this regard, there is need for clarity who the complainant is. It was therefore proposed that the interpretation section needed to be categorical of who the complainant is so as to avoid doubt and possible abuse of process. The law needs to be categorical on which offences can be withdrawn.

Section 221: Payment of Admission of Guilt Fines

The CPC provides that where a person is charged with an offence whose sanction is less than 1,500 penalty units or imprisonment for not more than 6 months, the accused person may sign an admission of guilt form and pay the requisite fee or deposit property to the arresting officer as security. Where a person pays the admission of guilt fine, the person may not be required to appear before Court. Section 221 provides that

if the Court feels that a person who has signed an admission of guilt form needs to appear before such Court, then the Court may summon the accused to answer to the charges.

The admission of guilt form does not necessarily signify the end of the prosecution process. This is because the process may be resuscitated by the Court or by the accused person choosing to exercise his right to be heard by the Court and the Court making a ruling. However, in practice, the admission of guilt procedure is taken by the police as the end of the prosecution process with the police in most cases not depositing such money with the court. This is most prevalent in traffic offences. It was recommended that the Road Traffic Act (RTA) be harmonised with the Penal Code. It was further noted that the offence under the road RTA is failure to produce a driver's licence, that there is no provision for impounding.

Section 223: Preliminary inquiry

On the question of holding a preliminary inquiry before the substantive case, it was simply stated that if the preliminary inquiry is not held because of challenges on the part of the prosecution, the accused person must be acquitted. Again, the concern was that the holding of a preliminary inquiry was being used by the prosecution as a tool to test their evidence and keep the accused in custody in contravention of the fundamental human rights.

Other Sentences (Sections 306A, B, C, D and E, CPC)

The offence subject to Community Sentencing under the current provisions is a misdemeanour. However, it was submitted that the option for community sentencing must also be extended to felonies especially with the challenges that Zambia is facing with regards to escalating prisons populations and limited capacity. Further, it was submitted that the Clerk of Court needed to be given express powers in the CPC to effect and ensure compliance with the terms and conditions of Community Sentencing. However, the consent needed to be obtained from the offender to undergo community service must be removed so that the court has absolute discretion to determine which person is fit for community service and which one is not. It must not be up to the convict to accept or refuse community service.

4.2 Submissions on the PC

Section 15 of the PC: Immunity of Powers of Judicial Officers

A lot of powers to Judicial Officers who at times end up making imprudent decisions. There is a need to limit their powers for the betterment of society as in most cases they tend to abuse such powers.

Section 26-28 of the PC

It was proposed that fines be determined by the gravity of each case although there is a need to revise penalty units.

Section 36 of the PC

Offences against morality: the rule against duplicity should be amended so that offenders can be charged with several counts on the same offence.

Section 69 of the PC: Defamation of President

It was recommended that this provision should be removed from the statute book as defamation is a civil matter which should be dealt with in a civil realm. It is also not fair as it protects only one party to the detriment of others. It is alright to protect the office, not the individual who holds the office, in this case the President has immunity which only needs to be lifted by Parliament. This immunity should be limited to what that person is doing on behalf of the State.

Section 67 of the PC: Publication of false news with intent to cause fear and alarm to the public:

It is used for political mileage. It was proposed that the wording 'likely to cause' should be removed and replaced and replace it with 'which causes' or take the section to subsidiary legislation.

Section 68 of the PC: Insulting of National Anthem

It was proposed that this provision should be removed from the Statute Book as Zambians are not patriotic. Others felt that there is a need to reinforce it and bring back patriotism and be united in diversity. It was further proposed that the symbols used when singing the anthem should be stopped. We should understand that democracy is not moving without values.

Section 71 of the PC: Defamation of Foreign Princes

It was proposed that this Section should be dropped. Although others felt it should be amended by deleting the wording 'foreign princes'.

Section 88 of the PC: Affray

This Section is not doing anything as it amounts to assault in certain circumstances, hence its removal.

Section 132 of the PC: Rape

It was proposed that the definition of rape, should include marital rape and indecent exposure and used of other.

Section 137 of the PC: Indecent Assault

The sentence should not have a ceiling, thus the penalty should come down to 5 years and the inclusion of an option of a fine.

Section 137 and 157 of the PC

The wording 'on a child' and include 'any person' this is because it excludes an adult because of the defining of a 'child'.

Section 138 of the PC Defilement

The term 'unlawful' be removed as this would criminalize sex with a child under sixteen who is married off under customary law. The position of R v. Chinjamba should be overturned by a legal provision outlawing child marriages. Further the sentences should be revisited by not putting a mandatory sentence, as these need corroboration and at times it is lacking. The 15 years should be reviewed. It was also recommended that the continued use of the term defilement should be revisited as this is a derogatory and derives from English canon law; and is no longer being used in English criminal law.

The Section on defilement is not couched in such a way that it covers children who defile each other. So, there is a need to revisit the section to include this form of mischief though the sentence is provided for in the Juveniles Act.

It was recommended that the term 'unlawful' should be dropped but also different Zambian customs and /or cultures should be looked at, as they have negative connotations. If dropped, the precedents of the Chinjamba case to be dropped and then come up with a statutory marriageable age, customarily and statutorily. Culture is dynamic, so it must change. We have to deal with thorny cultures.

It was also recommended that the parents who marry off their underage daughters should be charged as co-accused in cases of defilement and early marriage.

Section 155 of the PC: Unnatural offences

There is a need to define what amounts to carnal knowledge, what amounts to 'unnatural offence' or 'order of nature'. Carnal knowledge here is intended to mean sexual intercourse and the law should not be shy to say so. It should be explicit and state without any dilution in interpretations as to what amounts to order of nature, 'carnal knowledge'. It was therefore submitted that carnal knowledge to be replaced with the wording 'sexual intercourse'. The provision excludes female persons and needs to be broadened and the wording 'male person' to read as 'any person'.

Section 157 of the PC: harmful cultural practices

The provision should be conducted with consent. The section should be revisited

Section 159 – 162 and 200 of the PC DPP's consent under

Incest: consent of the DPP is irrelevant because it is a sexual offence just like any other which doesn't require DPP's consent.

Proposal: consent of the DPP should be dropped. It was also proposed that consent of the DPP for murder under Section 200 of the PC should also be dropped. If there is evidence the matter should go to Court instead of making accused people to forever appear for mention. Detention should be done when necessary, i.e. with adequate evidence.

Section 166 of the PC

Due to our cultural practices, a marriage is potentially polygamous. However, it is high time, as a country, to stop borrowing other people's customs, hence the need to have home grown laws that reflect our values. The aspect of bigamy should be moved from penal sanction to civil realm. Hence the need to amend the marriage Act and also relax the procedure for divorce under this Act because in its current state the process is tedious.

Section 169 and 233 of the PC

The sentence in both sections should attract a felony and allow an arresting officer to arrest without a warrant.

Section 170 of the CPC

What amounts to 'without delay'? It was proposed that there should be a time limit

Section 177 (1) (a) of the PC: Obscene Matters or Things

It was proposed that there must be a distinction between one who is making and one in possession. The intentions of the producers, conveyor and processor are different. The person making it should get a much higher sentence than one in possession.

Proposed that the section in accordance with the sentence must be graded, there is need to attach seriousness to deserving parts. Possession should be less than 5 years, maybe up to 2 years. Thus the person making it should get a sentence of 5 years upwards.

Section 183 of the PC:

Dangerous disease does not include HIV and AIDS which is a condition, so this provision should cater for this condition.

Section 191, 192, 193 and 194 of the PC: Chapter on Defamation

These sections should go to the civil realm

Section 248 of the PC: Assault or Battering of Child

It was said that unlawful wounding which is listed under offences endangering life in the PC is a more heinous offence than Assault Occasioning Actual Bodily Harm, yet the latter has a stiffer penalty than the former. A stiffer penalty was recommended for unlawful wounding.

Section 229 of the PC:

Grievous harm: this section should be revised, e.g. inclusion of permanent disfigurement.

Section 306 of the Penal code: criminal trespass

Cases take long and in most cases people are over detained. Over detaining and sentencing being too harsh is the issue over this section. It was recommended that it is better to grade it according to the intent.

Section 232 of the PC,

A comparison with **Section 248 of the PC:** unlawful wounding. The punishment calls for 5 years under Section 248, yet unlawful wounding is 3 years even though the instruments or weapon used is dangerous. It was proposed that Section 232 of the PC should be revisited to include the use of instruments or weapons such as a knife, bullet, etc and the punishment should be more than 3 years.

Section 309 A (2) (a) of the PC:

Obtaining pecuniary advantage by false pretences: The wording, 'including one not legally enforceable' comes with bad taste as to what the intention was hence recommended for its removal. It was further proposed that there was a need to expand it to include partial contracts or contractual obligations as in its current state it is not doing anything, punitive action for those who use government monies on contractual obligations and they partly perform and run away.

4.3 Submissions Relating to Allied Legislation

Article 13 of the Constitution: Constitution Bail

Proposed that what amounts to ordinate delay should be proscribed. Further, proposed for the establishment of a Constitution Court.

Intestate Succession Act Chapter 59

Matters related to property grabbing, the sentence under the Intestate Succession Act, Chapter 59 is inadequate. In most cases, or in order to criminalise property grabbing, it is treated as theft under the PC. Thus it was proposed that the offence of property grabbing should be incorporated into the PC so that the punishment should be grave.

It was proposed that there is need to revisit the sentence

Forfeiture of Proceeds of Crime Act No 19 of 2010

Under section 71 of the forfeiture of Proceeds of Crime Act the burden of proof has shifted from the state of the accused. The prosecution has a duty to prove beyond reasonable doubt. See the case of Austin Liato v the People (Unreported).

Section 319 of the PC is better than Section 70 of the Forfeiture of Proceeds of Crimes Act as it requires that reasons be given, hence the need to show or consent how the money was obtained. There is hence a need to harmonise the two.

Further, the 'Forfeiture of Proceeds of Crime Act' should be amended. This is because it is not in line with International Instruments to which Zambia is party. There is a need to understand the mischief that was intended to be remedied by the enactment of this legislation. The interpretations section also needs to be enhanced.

Zambia Bureau of Standard (Standards Act No. 4 of 2017)

A provision to deal with the standard of food stuffs and packing of beverages needs to be inserted in the law. The law on adherence to standards must be strengthened and enforced.

4.4 General Submissions

Enactment of criminal code

Seeing that there were so many statutes dealing with criminal law, the country should consider putting these in one code. This way all the Statutes would be available as one instrument.

Oversight of the criminal justice institutions

Despite the amount of work undertaken to enhance performance and delivery by the five key Criminal Justice Institutions, there was no oversight body. As a result, there is no one holding these Institutions accountable. For example, after confirmation by the Supreme Court the record is supposed to be returned to the High Court. This is not happening and no one is questioning it. High Courts are supposed to receive judgments of the Supreme Court, but this is also not happening. It was observed that a system similar to that being used for the Commercial Court where a user's committee holds the Court accountable should be put in place.

An oversight body or Institution should be established by Act of Parliament. This body must meet on a quarterly basis, identifying challenges and hold the five key Criminal Justice Institutions accountable. The Criminal Justice Council should be multi sectoral. This will also ensure proper liaison between the Zambia Prisons Service and the Judiciary.

Responsibility for Persons Remained to Prison

The majority of people in Prison are on remand. This is by order of Court and therefore once made transfers such a person from the authority of the Police Force that undertook the arrest and passes that person to the Prisons. However, there is a serious wrangle over who is responsible for such a person. Instances when persons on remand are ill or need to be brought to court slows down the judicial process as neither the Police Force nor Prison Service want to take responsibility. It was indicated that since the Prisons are overcrowded, special facilities should be provided for remanded persons as they are innocent till proven guilty. While on remand, the institution prosecuting should be responsible for ensuring that such persons are brought to Court. The same institution should be responsible for their health while on remand.

Bail pending Appeal and Bail pending Trial

It is in the discretion of the Court to grant it or not, if not granted it becomes an issue, but it is important to understand that at the time of investigation, the Investigating Officers have a right to come to Court to give information about the arrested person about the danger of giving such a person on bail. But counsel defending the culprit, picks up issues. This provision is very important to consider with appropriate attention.

Proposal: It is administrative but there is a need to make lawyers understand the process and not put the bench into ridicule.

Diversion of Juveniles before Criminal Courts

Diversion is not provided for in the law. It was recommended that this be provided for. It was submitted that the plea negotiations and bargaining act enacted for the introduction and implementation of plea negotiations and plea agreements in the Criminal Justice System is a very good act. It was stated that it would work very well especially for diversion programs on juveniles in relation to Section 72 or 73 (j) of the Juveniles Act. This is because there is no laid down procedure to be followed by the juveniles Act or CPC on diversion programs. In addition, there are no structures to support diversion programs hence the provisions in Plea Bargaining Act should be used.

It was further proposed that in relation to juveniles, there is a need to empower the Social Welfare and put in a Law that allows screening and then to send cases (in the form of court orders) to a relevant institution. Further, a Court should conduct preliminary inquiries before hearing

the cases. Thus an independent body of different stakeholders should be put in place and this body should have legal backing so they are protected on how to treat and deal with these cases without making the court look as though they are compromised. In other jurisdictions such as Malawians and Thailand, they have such systems in place, such as paralegals to help the system. A certain support or institution outside the court to help or alleviate certain problems should be put in place.

There is a need to harmonise the PC and Juveniles Act, in relation to all juvenile matters as there is currently no procedure to follow in peer defilement which proves problematic. In addition, diversion programs are discussed only in workshops but not provided for in our Statute Book.

It was further proposed that a well-established procedure, with stakeholders in place and that cases be resolved outside the Criminal Justice System. Section 72 (j) of the Juveniles Act, comes at a late stage with a criminal record, so if that process could start just after a plea then it is possible to divert.

Sentencing and parole

It was observed that there were a lot of problems relating to sentencing. It was further observed that Judges did not always obey the law regarding sentencing. Therefore, there is a need to develop sentencing guidelines.

It was also observed that Parole is not a transparent process in Zambia; that it is not clear whether it is absolute or conditional. It was noted that there were some Parolees who came to claim their pension. An example of the infamous Mr Fireman Lungu who has been pardoned more than once was given. It was recommended that there should be clear guidelines for Parole and that these should be accessible to concerned persons. Consultation with relevant Stakeholders should be done before releasing Prisoners on Parole.

Enactment of an evidence code

It was recommended that an Evidence Code be enacted to provide for admissibility of evidence. It was observed that while rules for civil procedure have changed the criminal rules have not.

Use of information and communication technology (ICT)

It was observed that the use of Information and Communication Technology (ICT) is considered one of the key elements to significantly improve the administration of justice. Further, the availability of web services, the possibility of consulting on line legislation and case law, the use of electronic filing, the electronic exchange of legal documents, are only some examples that should spur the judicial administrations to rethink their current functions and activities.

It was recommended that the judiciary step up to the process they have begun on e-justice. It was observed that e-justice would reduce long standing problems like poor case flow management. An example of how usage of video conferencing with remandees supposed to come for mention can reduce the problem of transportation to and from the court; the use of digital file tracking can eliminate the tendency of mission court records.

Usage of pre-trial Conference in Criminal Matters

It was recommended that the Judiciary should consider using pre-trial conferences in criminal matters similar to the one used in civil matters. It was observed that the desirability of providing for a conference to be held before the commencement of the trial, as occurs in civil litigation, has been recognized in other jurisdictions. The purpose of such a conference is to attempt to limit the issues in the trial and generally to facilitate the efficient disposal of the matter. It was noted that difficulty will remain if provision is made for the holding of a pre-trial conference and the accused chooses not to co-operate as there is no effective means of compelling cooperation. It was further noted that it is desirable to provide a formal structure for this to take place.

Fines

Provisions on fines are outdated and obsolete. They are ridiculously low and need to be revisited. It was also recommended that fines and fees collected by the Judiciary should be retained so that this money can be used in the administration of justice since only about 50 per cent of the approved budget for the Judiciary is released. Further, the Judiciary has consistently been the most underfunded arm of government.

Overhaul of the Zambia prison service

It was observed that there is a need for a complete overhaul of the Zambian Prison Service (ZPS). The government should consider private

partnerships in running Prisons. It was observed that the ZPS was capable of generating income and therefore had the capacity to sustain itself; that the inmates who had varied skills could be harnessed to undertake works for which ZPS could be paid.

One year and one day rule

The provision should be amended as the period is a long period to warrant someone to be sentenced for murder.

Definition of a child

A child is a person aged 16 years and below across the Statute Book.

Note: The Constitution (Amendment) Act No. 2 of 2016 defines a child as a person who has attained or is below the age of 18 years.

Duration of appeal

It was proposed that the period of 14 days be extended to 21 days because sometimes complications arise in relation to files being misplaced or lost

Other submissions

- 1) The requirement for the express consent of the DPP to proceed in most cases has been found to be repugnant to the principle of free and fair express justice framework as guaranteed by the constitution.
- 2) The use of the terms 'misdemeanour' and 'felony' must be replaced with the use of the terms 'summary' and 'indictable'.
- 3) There is a need to created a Crime Stoppers programme
- 4) There is a need for the decentralisation of the police functions by making police commissioners more autonomous from the centre in terms of decision making.
- 5) The Council Police must be integrated into the mainstream police service with the clear responsibility of enforcing bylaws.
- 6) There may be a need to create Provincial Emergency Response Teams (PERT) to assist in responding to emergencies situations at the local level.
- 7) A robust legal aid system in Zambia must be established to ensure that the numbers of unrepresented litigants is reduced.

8) With the ever increasing number of road accidents in Zambia, there may be a need to set up a Highway Safety Division within the Zambia Police or under the auspices of RTSA.

9) It is suggested that the Zambia Police Service may need more than 6,000 uniformed officers, 2,000 civilian employees and 800 Auxiliary officers to effectively carry out their mandate.

There is a need to have crime prevention expertise in both support and frontline staff in the Zambia Police Service.

10) Promotion and support of partnerships with external stakeholders; government, community and other police services, aimed at the prevention and reduction of crime must be enhanced.

11) Taking a leadership role in identifying and sharing best practises, on a broad range of crime prevention focused programs and initiatives, proven effective through research and consultation must be encouraged.

12) There is a need for deliberate efforts in delivering crime prevention messages to the public targeted at reducing crime, as well as the impact, victimisation and fear of crime within communities.

13) The Police must work in partnership with officers from the local authorities more effectively to help in enforcing most of the municipal laws.

14) There must be clear guidelines on when the police may hold someone in custody by providing the police with a check-list of what may precipitate holding a person in police cells.

15) The Constitution needs to authorise Parliament to establish a general court of appeal for Zambia, as well as any additional courts for better administration of the laws in Zambia.

16) In the Zambian legal system, judicial authority must clearly be divided between the national and local governments.

17) There must be established a specialised Immigration Tribunal to hear cases related to immigration and nationality in accordance with the decentralisation policy.

18) There is a need to have a general Court of Appeal between the High Court and the Supreme Court.

- 19) The composition of the Supreme Court must be balanced in such a way that it reflects the four main regions in the country. Additionally, the Supreme Court bench must endeavour to reflect gender equity.
- 20) Dissatisfied parties must apply to the judges of the Supreme Court for permission (or leave) to appeal. In certain criminal cases, the right to an appeal must be assured.
- 21) There must be a provision in the statute book to allow the government to ask the Supreme Court for its opinion on important legal questions.
- 22) The Directorate of public prosecution must provide prosecution-related advice to police investigators.
- 23) In areas where the Directorate of Public Prosecution has no offices, there may be a need to appoint private practice lawyers to prosecute cases on behalf of the Crown.
- 24) The 'arrest then investigate strategy' which is mainly employed by the Zambia Police must be discouraged. An arrest should only be effected after comprehensive investigation as well as a belief of reasonable and probable grounds that an offence has been committed.
- 25) In light of the freedom of expression provisions in the Zambian constitution, the issue of prohibited publications must be removed to encourage divergent discourse.

5 WRITTEN SUBMISSIONS

Section	Offence	Recommendation
Penal Code		
2	Saving of certain laws	Repeal section 2(a) and replace it with new provision. Repeal section 2(c).
Chapter IV – GENERAL RULES AS TO CRIMINAL RESPONSIBILITY		
14	Immature age	Amendment of sections 14(1) and (2) to ensure that no child under the age of 12 can be found criminally responsible for any act or omission.
	Trivial nature of offence	Insert new provision on trivial nature of offence
Chapter VI – PUNISHMENT		
25	Sentence of death	The repeal of section 25
Chapter VII – TREASON AND OTHER OFFENCES		
53	Prohibited publication	The amendment of section 53 to remove the power to declare a publication prohibited from the president, and give that power to a board, and to create formal mechanisms for appealing a declaration of prohibition.
54	Offences in respect of prohibited publications	The amendment of section 54 to introduce an element of intent to the offences, so as to require knowledge of the prohibition in order to be liable.

55	Delivery of prohibited publication to police station	The amendment of section 55 to introduce an element of intent to the offences, so as to require knowledge of the prohibition in order to be liable.
60	Seditious intention	The repeal of subsections 60(1) (b) to (j) and section 60(3).
67	Publications of false news with intent to cause fear and alarm to the public	The repeal of section 67.
68	Insulting the national anthem	The repeal of section 68
69	Defamation of the President	The repeal of section 69
70	Expressing or showing hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour.	The repeal of section 70
	Chapter on crimes against peace and humanity	Add Chapter
Chapter VIII – OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY		
71	Defamation of foreign princes	The repeal of section 71
Chapter XI – OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE		

116	Contempt of court	The repeal of section 116(3) and the replacement of the word servant in section 116 (1) (g) with employee.
Chapter XV – OFFENCES AGAINST MORALITY		
132	Definition of rape	Reform offence to be gender –neutral and to broaden acts of sexual penetration. Insert proviso stating that marriage is not a defence.
137	Indecent assault	Replace offence with new offence of sexual assault.
138	Defilement of child	Replace offence with range of new offences relating to sexual abuse of children.
139	Defilement of imbecile or person with mental illness	Replace offence with range of new offence relating to sexual abuse of persons with mental disabilities.
146	Person living on earnings of prostitution or persistently soliciting	The repeal of section 146
147	Person living on, aiding etc,	Insert the phrase in an exploitative manner.
	President	
306	Procedure where woman convicted of capital offence alleges she is pregnant	The repeal of section 306.

The sentencing powers of magistrates were proposed as follows:-

Description	Proposed Term of Sentencing Powers
Magistrates of the First to Third Class	Up to 10 years
Resident Magistrate and Senior Resident Magistrate	Up to 16 years
Principle Resident Magistrate	Up to 18 years
Chief Resident Magistrate	Up to 20 years

Annex 4- Submissions from Technical Committee

6 Findings of the Technical Committee Meetings

In accordance with the law reform process that is followed by the ZLDC, there was need to constitute a committee of experts in criminal law to review the reports for the purpose of making recommendations for law reform and development.

In June 2016, the ZLDC wrote a letter to the Secretary to the Cabinet, requesting the appointment of experts to constitute the Technical Committee. The individuals appointed were as follows:

1. Honourable Mr. Justice ChalweMchenga for the Judiciary
2. Mr. Raphael Mungole for Zambia Open University
3. Ms. Maimbo Ziela for National Prosecution Authority
4. Mr. Bako Chipola for National Prosecution Authority
5. Mrs. Felicity Kalunga for University of Zambia
6. Mr. Anderson Ngulube for Legal Aid Board
7. Mr. Simon Tembo for Zambia Police Service
8. Mrs. Stella Mulenga for Anti Corruption Commission
9. Ms. Tizyo Banda for the Law Association of Zambia

6.1 Observations and Recommendations of the Technical Committee in Consideration of the Legislative Audit Report on Legislation with Penal Provisions

1) Immigration and Deportation Act No. 18 Of 2010

It was submitted that the Act provides the following offences:

- (i) Wilfully concealing one's identity.
- (ii) Offence on making false statements.
- (iii) A person who wilfully fails to comply with the Act.
- (iv) Offence on the illegal entry.
- (v) Officer resisting an arrest of the officer

The chairperson submitted that there were provisions that were similar to those provisions in the Penal Code. It was also submitted that the offence of forging of an official stamp was also provided under the Zambia Police Act as well as in the Immigration Act.

The committee also submitted that the powers to search without a warrant in the Act should be looked at.

1) Banking and Financial Services Act No. 7 of 2017

It was observed in the meeting that the Act prohibits conducting business without a permit and such offences were compliance offences which should remain in this Act.

2) Zambia Wildlife Act No. 14 of 2015.

It was submitted that the Act provides offences on the following:

- (i) Hunting on animals that are protected.
- (ii) Offence on a person being found in possession of uniform.
- (iii) Hunting without a licence.
 - Section 131

It was submitted that the offence in the ZAWA Act should be looked at in relation to vandalism as provided under the Penal Code. The committee however observed that a penalty was not provided for the offence in the ZAWA Act and recommended for the provision of the penalty.

- Section 132

It was submitted that the section provides for an offence of wearing of official uniform and this particular offence was also provided in the penal code. It was recommended that it needs to be well-couched as it may be problematic and may create a strict liability offence. It needs to be looked at critically in light of the PC provision.

3) Legal Practitioners Act Chapter 30

It was observed that the Act provides offences on making of false declaration, offence on unqualified persons purporting to be a legal practitioner.

The chairperson indicated that there is need to look at the Medical Practitioners Act, Teaching Profession and the Human Resource and have a general provision in the PC to deal with unqualified persons Act.

The meeting further observed that in some provisions, there is a person who employs an unqualified person should also be looked at.

4) Higher Education Act No. 4 Of 2013

- Section 13

It was submitted that the section provides an offence on running an unregistered institution. The offence was held to be a compliance offence that should remain in the principal Act.

- Section 49

It was submitted that the section provides for an offence of holding out another as qualified or overqualified in a field of study and the Chairperson observed that it was a border line provision between impersonation and giving false information.

- Section 49 (3)

It was submitted that the offence was associated with giving false information to a public officer, and the Committee recommended that the offence should move to the PC and the penalties should be made stiffer. It was also observed that the definition of a public officer can be very problematic especially in the education sector.

- Section 49 (3) (c)

The Committee recommended that obscene materials should be taken into consideration when looking at the section.

- Section 125

It was submitted that the section provides for the offence of giving false information to a public officer and it was recommended that the offence should move to the PC and the penalties should be graduated where harm has occurred to person or persons in cases of collapse and this should cater for most offences on giving false information.

5) Education Act No. 23 Of 2011

- Section 18

It was submitted that the offence should be moved to the PC as it is a criminal offence.

- Section 17

It was submitted that the offence should be looked at in relation to neglecting to be a parent.

- Section 25 (4)

It was submitted that the section provides for a compliance offence and should remain in the principal Act.

- Section 28

It was submitted that the section provides for an offence on corporal punishment and inhuman treatment. The chairperson expressed concern that if the offences were in two places, there might be a problem as to where the offence was in one place and the court may easily adjudicate over such matters at conviction or case to answer stage in such cases.

- Section 47

It was submitted that the offence was a compliance offence and should remain in the principal Act.

- Section 113

It was submitted that the offence should be moved to the PC as it relates to wilful obstruction and giving false information to a public officer as provided in the penal code.

- Section 128

It was submitted that the section provides for an offence of unauthorised disclosure of information generally by public officers. The offence should be moved to the penal code.

The committee observed that at times conflicts may arise where one person is employed by one institution and seconded to another institution.

6) Forest Act No. 4 Of 2015

- Section 16

It was submitted that the section provides for an offence of compliance and it should remain in the principal the Act.

- Section 89

It was submitted that the offence provided by this section should be moved to the PC as there is an offence under the PC prohibiting receiving of stolen goods or property.

- Section 91

It was submitted that the section provides for an offence of smuggling which has already been provided under the Zambia Revenue Authority Act.

- Section 94

It was submitted that the offence should move to the PC as there was already an offence of vandalism and malicious damage to property under the penal code.

- Section 95

It was submitted that the offence should be moved to the PC as it relates to the offence of counterfeiting which has adequately been provided in the penal code.

- Section 96

It was submitted that the section provides for an offence of failing to assist with extinguishing the fire.

- Section 97

It was submitted that the section provides for the offence of vandalism or malicious damage and this should be moved to the PC as it is adequately provided for in the penal code.

- Section 98

It was submitted that the offence should be moved to the PC as it relates to impersonation as provided in the penal code.

7) Information And Communication Technology Act No. 15 Of 2009

- Section 76 (10)

It was submitted that the section provides for an offence of obstruction of a public officer and that the offence should move to the penal code.

- Section 77

The committee submitted that the substantive criminal offence was associated with vandalism and malicious damage to property and should move to the penal code.

- Section 77 (2)

The chairperson observed that the same offence on one hand was dealing with lesser penalties and huge fines on another hand. It was recommended that the offence should be moved to the PC as it was a serious offence. The offence in the PC should have 15 years imprisonment and still with an option of a fine of K 400 000.

The chairperson stated that one of the terms of reference for the Technical Committee was to harmonise the sentences. The cases where there is an option of a fine, such cases were misdemeanours and the cases with imprisonment were serious in nature and should not attract an option of a fine.

- Section 78

The Committee recommended that the penalties in the section should clearly be outlined.

- Section 80

The Committee recommended that the offence was more of a criminal offence than a compliance offence and the offence should therefore be moved in the PC as it amounts to fraud. The penalties should be revisited, as they were minimal.

- Section 81

The committee observed that the section provided for the offence of unlawful disclosure of information and recommended that the offence should move to the PC and that a comparison should also be made with private institutions where unlawful disclosure of information was concerned.

- Section 81

The committee recommended that the offence of interception should go in one Act, the Penal Code.

- Section 82

The committee recommended that the offence should move to the PC as it is associated with giving false information to a public officer and it is adequately provided under the penal code.

- Section 83 (a)

The committee recommended that the offence be moved to the PC as it deals with trespass and was adequately covered under the penal code.

- Section 85

The committee observed that the section did not provide for an offence.

8) Zambia Police Act Cap 107

- Section 8 (2)

The Committee observed that the section is an attestation for security check up and should remain in the Police Act.

- Section 22

The committee recommended that the section should remain in the Police Act as it is more of a compliance offence not to break into the cordon.

- Section 22

The committee submitted that the section deals with internal matters of the police and recommended that the section should remain in the Police Act.

- Section 59

The committee recommended that there should be a uniform provision in the PC to cover even those provisions in the state proceedings Act and the Defence Act.

- Section 60

The committee submitted that the committee should have it in mind whether the lock up conduct extends to court or prison facilities. Mr. Mungole submitted that it should remain in the Police Act.

9) Workers Compensation Act No. 10 Of 1999

6.10.1 Section 130

The committee submitted that the section has a lot to do with compliance offences and recommended that it should remain in the Workers Compensation Act.

10) Rent Act Chapter 206

The committee observed that most offences in the Rent Act are compliance offences.

- Section 12

The committee observed that the offence relates more to unlawful disclosure and recommended that the section should move to the Penal Code.

11) National Pensions Scheme Act No. 7 of 2015

The committee submitted that the Act creates obstruction offences.

12) Customs And Excise Act Chapter 322

The committee submitted that the offences in the Customs and Excise Act were compliance offences and should remain in the Act.

13) Electoral Act No. 35 of 2016

The committee observed that the offences in the Electoral Act were more less the same as those in the Penal Code. The electoral offences should be picked and put in the penal code, it was submitted that the idea should be explored further. The committee recommended that the Electoral Act should be looked at to see if the duties of electoral officers were spelt out.

14) Prohibition and Prevention of Money Laundering Act No. 14 of 2001

- Section 53

The committee observed that money laundering has an element of disguising. The offences under this Act should be lifted and put in the penal code.

15) The Water Resources Management Act No 21 2011

- Section 48

It was recommended that the offence should be moved to the PC as there was an offence of harming provided under the penal code. The ZEMA Act also provides for an offence of pollution.

- Section 164

It was submitted that the section relates to vandalism and malicious damage and there is a need to streamline it between vandalism and malicious damage and should be moved to the penal code.

16) The Road Traffic Act No. 11 of 2002

- Section 11 – 12

It was submitted that the sections provides for compliance offences and should remain in the Road Traffic Act.

- Section 44

It was recommended that the offence should be moved to the PC as the offence of wilfully fixes amounts to forgery under the penal code.

- Section 81

It was submitted that the section should be treated as a serious criminal offence and should be moved to the penal code.

- Section 86

It was submitted that the section provides for compliance offences and should remain in the Road Traffic Act.

- Section 104

It was recommended that the offence should be moved to the PC as the offence relates to the offence of giving false information provided under the penal code.

- Section 118

It was submitted that the section provided for compliance offence and should remain in the Road Traffic Act.

- Section 155

It was submitted that the section provided for compliance offence and should remain in the Road Traffic Act.

- Section 161

It was recommended that the offence of causing death by dangerous driving should move to the PC and have the same penalty as manslaughter. It was also recommended that the offence of causing death by careless driving should carry the same penalty with an option of a fine.

The Technical Committee further recommended that what should remain in the Road Traffic Act are the compliance offences like motor vehicle insurance offences and the criminal offences like causing death by dangerous driving, reckless driving and careless driving should move to the penal code.

17) The Public Roads Act No. 12 of 2002

- Section 33 (10)

It was submitted that when dealing with roads, de-facing roads amounts to vandalism, the offence is a compliance offence and should remain in the principal Act.

- Section 76

It was submitted that the section provides for a compliance offence because it requires permission before carrying out excavation activities on Public Roads and the offence should remain in the Public Roads Act.

18) The Independent Broadcasting Authority Act No 17 of 2002

- Section 16

It was submitted that the section provides for an offence of failure to disclose to a public officer and should be moved to the Penal Code.

- Section 45

It was submitted that the section provides for a compliance offence and should remain in the Act.

- Section 45 (e)

It was recommended that the section should be removed.

19) The Zambia National Broadcasting Corporation Act, Chapter 154

The Committee submitted that most of the offences in the Act were compliance offences.

20) The Occupational Health and Safety Act No. 36 of 2010

- Section 14 (4) (a) (b) (c)

It was submitted that the section provides for an offence of obstruction and disclosure and should move to the Penal Code.

- Section 16-17

It was submitted that the two sections provide for compliance offences and should remain in the Act.

21) The Medical And Allied Professions Act, Chapter 297

- Section 44

It was submitted that the section provides for a compliance offence and should remain in the Act.

22) The Market And Bus Stations Act, Chapter 290

- Section 11

It was submitted that the section provides for an offence of obstruction of a public officer and giving false information as provided in the penal code.

23) The Fisheries Act No. 22 of 2011

- Section 51

It was recommended that environmental related offences like fishing and hunting should be put in the penal code.

- Section 12A

It was recommended that the introduction of species in rivers should be looked at critically when it comes to environmental issues.

- Section 15G

It was submitted that the section should be removed from the as the offence of misappropriation amounts to theft. The offence should be put in the penal code.

- Section 12G

It was submitted that the offence in this section relates to vandalism of fisheries schools which are public properties and also malicious damage as provided by the penal code.

24) Passport Act No. 28 Of 2016

- Section 17

It was submitted that the section provides for compliance offences and that it should remain in the Passports Act.

- Section 19 (1) (a)

It was submitted that the offence relates to giving false information and that the offence should move to the PC as it is adequately provided under the penal code.

- Section 19

It was submitted that the offence relates to forgery that the offence should move to the PC as it is adequately provided under the PC in order to avoid multiplicity of the same offences. The Committee also recommended that comparison should be made for provisions as the wording of the section in this Act may be broader than the wording in the penal code.

The selling of blank forms should remain as an offence in the passports Act.

25) The Electricity Act NO 11 of 2019

- Section 46

It was submitted that the section relates to the offence of giving false information to a public officer and it should be moved to the PC as it has been adequately provided under the penal code.

26) Zambia Institute Of Purchasing And Supply Act No. 15 Of 2003

- Section 20

It was submitted that the section relates to the offence of misrepresentation and that the offence should move to the PC where it has been provided for adequately.

- Section 23

It was submitted that the section relates to the offence of forgery that the offence should move to the PC where it has been provided for adequately.

27) Employment Code Act No.3 of 2019

- Section 13

It was recommended that the section should remain in this Act.

- Section 32

It was recommended that the section should be considered together with the provisions of the Anti-Human Traffic Act.

28) Medicine and Allied Substance Act No. 3 of 2013

- Section 14 (1)

It was recommended that the offence relates to counterfeiting and should therefore be moved to the PC where the counterfeit offence was adequately provided.

- Section 28

It was recommended that the section should be left as an offence in the Act.

- Section 33

It was recommended that both manufacturing and selling of medicine should be put in the penal code. It was also submitted that an adulterated drug was an offence under the PC under section 186.

- Section 36

It was submitted that the section provides for compliance offence.

- Section 38 (1)

It was recommended that where there is fraud there should not be an option of the fine, there should be imprisonment.

The offences of drugs distribution in addition to custodial sentence, fine should also be ordered to cripple those businesses.

- Section 29

It was recommended that the term of imprisonment should be 2 years and not the 9 months imprisonment term.

- Section 58 (2)

It was subjected that the section was subject to imprisonment and fines.

The committee recommended that the factories dealing in adulterated medicines should be subject to forfeiture of proceeds of crime in order to deter would-be offenders.

29) Pharmaceutical Act No. 4 2004

- Section 7

It was recommended that the offence should move to the PC owing to its serious nature.

- Section 14

It was recommended that the offence should move to the Penal Code.

- Section 32

It was submitted that fraudulently amounts to a serious offence and should be put in the Penal Code.

- Section 35

It was recommended that the offence should be put in the Penal Code.

- Section 43

It was submitted that the offence is regulatory one and should remain in the principal Act.

- Section 49

It was recommended that the offence should move to the PC as it was a criminal offence.

- Section 60

It was submitted that the section deals with the offence of obstruction.

30) Insurance Act No. 27 of 1997

- Section 4

It was recommended that the section is regulatory and should remain in the principal Act.

- Section 22

The committee submitted that the section borders on fraud and therefore should move to the Penal Code.

- Section 24

It was submitted that the section provides for the offence of strict liability, and it was recommended that the offence should be taken into consideration especially when it comes to third – party insurance as a matter of concern and that fraudsters should not be given a lee-way.

- Section 30 and 98

It was submitted that the two sections provide for compliance offences and should remain in the principal Act.

- Section 128

It was submitted that the section provides for the offence of forgery and that it should move to the PC as there were different instruments of forgery in the penal code.

- Section 130

It was submitted that the section provides for a criminal offence and it should be moved to the penal code.

- Section 131

It was submitted that the offence should remain in the principal Act.

31) Food Reserve Agency Act Chapter 225

- Section 13
-

It was recommended that the offence should remain in the principal Act.

- Section 18

It was recommended that the offence should remain in the principal Act.

32) The Prohibition of the Development, Production Stockpiling and Use of Chemical Weapons Act No 2 of 2007

- Section 10

It was recommended that the section should be kept in the principal Act in order to do some reading around it.

33) Matrimonial Causes Act No. 20 of 2007

The committee recommended that the provisions of the Matrimonial Causes Act as well as those in the Juvenile Act should be put in the Penal Code.

34) Marriages Act, Chapter 50

- Section 38

It was recommended that the offence should move to the PC as it provides more sufficient penalties.

- Section 39

It was recommended that the offence should move to the Penal Code.

- Section 40

It was recommended that the offence should move to the penal code.

- Section 41

It was recommended that the offence should move to the Penal Code.

- Section 42

It was submitted that the section provides for the offence of impersonating a public officer and it was recommended that the offence should move to the Penal Code.

- Section 43

It was recommended that the offence should remain in the principal Act as it is a compliance offence for administrative purposes.

- Section 44

It was recommended that the offence should move to the Penal Code.

35) The Competition and Consumer Protection Act No. 24 of 2010

The chairperson recommended that the offences under this Act dealing with counterfeiting should move to the Penal Code.

- Section 9

It was submitted that the section was consumer related and should remain in principal Act.

- Section 50

It was submitted that the offence has counterfeiting elements and recommended that it should tentatively move to the Penal Code.

- Section 72

It was recommended that the offence should remain in the principal Act.

36) Plea Negotiations and Agreement Act No.2 Of 2010

It was recommended that this particular Act should be captured in its entirety and fused in the Criminal Procedure Code.

37) Environmental Management Act No. 12 of 2011

- Section 15

It was submitted that the section provides for the offence of impersonating a state officer and that it should move to the Penal Code.

- Section 16

It was recommended that the offence should remain in the principal Act as it may stipulate powers of an inspector under ZEMA.

- Section 25 (1) (2)

It was recommended that the powers of the minister should remain in the principal Act if such powers are for administrative purposes.

- Section 25 (3)

It was submitted that the section provides for criminal offences and as such the offences should be moved to the Penal Code.

- Section 32

It was recommended that the offence should move to the Penal Code.

- Section 35

It was recommended that the obligation should remain in the principal Act and the offence of non-disclosure should move to the Penal Code.

- Section 54

It was submitted that the regulatory provision should remain in the principal Act and the offence provided in section (54) (5) should move to the Penal Code.

- Section 60

It was submitted that the regulatory provision should remain in the principal Act.

- Section 77

It was recommended that the responsibility remains in the principal Act and the offence moves to the penal code.

- Section 117 (c)

It was submitted that the giving of false information should come out as an offence and be put in the Penal Code.

- Section 117

It was submitted that the offence should remain in the principal Act apart from paragraph (c) that should be struck out.

It was further recommended that the public officer should be defined in the Acts and the penalties for giving false information to a public officer should be stiffened.

- Section 118

It was submitted that the section provides an offence for administrative purposes and should therefore remain in the principal Act. It was also submitted that the offence of giving false information in paragraph (c) and the offence of altering in paragraph (d) should move to the Penal Code.

- Section 119

It was submitted that the section should be moved to the PC owing to the serious nature of the penalties provided for the offence.

- Section 120

It was submitted that the offence should be moved to the PC and the option of a fine should be removed and the offence should carry mandatory imprisonment.

- Section 121

It was submitted that the section should be looked at in conjunction with the Ionising and Radiation Act.

- Section 122 - 123

It was submitted that the offences in the two sections should move to the penal code.

- Section 126

It was submitted that the section should move to the CPC while considering whether body corporate could be charged with criminal offences and whether the directors could be held liable.

38) Non-Governmental Organisation Act No. 16 Of 2009

- Section 10

It was submitted that the offence was essentially regulatory and that it should remain in the principal Act.

- Section 36 (1) (c)

It was submitted that the section provides for the offence of giving false information and that it should move to the PC and the penalties should be stiffened.

39) Narcotic Drugs and Psychotropic Substances Act, No. 35 of 2021

- Section 33

It was submitted that the offence should move to the PC as it relates with the offence of impersonation as provided under the Penal Code.

Section 52

It was recommended that the offence should move to the Criminal Procedure Code.

- Section 54

It was submitted that the offence should move to the Criminal Procedure Code.

- Section 32 and 53(3)

It was submitted that the offence relates to the offence of obstruction and impersonation and it should move to the Penal Code.

- Section 59

It was submitted that the offence should move to the PC as it relates to the offence of assault under the penal code.

Section 81

It was submitted that the offence does not appear in the CPC and it was therefore recommended that the offence should move to the CPC and be looked at together with section 23 of the CPC on cognizable offences.

- Section 86

It was submitted that the offence relates to trafficking and that it should remain in the principal Act.

The committee recommended that there should be divisions dealing with narcotics and trafficking in the Act

40) The Anti-Human Trafficking Act No. 17 Of 2008

The committee submitted that the administrative provisions should remain in the principal Act while the criminal offences should move to the Penal Code.

- Section 3

It was submitted that the human trafficking offences should move to the Penal Code.

- Section 4

It was submitted that the offence should move to the Penal Code.

- Sections 10, 11, 12

It was submitted that the offences should be removed from the Act as they were already provided for under the Penal Code.

- Section 24

It was submitted that the offence should move to the PC and consider whether consent of the DPP should be required.

- Section 30

It was submitted that the offence should move to the Criminal Procedure Code.

- Section 109

It was submitted that a provision should be put in the CPC where cases can be heard in camera.

41) The Juvenile Act, Chapter 53

The committee submitted that the provisions relating to procedure in the Juveniles Act should be moved to the Criminal Procedure Code.

- Section 46

It was submitted that the offence should be looked at in the context of the offence of child battery as provided under the Penal Code.

42) The Urban and Regional Planning Act No 3 of 2015

The committee submitted that the offences under the Act were mostly compliance offences.

- Section 73

It was submitted that the offence should move to the PC as it relates to the offence of obstruction as provided under the Penal Code.

- Section 11

It was submitted that the offence should be moved to the PC as the swearing of affidavits amounts to perjury under the Penal Code.

- Section 23

It was submitted that the offence should remain in the principal Act as it is a compliance offence. It was also submitted that the Anti-Gender Based Violence Act or other Acts should be looked at when considering the definition of sexual harassment and consider whether definitions could be extended to the review.

- Section 38

It was submitted that if there was an offence for publication, there should only be a single provision to cater for all court procedures for certainty.

43) Tolls Act No 14 of 2011

The committee submitted that the offences on impersonation, giving of false information and obstruction should be moved to the Penal Code.

44) Civil Aviation Act No 5 of 2016

- Section 8 (4)

It was submitted that the offence should be moved to the PC as it relates to the offence of obstruction as provided under the Penal Code.

- Section 11 and 28

It was submitted that the offences were compliance offence and that they should remain in the principal Act.

- Section 74 (3)

It was submitted that the offence should be moved to the Penal Code.

- Section 80

It was submitted that the offence should be linked to the Anti-Terrorism Act and that the offences should be moved to the Penal Code.

- Section 90

It was submitted that the section provides for a compliance offence and that it should remain in the principal.

- Section 92

It was submitted that the offence should move to the Criminal Procedure Code. The committee submitted that the jurisdiction issue should be moved from the PC to the Criminal Procedure Code.

- Section 93

It was submitted that the offence should be moved to the Criminal Procedure Code. It was also submitted that there was no need for the Director of Public Prosecutions to give consent when the general trend was that offences under Terrorism Act do not require consent.

- Section 94

It was submitted that the offence should be moved to the CPC in order to deal with the aspects of evidence and it should be looked at as a general provision in criminal matters. The committee also urged the researchers to also consider the South African scenario regarding giving statements on oath.

- Section 136

It was submitted that the offence should move to the PC as it relates to the offences of attempts or threatening to commit an offence as provided under the Penal Code.

- Section 137

It was submitted that the offence should be moved to the PC as it relates to the offence of giving of false information as provided in the Penal Code.

- Section 138

It was submitted that the offence should be moved to the Penal Code.

- Section 140

It was submitted that the offence should be moved to the PC as it relates to the offence of obstruction and threatening violence as provided under the Penal Code.

- Section 141

It was submitted that the offence was a serious criminal offence and that it should remain in the principal Act.

- Section 143

It was submitted that the offence should move to the PC as it amounts to terrorism as life may be lost when the device is tempered with and the sentence should also be graduated or increased. The offence should also be considered in light of the Terrorism Act, the penalties should be the same as those in the Terrorism Act.

- Section 144

It was submitted that the offence relates to trespass and it is connected or associated with terrorism and the offence should move to the Penal Code.

45) Persons With Disabilities Act No.6 of 2012

- Section 61

It was submitted that the offence should remain in the principal Act.

- Section 62

It was submitted that the offence should move to the PC as there was a part in the PC dealing with negligence.

- Section 63

It was submitted that the offence should move to the PC as it relates to the offence of giving false information as provided under the Penal Code.

46) The Citizenship of Zambia Act No 33 of 2016

- Section 42

It was submitted that the provision should be split as it covers the offence of forgery and giving of false information. The offences should move to the PC while the offence of selling blank forms should remain in the principal Act.

- Section 42 (2)

It was submitted that the offence should remain in the principal Act.

- Section 42 (3)

It was submitted that the offence deals with impersonation and that it should move to the penal code. It was also submitted that the compliance offences should remain in the principal Act.

47) THE ANTI-TERRORISM AND NON-PROLIFERATION ACT, 2018

The committee recommended that the provisions of the Ant-Terrorism Act should be put in the Penal Code.

- Section 24

It was recommended that the offence should carry a penalty of 10 years imprisonment and above.

- Section 27 and 28

It was submitted that the provisions should not be put in the PC instead those provisions in the PC relating to procurement and attempts should apply in their place as they were sufficient enough in terms of penalties.

- Section 31

It was submitted that the offence should carry a 14-year imprisonment as a penalty and the section should also be examined in order to see how it blends with the provisions in the Penal Code.

- Section 38

It was recommended that the offence should be categorised as vandalism and a 10-year imprisonment should be provided as a penalty for the offence.

- Section 54

It was submitted that the detention order was a procedural issue and as such it should move to the Criminal Procedure Code.

The committee submitted that the Attorney General should be replaced with the Director of Public Prosecutions (DPP).

- Section 60

It was submitted that the offence should not only be limited to the principal Act but should move to the PC and apply generally to all the criminal offences. It was also recommended that the penalties should also be graduated.

- Section 63

It was submitted that the offence should move to the penal code. It was further submitted that the International and Regional Conventions should be examined in order to see what has been left out in the law so as to include them and also the procedures.

48) The Petroleum (Exploration And Production) Act No. 10 of 2008

- Section 17

It was submitted that the section provides for compliance offences and that it should remain in the principal Act.

- Section 56

It was submitted that the section provides for the compliance offence and should remain in the principal Act.

- Section 55

It was submitted that the offence should remain in the principal Act.

- Section 86

It was submitted that the section provides for the offence of unauthorised disclosure and it should move to the Penal Code.

- Section 95(5)

It was submitted that the section provides for the offence of obstruction and that it should move to the Penal Code.

49) The Accountant Act No.13 2008

- Section 18 (1)

It was submitted that the section provides for the offence of impersonation or holding out another as a professional. The committee observed that the rest of the offences under the Act were compliance offences and should remain in the principal Act.

50) The Postal Services Act No.22 2009

- Section 5

It was submitted that the section provides for compliance offences and should remain in the principal Act.

- Section 32 (2)

It was submitted that there was a part in the PC relating to postal matters and that should be looked at in relation with this provision.

- Section 67

It was submitted that the offence should be moved to the PC as the code provides for this particular offence.

- Section 69

It was submitted that the section should move to the Penal Code.

- Section 72

It was submitted that the section provides for the offence of impersonation and should move to the Penal Code.

- Section 74

It was submitted that the section provides for the offence of uttering a false document and should move to the Penal Code.

- Section 75

It was submitted that the section provides for the offence of interfering and should move to the Penal Code.

- Section 83 (d)

It was submitted that the section provides for the offence of vandalism and malicious damage and should move to the Penal Code.

- Section 84

It was submitted that the offence should move to the Penal Code.

51) Anti-Corruption Act No 3 of 2012

- Section 8 (2)

It was submitted that the section provides for a statutory duty and should remain in the principal Act.

- Section 16

It was submitted that the offence deals with disclosure.

- Section 17 (1)

It was submitted that the offence should be noted and see what the provision means and how it can work.

- Section 17 (2)

It was submitted that the provisions should be looked at critically and draw their meaning and the wording.

- Section 18

It was submitted that the section provides for a general provision. The committee recommended that part III of the ACC Act dealing with the offences should be extracted and checked with the provisions of the Penal Code.

The committee recommended that the law should capture that where there is a public officer, there should be a state officer. The committee further recommended that every provision should remain in the principal Act apart from part III for the offences should move to the penal code.

52) The Notaries Public And Notarial Functions Act, Cap 35

- Section 26

It was submitted that the section provides for the offence of impersonation and should move to the Penal Code, because once a person is removed as a notary they are no longer a notary and if they continue performing their duties, it will amount to impersonation.

53) Patents Act No 40 of 2016

- Section 71

It was submitted that the section provides for a regulatory offence and that it should remain in the principal Act.

- Section 83

It was submitted that the section provides for the offence of making of false documents or uttering and should move to the Penal Code.

- Section 84

It was submitted that the offence should move to the Penal Code.

- Section 85 and 86

It was submitted that the offence should move to the PC as it relates to administration of justice.

54) Trade Marks Act Chapter 401

- Section 68

It was submitted that the section provides for a general provision or offence.

- Section 69

It was submitted that the section provides for a criminal offence and that it should move to the Penal Code.

- Section 70 and 71

It was submitted that the offence should move to the PC as it provides for a criminal offence.

- Section 81

It was submitted that the offence was a regulatory offence and should remain in the principal Act.

- Section 89

It was submitted that the section provides for the offence of impersonation and that it should move to the Penal Code.

55) Copyrights and Performance Rights Act Chapter 406

- Section 28

It was submitted that the section provides for a criminal offence and that it should move to the Penal Code.

- Section 38 (d)

It was submitted that the section provides for the offence of giving false information and that the section should move to the Penal Code.

- Section 52 and 53

It was submitted that the offences in the two sections should move to the Penal Code.

56) Radio Communication Act, Chapter 169

The meeting observed that the Act was repealed by the ZICTA Act.

57) Other Legislation With Penal Provisions To Be Considered

- (i) Protection of whistle-blowers Act for procedure.
- (ii) Forfeiture of proceeds of crime
- (iii) FireArms Act
- (iv) Evidence Act
- (v) State Security Act

4.2.1 Second Technical Committee Meeting

1) Section 6 of the PC

Section 6 of should be broadened to include all the offences for our Courts to have jurisdiction. Reference was made to the Nganti case.

It was submitted that it is better to have the law and deal with extradition later; this should be looked at in relation to the C.P.C in order for it to be applicable to all offences.

Note: it must be of a broader application to all offences.

Note: The members should also look at the penalties provided 30 penalty units was the one obtaining.

2) Section 21 of the PC

We should maintain what is provided in the PC that when you commit an offence, you are charged when you abet, you are charged and

prosecuted. The provision of section 101 of the communication Act should be completely removed but should not be put in the PC in as much as it should be removed from the communication Act.

The principle of criminal liability is the same but the penalties should vary for joint offenders.

However, since there are no guidelines on sentencing, it should be left until such a time we have a sentencing Act or sentencing guidelines on having uniform offences.

The joint enterprise must carry the same sentence; Mr. Mungole stated that there is need for special attention on sentencing. Ms.Ziela stated that in GBV cases, there is need to be consistent with what is provided in the PC as regards sentencing. Mr. Bako stated that sentencing has for a long time been left to the discretion of the court and only guided by the principle of sentencing.

Note: sentencing requires to be dealt with especially on the mandatory sentencing.

3) Section 27 of the PC– corporal punishment

The Chairperson indicated that it should be looked at in relation with the anti-torture Bill. The offence under section 28 of the Education Act was narrow and the general one was more general and not limiting it to teachers. The general one on torture should be adopted.

It was submitted that there should be a proviso to instil discipline on children and that should not amount to torture.

The meeting was advised that instead of rushing to domesticating instruments- the law should reflect the spirit of the convention.

It was further submitted that in the definition of torture should refer to a person and not specifying a public or private individual as that would cover everyone. The definition seems to target the Police and not the torture that occurs in peoples or private homes. There is need to take a broader approach to torture.

The offence in section 28 of education Act should move to the PC and be put in the right place and that the offence in the anti-torture Bill should be moved to the PCand that if the approach in the convention is to be taken, it will be a step backward as it will limit the application of the law

to only public officers and not the private persons as torture can be committed by private persons as well.

4) Section 67 of the PC

It was submitted that section 138 of the Aviation Act should move to the PC but the penalty should be graduated. Section 67 of PC was to do with disturbance of the peace and 138 of Aviation act was to do with the severity of the offence and both should be combined.

5) Section 99 of the PC

The offence under section 128 of the education Act is similar to the offence under section 98 of the penal code

6) PC section 102 and ZAWA Act section 132

To a person who impersonates a person employed in the public service and a penalty of three years to be adopted.

To look at the new constitution and provide for a person who impersonates a public officer or state officer as defined or provided under the new constitution.

There is need to have a general provision or division between the general impersonation associated with fraud and the impersonation of a public officer and the sentence of 2 years should be provided. Impersonating a public officer provides a danger of security.

Impersonation of a public officer in all other pieces of legislation should all move to the penal code.

7) Section 108 of the PC

There is need for a single provision to cover any tribunal on the offence of fabricating evidence and provide for the seven years imprisonment.

The one in section 104 A of the PC should be more severe as it occurs in court and it is perjury and not the tribunal one in section 108 which was a tribunal for administrative purposes and end up with dismissal than perjury which may end up with a maximum of death penalty.

Sections 130, 105 should be put in section 108 of the penal code.

8) Tendering a false testimony

The penalties on false documents and false testimony should carry the same penalty of seven years.

Section 110 was dealing with deceiving witnesses and 108 was dealing with fabricating and presenting fabricated evidence.

For both offences, seven years should be adopted for a misdemeanour, community service can be considered, and however, telling lies in court should be ultimate and should carry heavy penalties.

9) PC section 122 and Information and Communication Technologies Act section 76

This should be considered with obstructing and assaulting of public officers in the execution of their duty.

The wording is the same for all other Acts apart from the civil Aviation Act which is broader as it includes threatens violence.

The narcotic drugs and psychotropic substances Act in section 42 should be adopted as it leaves the court with a discretion.

The one in one 140 of the civil Aviation Act should be adopted in the PC but the sentence should be that of the narcotic drugs in section 42 of the five years (recommendation).

There is a distinction with the one in the state security Act and this Act should be deferred to look at how it relates with these acts on section 123 of the penal code.

10) PC section 124 and on false information to public officer

Sections 49 are more of compliance and regulate and should remain in the Higher Education Act.

Section 49 (3) (a) should come out as giving false information to a public officer and be moved to the penal code.

Section 82 deals with giving of false information and should go to the penal code

Section 82 (a) (b) should remain in the information and technologies Act.

Refusing to give information should remain in the Act but giving of false information should move out to the penal code.

The penalty should be looked at in section 125 of the PC and adopt the seven years in the ZEMA Act under section 117.

Note: we have it in mind the definition of public service was broad enough to cover ZEMA.

Section 81 of the road traffic Act should go back to the Act as it is a regulatory provision

Section 108 (27) (b) of the Road Traffic Act should be added to the PC under giving of false information.

Getting 40 to be as section 125 ©.

Section 23 of the electricity Act should remain in the Act

Section 12 of the rent Act should remain in the Act as it does not relate to giving of false information

Section 40 and 41 of the marriage Act were dealing with giving of false information and should remain in the PC under section 125.

11) Section 18 of the Education Act and section 138 of the PC on defilement of girls under sixteen.

It was observed that the section under the PC provides for an offence for a non-school going girl while the section under the education act provides for an offence for a school going girl

Mr. Mongol submitted that age was a big or controversial problem, the constitution provides for 18 years and the other Acts of Parliament including the Marriage Act are prescribing the age of sixteen years. Those should be harmonised.

Chairperson submitted that the issue was a problematic one that needs to be addressed.

Note: Consideration be given that the age move from sixteen years to eighteen years.

Ms. Ziela submitted that the age should be provided for this exercise and deal with other legislation later.

Note: there was an issue which was not resolved on defilement and the age.

12) Section 139 of the PC

This should be left as it is but the words idiots or imbeciles should not be used as they are discriminatory or derogatory terms

Note: as the process goes on, correcting of language of certain terms should be considered.

13) Section 165 of PC

Section 45 of the Marriage Act is connected more to bigamy.

In gender equity there is a more comprehensive provision.

Section 45 of the marriage act and section 166 of the PC should be looked at. The marriage act should not have been embraced in the first place but only things like the right to divorce.

Section 45 of the marriage act should be in the penal code.

14) Section 169 of the PC

Section 17 of the education act should move to the PC as it relates to neglecting to provide under the penal code.

Section 17 (a) (I) of education act, there is need to also look at the medical field especially on immunisation laws and blood transfusion to criminalise the same failure by parents to immunise their children or other health care. (There is need to interrogate the same – chairperson recommendation)

15) Section 177 of the PC

Section 102 of the Telecommunication Act should be looked at in relation to pornography when looking at on obscene matters or things. Section 177 was passed at the time when pornography was not right, now they were issues of pornography on the social media that needs to be considered.

There is need to look at the child pornography in the ZICTA Act.

16) Section 49 of the Higher Education Act was regulatory and should go back to the Higher Education Act.

17) Section 186 of the PC

Adulteration of drugs and section 35 of the medicine and allied substance act

Look at the offences of dispensing medicines without a licence. Leave it under the PC but consider putting it in the same place as the offence of dispensing medicine.

18) Section 188 of PC – fouling water and section 55 of the Water Act.

The PC section of 188 must go because of the voluntary aspects.

There is a need to keep without a licence and the wilful one. One that is associated with a discharge without negligence and the one without a licence.

That section 55 of the water act should be broadened to deal with pollution of public water, air, land as provided under the ZMA act section 32 and that a penalty of three years should be imposed as provided under section 1888 of the PC and two million penalty units fine.

19) Section 199 of the PC manslaughter and **section 161 of the Road Traffic Act.**

Causing death by dangerous driving should have higher penalties than causing death by careless driving.

For causing death by careless driving should carry a penalty of five years with an option of fine while causing death by dangerous driving should carry the same offence as manslaughter. There is a need to split the two.

South African legislation on causing death by driving should be looked at and be considered.

20) PC section 237 – criminal recklessness and negligence and section 62 – persons

The chairperson stated that a person who negligently causes a disability to another connotes causing but grievous bodily harm for which the offence can be prosecuted.

The offence of bodily harm does not have a provision of a fine as it is serious and can only be presented under the penal code.

The spirit of section 62 of Persons with Disabilities Act should be incorporated into the penal code.

21) PC section 278 – stealing by clerks and servants and section G (7) of the Fisheries Act.

5 G (7) (a) should go back to the Fisheries Act.

The misuse could be theft or misappropriation of money.

22) PC section 306 criminal trespass and Civil Aviation Act Section 144

This should move into the PC but should be broadened so as to not limit it to airport but other areas like terror.

The sentences should be appropriated to the different areas of trespass and identify and segregate institutions.

The State security Act should be looked at as it stipulates the areas.

The danger is not only limited to airports.

The provisions of the anti- terrorism Act should be looked at.

The two years imprisonment should be maintained as a sentence.

23) PC section 310 A intent to deceive and the Patents Act

It should go back to the principal act section 87

Section 88 of Patents Act is a regulatory and should go back

To pull out the provisions from the Consumer Protection Act and make comparisons with section 87 of the patents Act

24) Section 61 (3) of the Electronic Communications and Transactions Act should go back to the principal Act.

Note: The police should document some problematic areas and should sit down to analyse and change the law. The same should be done with court judgement that may be correct at law but circumstances are different or decisions are absurd, that would help the situation.

25) The PC section 318 – receiving stolen property etc. and section 89 of Forest Act.

There is a need to have an offence on handling stolen property in the penal code.

Section 89 of the forest Act should come out of the forest Act and into the PC as it was adequately covered under section 318 of the penal code.

26) Section 323 (1) of the PC trustees fraudulently disposing of trust property and section 86 of the patents Act.

Section 86 was a regulatory and should go back to the principal Act.

27) Section 334 (1) of the PC injuring animals and section 5B of the fisheries act.

Section 5B of the fisheries Act was a regulatory provision and should go back to the principal Act.

28) Section 339 of the PC– wilful damage etc. to survey and boundary marks and section 94 of the forest act.

The section was adequately covered by the PC under section 339

The penalty should be 3 years imprisonment because it is a misdemeanour.

29) Section 97 of the Forest Act should be covered under validation and malicious damage.

30) The section on vandalism in the PC should be expanded to include areas where one causes damage to software equipment as they were not covered.

31) Section 77 (2) (d) of information and communication technologies act deals with interfering with electronic communications networks.

It should be split between interference and vandalism. The offence should come out of the information Act.

Note: The Australian jurisdiction, the laws have been clustered on the offences and should be looked at the offences on the telecommunications. (Recommendation).

32) Section 77 (3) of the Information and Communication technologies Act

This should all together be removed from there.

33) Section 339 of the PC– wilful damage etc. to survey and boundary marks and section 53 of the water act.

Section 53 (b) this section was already in the penal code. The penalties should be those of a misdemeanour offence.

34) Section 33 of the Public Roads Act

Section 33 of the public roads Act should go to the PC and include the offence of tampering with the road signs and the sentence should be increased.

Section 76 of the public roads Act is a regulatory and should stay in the parent Act.

35) Section 12G of the Fisheries Act should remain in the parent act for the fisheries officials to make follow ups and not the police

36) Section 83 of the postal services act was already covered in the penal code

37) Section 42 of the citizenship of Zambia Act was already covered adequately in the PC.

38) Section 143 of the civil Aviation act

Section 143 9a) (b) (c) should be moved into the Anti-terrorism Act and section 143 (d) should remain in the penal code.

39) Section 22 of the Tolls Act should be moved and enhanced

40) PC section 347 – general punishment of forgery and section 19 of passport act

The section should remain in the PC on forgery but there should be no option of a fine as it is serious

- 41) Section 74 of Postal Service Act**, the offence should move to the section in the PC dealing with false statements.
- 42) Section 75 of the Postal Service Act**, the offence should move to the section dealing with false information
- 43) Section 17 of the Petroleum** (exploration and production) Act should move to section on making false information.
- 44) Section 22 of the Tolls Act** amounts to counterfeiting and should stay in the PC and the sentence should be enhanced.
- 45)** Section 118 of the Environmental Management Act was already covered in the PC under forgery.
- 46)** Section 128 of the Insurance Act should stay in the PC on forgery and the penalty should be that of forgery.
- 47)** Section 376 of the PC – counterfeiting trademarks and section 69 of the Trade Marks Act

Note: The provisions in the trade marks Act, merchandize Act. Competition and consumer protection Act should all be identified and be put in the penal code.

- 48)** Section 377 of PC– definition of trade mark and section 95 of the forest act.

The offence should move to the PC in the appropriate section and the sentence should be enhanced. There should be no option of a fine and only imprisonment for 10 years owing to the serious nature of the offence, especially the dealing of the mukula tree.

- 49)** Section 80 of the Information and Communication Technologies Act should be in the PC and the sentence should be enhanced to two years imprisonment without the option of the fine.
- 50)** Section 44 of the road traffic Act should stay in the PC and the penalties sentence should be up to three years.
- 51)** Section 20 of the Zambia Institution of Purchasing and Supply Act amounts to impersonation and was adequately covered in the PC and should move from the parent Act and penalties should be maintained.
- 52)** Section 14 of the medicine and Allied substances Act

The offence should go to the PC and the regulatory mechanisms should go to the parent act (final recommendation by Committee members)

- 53)** Section 67 of the Postal Services Act

This section should move to the PC as it has adequately been covered

- 54)** Section 378 of the PC– impersonation and section 42 of the marriage act

This should move to the PC with the sentence as it is.

Section 44 of the marriage act should move to the PC under the impersonation and the sentence should be from 0 to 5 years imprisonment without an option of fine.

- 55)** Section 43 of the Legal Practitioners Act

This should move to the PC under impersonation and the penalty should be up to five years imprisonment because it is serious

- 56)** Section 49 of the higher education act

The offence should remain in the PC and broader it to cover for all other offences and the regulatory part should remain in the parent act, penalties should be broadened or enhanced

- 57)** Section 44 of Medical and Allied Professions Act is regulatory and be in the parent Act
- 58)** Section 52 of copyright and performance rights act should move to the PC and fine of One hundred thousand for the court to have a leverage
- 59)** Section 89 of the Trade Marks Act should move to the PC and the penalties be intender with
- 60)** Section 72 of the Postal Services Act should move to the PC on interference and the penalties should remain.
- 61)** Section 73 of the Postal Services Act should move to the PC on impersonation and penalties be increased.
- 62)** Section 18 of the Accountant Act should move to the PC on impersonation and penalties increased.
- 63)** Section 22 of Accountant Act – impersonation and move to the PC
- 64)** Section 42 (3) of Citizenship of Zambia Act should move to the penal code.
- 65)** Section 5 (8) of Tolls Act

This has been taken care of in the PC and penalties enhanced

- 66)** Section 22 of Insurance Act, this should be the same as the accountants and lawyers and other professional bodies.
- 67)** Section 101 (1) of the Electronic Communication and Transaction Act move to the Penal Code.
- 68)** Section 137 of the Civil Aviation Act, the offence should move to the PC as it has been adequately taken care of.

69) Legal practitioners Act Section 42

The section is purely a regulatory

70) Education Act

Obtaining is all fraud. Section 49 (3) already dealt with

71) Information and Communication Technologies Act

Section 76 is regulatory and remain in the act

Section 77, malicious damage and vandalism should come out of the act.

Vandalism – public installations for public use malicious damage, any other property

Section 88

Section 83 (a) is trespass

Section 83 (b) to leave the remainder and the inspection to go to the parent act

.Section 85 – it should be removed as it is a super flows offence

Section 86 should be removed

72) Zambia Police Act

Section 59 should remain in the parent act

73) Workers Compensation Act

Section 130 remain in the penal code

Section 136 remain in the parent act

74) Electoral Act

The criminal offences in the electoral act should remain in the parent act as well as those criminal offences under the state security act.

75) The Prohibition and Prevention of Money Laundering Act

The offences should move to the penal code.

Note: there is a need to revisit the definition of money laundering.

Offences committed in a series carry sentences concurrently, - principles of sentencing.

There is a need to reconcile between forfeiture and restitution.

76) Road Traffic act

What should remain are the compliance offences like unlicensed, uninsured or failing to display or produce a licence when asked should remain in the parent act and the rest should move to the penal code.

77) Employment Code Act No.3 of 2019

The offences are compliance offences.

78) Medicines and Allied legislation act

Section 14 should remain regularly

79) Pharmaceutical and Poisons Act

Section 7 – it is a criminal offence and move it to the PC and is in the same category as adulterated medicines

80) Anti-corruption Act

Section 17 remain in the Act (Act Act)

Section 18 remain in the parent act

Section 19-39 covers offences

Section 40 91) to be taken along

Section 40 (2) to be maintained in the penal code

Section 53 remain in the parent act

81) Section 7 of the C.P.C – powers of the subordinate court

There is need for a chief resident magistrate to appear

Sexual offences. Offences are tried by magistrate courts but sentences passed by the high court.

They must be tried by a person with powers to sentence like chief resident magistrate. The trial court should have the man date to pass sentence in arson and sexual offences carrying a minimum mandatory sentence of 10 years.

Class iii minimum should be fifteen years.

Increase the threshold for confirmation, 20 years for class 11 and iii subject to confirmation by the high court. Any magistrate should try or handle cases of incest.

Higher threshold at the magistrate court level should be raised to 20 years and above and case should go to the high court on appeal or confirmation (Mr. Mongol)

Lay magistrates should not be allowed to handle serious offences

Currently magistrates were passing a maximum sentence of nine years.

To improve the threshold and open up the powers of the magistrate and reduce the high number of cases going to the high court.

20 years for class ii and iii and I and 25 years for R.M, P.R.M. and C.R M.

Confirmations deal with those cases where one does not appeal and not where one appeals.

Confirmation for class II and III for five years does not appeal the sentence.

Class II and III sentences requiring confirmation are those of five years and above and class I R.M, P R M and C R M are those of 10 years and above.

Power to impose fines (Cap) for class III is three hundred and fifty kwacha (K350.00) Units.

Class II and III fifty thousand kwacha and converted to penal units.

Class I one hundred thousand kwacha and convert to penalty units

Note: to look to other jurisdictions on diversions in cases of children committing offences

Note: to have a two **pronged** approach, diversion done outside court and diversion done by the court.

82) Section 17 of CPC

There is a need to go to court and obtain a search warrant to go to a guide that they have a probable cause or evidence to have an accused medically examined.

This part needs to go to two part dealing with investigations and not trial

The section borders on self-incrimination

That the investigator may obtain a body tissue from the accused and if the accused refuses then apply to the court for a search warrant or order from court (recommendation).

Note: There is schedule to the PC and the offences identified should put in the schedule to the PC (recommendation)

83) The provision in the extraterritorial crimes in the PC should move to the C.P.C. Further, the jurisdiction of territorial offences should be removed from PC and be put in the CPC and then it would apply to all other offences.

84) The part of general rules of criminal responsibility in the PC should move to the CPC and apply to all other offences.

Note: there is a principle that what is done outside the country should be an offence in that country; dual criminality when drawing up jurisdiction, this principle should be considered as well as extradition cases.

85) Section 99 of the anti-human trafficking act should be lifted.

86) Whenever consent is required you should put it next to the offence in the PC and not CPC.

87) Section 55 of the Anti-Corruption C should remain in the parent act

There is a need to have a schedule that says offences under his part should have a warrant drawn by a high court judge or magistrate. If its routine magistrate should deal, but if it's serious the high court.

88) Section 53 of the Anti-Corruption Act, to have the power of director general power of appeal, remains in the CPC.

89) Cyber offences, the same to be done for routine cases

90) The search warrant to come at page 10.

91) Bail – section 123

The issue of bail and foreigners should be interrogated. Some guidelines should be developed. Increase the amount on a bail. Conferences should be held through institutions on bail and wage the way forward.

Bail in the subordinate court- If the denied bail, they can go to the high court

The state should apply for a review of a grant of bail issued by a magistrate on an interlocutory matter.

It should be left open ended where a person has been given bail by a subordinate court.

The DPP should appeal for review of a grant of bail or condition on which magistrate.

92) Section 149 of CPC.

122 of the juveniles Act should be put in the CPC above section 149 of the CPC and place the voir dire in the CPC.

93) Section 175 of CPC

There is a need to amend the amount, the amount of ten thousand kwacha and then convert to penalty units which is thirty five thousand penalty units.

94) Section 174 of CPC, Section 186 of the CPC

It needs to be looked at and see if it can be broadened.

95) Section 191 CPC

This should extend to ballistic evidence and fingerprint evidence and be produced in the presence of the accused.

The author of the report will be called to court.

There is need to expand to experts that reports by them can be produced in evidence and allow for the defence counsel to call the expert if they feel like calling that expert.

The need for a provision to have a category of experts like handwriting, ballistics, motor vehicles and fingerprints.

96) Section 194 of the CPC – the removal of Zambia railways as it does not exist.

97) Section 109 of Anti-Human Trafficking Act should go in the CPC.

98) There is a need to have a provision to take evidence via a video link or barrier in court that prevents contact with the accused by the victim as it is in the anti-gender based violence act, in the part dealing with examination of witnesses in the CPC.

99) Section 302 of CPC

In addition to receiving evidence the court may allow the relatives of the victim to provide an impact statement and the convicted to address the court in mitigation.

100) Preliminary inquiry should find its way out of the CPC

After the first appearance a first certificate should be issued.

101) Community services sentencing – this is limited to misdemeanour.

To include felony and ID

Community service is available but if the item stolen is of more value than it should be excluded.

Note: there is need to review the community service orders and trying suits with some conditions

A specific provision be made and the maximum penalty be 12 months imprisonment in default on jumping bail and up to 2 years for habitual sureties forfeiture, when you fail to pay the money as a surety the maximum should be 12 months and K50,000 cash and K100,000 for non-cash.

18 months maximum imprisonment for the professional sureties and the amount should be high enough.

102) Section 321 (a) CPC – appeals by DPP.

There is need for provision to allow DPP to appeal on sentence

An appellate court cannot pass a sentence that is higher than what lower court has imposed.

103) Section 327 of the CPC – the appellant court should impose a sentence higher than the minimum sentence passed by the lower court.

An erroneous sentence by a lower court binds the higher courts.

104) Forfeiture is associated with criminal investigation in law enforcement.

The provision of forfeiture in the CPC is absolute and needs to be replaced.

4.2.2 Third Technical Committee Meeting

1) Liability for offences committed outside the jurisdiction, or partly within and partly beyond the jurisdiction – Section 6 of the Penal Code

Observation : the provision should be broadened to capture what is in the ACC Act.

Recommendation: the provision should be captured in accordance with the ACC Act

2) Principal offenders - Section 21 of the Penal Code

Observation: No guidelines provided for sentencing.

Recommendation: Since sentencing is a complete process on its own, a Committee must be specifically set up to tackle the issue.

3) Corporal punishment – Section 27 of the Penal Code

Observation: The provision for corporal punishment has since been repealed.

Recommendation: Update Report accordingly reconciling it with the provision in the Anti Torture Bill and other affected Acts.

4) Personating public officers – Section 102 of the Penal Code

Observation: Distinguish a ‘public officer’ in the PC from a ‘state officer’ as provided in the Constitution (Amendment Act) No. 2 of 2016, **Recommendation:** Harmonise the provisions in the two Acts to provide for a person who impersonates a person employed in the public service.

5) Defilement of girls under sixteen – 138 of the Penal Code

Observation: Both the PC and the Education Act (section 18) provide for children.

Recommendation: The provision in the Education Act should be incorporated in the Penal Code.

6) Defilement of idiots or imbeciles – Section 139 of the Penal Code

Observations: The words ‘idiots’ and ‘imbeciles’ should be derogatory and discriminatory.

-Decision of ‘idiots’ and ‘imbeciles’ to marry, how do you reconcile that/ sexual relations

Recommendation: Replace the words with more suitable terms and look at the Bill on Mental disorders to verify the use of the two words.

7) Neglecting to provide food, etc., for children – Section 169 of the Penal Code

Recommendation: Should be one provision looking across all the needs of a child.

8) Fouling water – Section 188 of the Penal Code

Recommendation: Section 55 of the Water Act should be incorporated in section 122 of the PC

9) The Water Act, Cap I98 -Section 54

Recommendation: Section 54 of the Water Act should be incorporated into the Penal Code.

10) The Fisheries Act No 22 of 2007 -Section 12G

Recommendation: Section 12G to be incorporated in the Penal Code.

11) Civil Aviation Act, 2010

Recommendation: Section 143 (a) (b) and (c) of the Civil Aviation Act are weak, should be looked at with section 143 (d) of the Anti- Terrorism Act , which should be incorporated into the Penal Code.

12) Anti-Human Trafficking Act-Section 109

Recommendation: In addition to the previous recommendation, there is need to have a provision in the CPC under the part dealing with examination of witnesses to allow for the use of screens or for the Court to be partitioned to prevent contact between the accused person and the victim.

13) Powers of the Subordinate Court-Section 7 of the Criminal Procedure Code

Recommendation: Verify the sentencing thresholds for all classes of magistrates

14) Section 175 of the Criminal Procedure Code

Recommendation: Provision for Hostile Witness to be made in the Criminal Procedure Code

15) Forfeiture

Recommendation: The Provision for forfeiture under the CPC should be reworked and incorporated into the Penal code.

16) Capacity(criminal liability)

Observation: age 8 is too low

Recommendation: should increase the age of criminal responsibility.

17) Diversion

Recommendation: Need to formalise practice of diversion in the subordinate court. Reservation by Mr. Mungole, some of the most atrocious crimes are committed

Submissions from the Technical Committee meeting held from 9th to 15th December 2019, in the Commission boardroom.

PENAL CODE

SECTION	SUBMISSION
<p>Section 2(f) Saving of certain laws</p>	<p>Not adopted</p> <p>The Police Force referred to in this section is as was the time the Penal Code came in effect and thus the use of Police Force should be maintained</p>

Inappropriate to remove the minimum mandatory sentences which were	
<p>Section 3</p> <p>General rule of interpretation</p>	<p>We must relate to the provision of the CPC, Subordinate Court Act and High Court Act especially where there is a lacuna in the law.</p>
<p>Section 6</p> <p>Liability for offences committed outside the jurisdiction, or partly within and partly beyond the jurisdiction</p>	<p>Reconsider section 6(2) on offences committed against Zambian nationals (outside Zambia) by foreigners who are outside Zambia.</p> <p>See Ngati case</p> <p>See ACC Act and general discussion on jurisdictions for offences committed outside the country such as Universal and dual criminality.</p>
<p>Section 12A</p> <p>Defence of diminished responsibility</p>	<p>Mental illness means insane and according to jurisprudence diminished responsibility is never used to mean insane and thus this section should be refined.</p> <p>Check carefully and distinguish between mental illness and diminished responsibility.</p> <p>Replace mental illness with mental condition</p>
<p>Section 13</p> <p>Intoxication</p>	<p>Intoxication can arise from any other substance e.g. petrol or glue and thus this section should be refined to include other substances.</p> <p>It should read narcotic drugs or any other substances.</p>
<p>Section 14</p> <p>Immature age</p>	<p>Adopted</p>

<p>Section 24</p> <p>Different kinds of punishment</p>	<p>Death penalty should be maintained as this punishment is still provided for in the Constitution under the Bill of Rights. Removing it requires public consultations, political dispensation and a referendum.</p> <p>Death penalty acts as a deterrent even though there are no executions.</p> <p>Diversion is not a form of punishment and the true meaning of Diversion does not involve court. Therefore, diversion cannot apply in this section.</p> <p>Diversion in the criminal justice system is never included as a form of punishment and juveniles found wanting do not go through a trial.</p> <p>The recommendation for Diversion should go under the juveniles Act because Diversion does not apply to adults.</p> <p>Counselling also should be placed in the Juveniles Act. Further see probation of Offences Act.</p> <p>Deportation should be deleted following the repeal of section 34 and 35.</p>
<p>Section 25</p> <p>Sentence of death</p>	<p>Retain I in line with the above discussions under section 24 on death penalty</p>
<p>Section 26</p> <p>Imprisonment</p>	<p>Remove manslaughter as the fine should not be a punishment for manslaughter.</p>
<p>Section 27</p> <p>Corporal punishment</p>	<p>Repealed by Banda v The People (2002) AHRLR 260 (ZaHC 1999)</p>

<p>Section 28</p> <p>Fines</p>	<p>The proposal is not adopted</p> <p>The law already provides and gives discretion to the court to give the period to pay the fine on a case by case basis</p> <p>See section 310 of the CPC</p>
<p>Section 32</p> <p>Costs</p>	<p>Proposal not adopted</p> <p>This section should be retained as the person cannot be prejudiced because of costs.</p> <p>This section is used in exceptional cases such as where there is a problematic accused person whose conduct results in costs over and above the normal costs or a private prosecution.</p>
<p>Section 34</p> <p>Deportation within Zambia – in case of felony</p>	<p>Adopted</p>
<p>Section 35</p> <p>Provisions as to sentences of deportation</p>	<p>Adopted</p>
<p>Section 39</p> <p>Sentences cumulative unless otherwise directed</p>	<p>Rejected</p> <p>Maintain section as it is owing to the resolution in section 24</p>

<p>Section 43</p> <p>Treason</p>	<p>Death should be retained.</p> <p>The TWG rejected proposal, paragraph (b) should be retained. However, the definition of force in subsection 2 should be redrafted so that it is not disjunctive and should clearly state what amounts to force.</p>
<p>Section 44</p> <p>Concealment of treason</p>	<p>Proposal rejected</p> <p>Treason is an ultimate offence and the sentence should be retained</p>
<p>Section 45</p> <p>Treason - felony</p>	<p>Proposal rejected</p> <p>Provision should be retained</p> <p>The offences are similar but Treason is more serious, this one has so much on undermining but not to overthrow.</p> <p>This offence is not similar and should be maintained.</p>
<p>Section 48</p> <p>Inciting to mutiny</p>	<p>Adopted</p>
<p>Section 49</p> <p>Aiding soldiers or police in acts of mutiny</p>	<p>Adopted</p>
<p>Section 50</p> <p>Inducing soldiers or police to desert</p>	<p>Adopted</p>

<p>Section 53</p> <p>Prohibited publications</p>	<p>The committee directed that further research be undertaken to look at the regulation of publications and look at publications on hatred (religious, tribe, moral etc.) and not just political publications like IBA and the Publications Act.</p>
<p>Section 54</p> <p>Offences in respect of prohibited publications</p>	<p>Repealed following the repeal of section 53</p>
<p>Section 55</p> <p>Delivery of prohibited publication to police station</p>	<p>Repealed following the repeal of section 53</p>
<p>Section 56</p> <p>Power to examine packages</p>	<p>Adopted</p>
<p>Section 57</p> <p>Offences in respect of seditious practises</p>	<p>Rejected</p> <p>Sedition is there to protect the state from unscrupulous people who endeavour to bring hatred and contempt to the government.</p>

<p>Section 58</p> <p>Legal Proceedings</p> <p>Section 59</p> <p>Evidence</p> <p>Section 60</p> <p>Seditious intention</p> <p>Section 61</p> <p>Persons deemed to have published a seditious publication</p> <p>Section 62</p> <p>interpretation</p>	<p>Rejected</p> <p>Provision is adequate and offers adequate protection in the proviso to section 60</p> <p>There is a prevalence of these offences which are intended to destabilise the country, removing these offences will bring bigger problems.</p> <p>Following the retaining of section 57</p>
<p>Section 63</p> <p>Unlawful oaths to commits capital offences</p>	<p>Proposal rejected following the guidance on Death penalty</p>
<p>Section 65</p> <p>Compulsion: how far a defence</p>	<p>Adopted</p>
<p>Section 66</p> <p>Unlawful drilling</p>	<p>Rejected</p> <p>The provision is related to treason and sedition.</p> <p>The person volunteering to be trained should be on the alert to know why he is being trained.</p> <p>Owing to the risks caused there is a high burden on individuals</p>

<p>Section 67</p> <p>Publication of false news with intent to cause fear and alarm to the public</p>	<p>Adopted</p>
<p>Section 68</p>	<p>Proposal rejected because mere refusal to stand and sing may amount to insulting the national anthem, the act should go beyond that.</p> <p>The committee recommended that the Regulation should be passed as to clarify what amount to ridicule and insult of the National anthem (prescribed under the national anthem Act)</p>
<p>Section 69</p> <p>Defamation of President</p>	<p>All provisions relating to defamation and libel in the Penal Code should be repealed.</p>
<p>Section 70</p> <p>Expressing or showing hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour</p>	<p>Adopted with the deletion of the word “birth”</p>
<p>Section 70 (2)</p>	<p>Not adopted</p> <p>There are no more delays in relation to issuance of prosecute because of decentralisation of NPA.</p>
<p>Section 71</p> <p>Defamation of foreign princes</p>	<p>Adopted</p>
<p>Section 73</p> <p>piracy</p>	<p>Create its own provision on piracy including hijacking and provisions on inland waters and high seas.</p>

<p>Section 75-83</p>	<p>Proposal not adopted</p> <p>The sections are maintained</p> <p>This assembly deals with intent to commit an offence contrary to the Public Order Act</p> <p>The offence in the Penal Code is broader</p>
<p>Section 79</p> <p>Rioting after proclamation</p>	<p>Proposal not adopted</p> <p>All sentences should be maintained.</p>
<p>Section 84</p> <p>Going armed in public</p>	<p>Proposal not adopted</p> <p>Provision maintained and penalty to be increased to five years</p>
<p>Section 85</p> <p>Possession of Offensive weapons or materials</p>	<p>Proposal not adopted</p>
<p>Section 87</p> <p>Forcible detainer</p>	<p>Adopted</p>
<p>Section 90</p> <p>Threatening violence</p>	<p>Proposal not adopted</p>
<p>Section 91</p> <p>Proposing violence or breaches of the law to assemblies</p>	<p>Proposal not adopted</p> <p>Following the resolution to retain all provisions of obtaining consent from the DPP.</p>

<p>Section 92</p> <p>Wrongfully inducing a boycott</p>	<p>We need to seek clarification (subject to further research)</p>
<p>Section 106</p> <p>Punishment of perjury and subordination of perjury</p>	<p>The sentence should not be reduced as it disrupts life and should carry a stiff penalty.</p> <p>There is no basis for the reduction of sentences.</p>
<p>Section 108</p> <p>Fabricating evidence</p>	<p>Proposal not adopted</p> <p>There is need to put measures in place on sentence guidelines before the mandatory minimum sentence can be removed</p>
<p>Section 112</p> <p>Conspiracy to defeat justice and interference with witnesses</p>	<p>There is need to put measures in place on sentences guidelines before the mandatory minimum sentence can be removed</p>
<p>Section 117 (2) (a) (c)</p> <p>Prohibition on taking photographs, etc., in court</p>	<p>Add Constitutional Court</p> <p>The court may move outside to view exhibits and as such pictures should not be taken.</p> <p>The paragraphs © subsection (2) should be maintained because it goes beyond and has security connotations</p>

<p>Section 132</p> <p>Definition of rape</p>	<p>Proposal to delete the words “carnal knowledge” and replace it with the “sexual intercourse” was adopted while the use of the word “unlawful” was retained.</p> <p>It’s unlikely that a woman can rape a man, for rape to occur there must be penetration.</p> <p>The proposal to replace woman or girl with person can only work in jurisdiction where same sex relation is lawful.</p> <p>The offence cannot be made gender neutral; it is gender specific.</p> <p>Removing “unlawful” will create marital rape.</p>
<p>Section 133</p> <p>Punishment of Rape</p>	<p>Proposal not adopted</p> <p>Maintain mandatory minimum sentence</p> <p>There is need to develop sentence guidelines before the mandatory minimum sentence can be removed to ensure certainty</p>
<p>Section 134</p> <p>Attempted rape</p>	<p>There is a need to develop sentence guidelines before the mandatory minimum sentence can be removed to ensure certainty.</p>
<p>Section 135</p> <p>Abduction</p>	<p>Adopted</p>
<p>Section 137</p> <p>Indecent assaults on females</p>	<p>Adopted</p>
<p>Section 137 A</p>	<p>There are juveniles who don’t require counselling (place provision on counselling in the juvenile Act)</p> <p>Delete subsection (2)</p>

<p>Section 138</p> <p>Defilement of girls under sixteen</p>	<p>Replace “child” with “opposite sex”</p> <p>Proposed sub (2) because we have customary law marriage, therefore under such marriages these provisions shall not apply.</p> <p>It can only be defilement with the child of the opposite sex.</p> <p>Subsection 4 to be placed in the juveniles Act.</p>
<p>Section 139</p> <p>Defilement of idiots or imbeciles</p>	<p>Adopted and it was proposed that for the offence to be committed it must involve sexual intercourse with a person of the opposite sex.</p>
<p>Section 141</p> <p>Procuring defilement of women by threats or fraud or administering drugs</p>	<p>Proposal not adopted</p> <p>Sentences should be maintained as it is.</p>
<p>Section 142</p> <p>House-holder, etc, permitting defilement of girl under twelve on his premises</p>	<p>Adopted</p>
<p>Section 143</p> <p>Householder, etc., permitting defilement of girl under sixteen on his premises</p>	<p>Proposal not adopted</p> <p>Offences of this nature should be put in the penal Code and align the sentences and punishment with the Anti Human Trafficking Act</p>

<p>Section 144</p> <p>Detention with intent or in brothel</p>	<p>Proposal not adopted</p> <p>Sentences should be maintained as they are.</p> <p>Replace the word “carnal knowledge” with “sexual intercourse”</p>
<p>Section 148</p> <p>Power of search</p>	<p>Adopted</p>
<p>Section 149</p> <p>Brothels</p>	<p>Proposal not adopted</p> <p>There is a need to develop sentence guidelines before the mandatory minimum sentence can be removed to ensure certainty.</p>
<p>Section 150</p> <p>Conspiracy to defile</p>	<p>The replacement of the word “carnal knowledge” with “sexual intercourse” was accepted.</p> <p>There is a need to develop sentence guidelines before the mandatory minimum sentence can be removed to ensure certainty.</p>
<p>Section 151</p> <p>Attempted to procure abortion</p>	<p>Proposal not adopted.</p> <p>There is a need to develop sentence guidelines before the mandatory minimum sentence can be removed to ensure certainty.</p>
<p>Section 152</p> <p>Abortion by woman with child</p>	<p>Proposal not adopted</p> <p>There is a need to develop sentence guidelines before the mandatory minimum sentence can be removed to ensure certainty.</p>
<p>Section 153</p> <p>Supplying drugs or instruments to procure abortion</p>	<p>Proposal not adopted</p> <p>There is a need to develop sentence guidelines before the mandatory minimum sentence can be removed to ensure certainty.</p>

<p>Section 155</p> <p>Unnatural offences</p>	<p>Proposal not adopted to reduce the sentence.</p> <p>Provision should be maintained as it is.</p> <p>The replacement of the word “carnal knowledge” with “sexual intercourse” was accepted.</p> <p>Replacement of “child” with “a person below sixteen years</p>
<p>Section 156</p> <p>Attempt to commit</p> <p>Unnatural offences</p>	<p>Provision maintained</p>
<p>Section 157</p> <p>Indecent assault of boys under fourteen</p>	<p>Provision maintained</p>
<p>Section 159</p> <p>Incest by males</p>	<p>The replacement of the word “carnal knowledge” with “sexual intercourse” was accepted.</p>
<p>Section 161</p> <p>Incest by females</p>	<p>The replacement of the word “carnal knowledge” with “sexual intercourse” was accepted.</p>
<p>Section 162</p> <p>Test of relationship</p>	<p>Adopted</p>
<p>Sanction of Director of public prosecutions</p>	<p>Not adopted</p> <p>Provision should be maintained</p>

<p>Section 165</p> <p>Fraudulent pretence of marriage</p>	<p>Not adopted</p> <p>People can be duped into marriage for exploitation.</p> <p>Expand the section to equally protect men from women in similar circumstances of exploitation.</p>
<p>Section 166</p> <p>Bigamy</p>	<p>Proposal not adopted</p> <p>Provision should maintained</p>
<p>Section 167</p> <p>Marriage ceremony</p> <p>Fraudulently gone through without lawful marriage</p>	<p>Proposal not adopted</p> <p>Maintain provision</p>
<p>Section 168</p> <p>Desertion of children</p>	<p>Proposal not adopted</p> <p>Retain provision</p>
<p>Section 169</p> <p>Neglecting to provide food, etc., for children</p>	<p>The purpose of this is to punish a person who does not provide for a child.</p> <p>Section 169 has a lesser penalty and an ingredient in 169 involves the injury to health and thus the penalty should be equal with the one in section 168.</p>
<p>Section 177</p> <p>Obscene matters or things</p>	<p>General comment</p>
<p>Section 177A</p>	<p>Delete subsection 3</p> <p>Community service does not apply to children</p> <p>Counselling should go to the Juveniles Act</p>

<p>Section 181</p> <p>Rogues and vagabonds</p>	<p>Subsection (a) (c) should be deleted</p> <p>The proposal to change the marginal note to read “wanderers and beggars was adopted.</p>
<p>Section 182</p> <p>Offences relating to official uniform</p>	<p>Adopted</p>
<p>Section 183</p> <p>Negligent act likely to spread infection</p>	<p>It was proposed that a new offence be created and inserted in the provision as subsection (2) for wilfully and knowingly transmitting an infectious disease.</p> <p>A sentence of life imprisonment should apply.</p>
<p>Section 186</p> <p>Adulteration of drugs</p>	<p>Need to look at it up (see medical and Allied substances Act for other offences)</p>
<p>Section 191 - 198</p>	<p>Provisions repealed following the repeal of section 69</p>
<p>Section 201</p> <p>Punishment for murder</p>	<p>Sentence maintain</p>
<p>Section 202</p> <p>Punishment of manslaughter</p>	<p>Maintain as it is.</p>
<p>Section 203</p> <p>Infanticide</p>	<p>Maintain provision as it is.</p>
<p>Section 215</p> <p>Attempt to murder</p>	<p>Maintain sentences as they are.</p>

<p>Section 216</p> <p>Attempt to murder by convict</p>	<p>Adopted</p>
<p>Section 217</p> <p>Accessory after the fact to murder</p>	<p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>
<p>Section 218</p> <p>Written threat to murder</p>	<p>There is need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed</p>
<p>Section 225</p> <p>Preventing escape from wreck</p>	<p>Proposal not adopted</p>
<p>Section 226</p> <p>Acts endangering railways and persons travelling thereon</p>	<p>There is a need to develop measures on sentence guidelines before the mandatory minimum sentence can be removed.</p> <p>Subsection 2 retained following the maintaining of subsection (1), the words “subject to the Juveniles Act should be deleted</p>
<p>Section 228</p> <p>Acts endangering the safety of persons travelling in motor vehicles</p>	<p>There is need to develop measures in place on sentence guidelines</p>
<p>Section 242</p> <p>Conveying persons by water for hire in unsafe or overloaded vessel</p>	<p>Maintain provision</p>

<p>Section 248A</p>	<p>Proposal not adopted</p> <p>There is need to develop measures in places on sentence guidelines before the mandatory minimum sentence can be removed</p>
<p>Section 252</p> <p>Definition of kidnapping from lawful guardianship</p>	<p>Adopted</p>
<p>Section 254</p> <p>Punishment for kidnapping</p>	<p>Proposal not adopted</p> <p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>
<p>Section 256</p> <p>Kidnapping or abducting with intent to confine person</p>	<p>There is a need to put measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>
<p>Section 261</p> <p>Buying or disposing of any person as a slave</p>	<p>Retain provision after the guidance that all offences should be placed under penal Code and align sentence with Anti Human Trafficking Act</p>
<p>Section 262</p> <p>Habitual dealing in slaves</p>	<p>Retain provision after guidance that all offences should be placed under penal Code and align sentence with Anti Human Trafficking Act</p>
<p>Section 275</p> <p>Stock theft</p>	<p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>

<p>Section 275A</p> <p>Stealing copper cathodes, copper bars, cobalt, lead, zinc or vanadium</p>	<p>Not adopted</p> <p>Copper sustains 80 percent of Zambia’s economy, this why its theft has a higher sentence from other minerals therefore it should remain as it is.</p> <p>Delete proposed words of ‘or other minerals in the section.</p>
<p>Section 281A</p>	<p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>
<p>Section 294</p> <p>Aggravated robbery</p>	<p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>
<p>Section 295</p>	<p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>
<p>Section 296</p> <p>Demanding property by written threats</p>	<p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>
<p>Section 297</p> <p>Attempts at extortion by threats</p>	<p>Proposal not adopted</p> <p>Maintain as it is</p> <p>Marginal note should be charged to ‘extortion by threats’</p>
<p>Section 302</p> <p>Entering dwelling house or other building with intent to commit felony</p>	<p>There is a need to develop measures in place on sentence guidelines before the mandatory minimum sentence can be removed.</p>

<p>Section 305</p> <p>Persons found armed, etc, with intent to commit felony</p>	<p>Adopted</p>
<p>Section 318</p> <p>Receiving stolen property, tec. and</p> <p>Section 320</p> <p>Receiving goods stolen outside Zambia</p>	<p>Offences should be extended to cover situations where the offender's handles stolen property without retaining it. e.g processing paperwork</p>
<p>Section 321</p> <p>Illegal possession of diamonds or emeralds</p>	<p>Rephrase provision (the rank of inspector to allow for senior officers to exercise this authority. A warrant should be required for all officers below the rank of inspector.</p> <p>There is no indication on offences that require a warrant or not</p>
<p>Section 328</p> <p>Arson</p>	<p>Proposal not adopted</p> <p>Maintain sentence</p>
<p>Section 335</p> <p>Punishment for malicious injuries in general</p>	<p>Replace five million kwacha with One hundred thousand fee units and fifteen million kwacha with one hundred and sixty thousand fee units.</p>
<p>Section 339</p> <p>Wilful damage, etc., to survey and boundary marks</p>	<p>Amend to remove the option of the fine by deleting the words 'or to a fine of six hundred penal units'</p> <p>Further to remove the words 'is liable to imprisonment for three months.....' So that the duration of the sentence is determined by the general punishment for a misdemeanour.</p>

<p>Section 340</p> <p>Penalties for damage, etc., to railway works</p>	<p>Adopted</p>
<p>Section 341B</p>	<p>The provision should be deleted.</p> <p>The jurisdiction of the High Court to deal with these offences should be set out in the schedule to section 11 of the CPC.</p>
<p>Section 341G</p> <p>vandalism of traffic signs and traffic signals</p>	<p>Maintain as it is.</p>
<p>Section 341H</p> <p>Vandalism of navigation signs and signals on water way</p>	<p>Add proviso from section 341G subsection (1) to provide for a penalty where vandalism results in death.</p>
<p>Section 341 I</p> <p>Offence by body corporate, etc</p>	<p>Delete subsection (1) (2) introduce a new subsection under section 26 to provide for criminal liability of a body corporate and place it there.</p>
<p>Section 341 K</p>	<p>Delete provision it is already provided under section 21</p>
<p>Section 341N</p> <p>Forfeiture</p>	<p>Should be replaced</p> <p>Forfeiture of proceeds of crimes Act provides for forfeiture</p>
<p>Section 344</p> <p>Making a false document</p>	<p>Check the Electronic Communication and Transaction Act for the definition of a document with the view to amending the definition of document in the CPC if necessary</p>

<p>Section 348</p> <p>Forgeries punishable by imprisonment for life</p>	<p>General comment on sentence</p>
<p>Section 365</p> <p>Preparations for coining</p>	<p>General comment on sentence</p> <p>Chapter XXXVII should be reviewed to extend its bank notes as it currently relates to coins only. The necessary amendments can then be made section 363-372</p>
<p>Section 373</p> <p>forfeiture</p>	<p>Repeal</p> <p>Reliance should be placed under the forfeiture of Proceeds of Crime Act which deals with the forfeiture of proceeds of crime and items used in the commission of crime.</p>
<p>Section 374</p> <p>Possession of die used for purpose of making stamps</p>	<p>There is need to have a similar provision in the amended Chapter XXXVII that deals with currency notes</p>
<p>Section 375</p> <p>Paper and dies for postage stamps</p>	<p>There is need to have a similar provision in the amended Chapter XXXVII that deals with currency notes</p>

<p>Written consent of the DPP to prosecute offences</p>	<p>The committee resolved in respect of all requiring the written consent of the DPP to prosecute offences that this requirement should be maintained owing to the following</p> <ul style="list-style-type: none"> (i) Some offences because of their nature require personal scrutiny and decision of the DPP; and (ii) The NPA Act has granted the DPP the discretion to decide which offences to delegate the assurance of consent to prosecute by his subordinates
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CRIMINAL PROCEDURE CODE

SECTION	SUBMISSION
<p>Section 7 Powers of subordinate courts</p>	<p>Adopted</p>
<p>Section 9 (1) (2) Sentencing requiring confirmation</p>	<p>Adopted Insert Chief Resident magistrate and Principal Resident magistrate so that the provision is updated with the current structure.</p>
<p>Section 9(6)</p>	<p>Deletion of subsection (6)</p>
<p>Section 9(7)</p>	<p>Deletion of subsection (7) There is no longer a direct appeal to the Supreme Court</p>
<p>Section 10</p>	<p>The section should be replaced in view of the proposed repeal of Part VII</p>

<p>Section 17</p> <p>Medical examination of accused persons</p>	<p>Insert a provision that will allow police officers to obtain a warrant to subject suspects to medical examinations where appropriate.</p>
<p>Section 286</p>	<p>Proposal not adopted</p> <p>The evidence obtained should not be used for any other purpose other than the purpose of the criminal proceedings</p>
<p>Section 23</p> <p>Power of police officer to detain and search vehicles and persons in certain circumstances</p>	<p>Consider whether to ‘replace police officer’ with law enforcement officer</p>
<p>Section 24</p> <p>Mode of searching women</p>	<p>Decency is not restricted to women; this provision should be amended to apply to both gender</p>
<p>Section 26</p> <p>Arrest by police officer with warrant</p>	<p>The proposal not adopted</p> <p>The provision as it is now enables any police officer to arrest a person he suspects has committed a cognisable offence without authorisation from his superiors.</p> <p>The proposed amendment will take such power and require such police officer to obtain authorisation from the head of Zambia Police, such amendment will defeat the intended purpose of the provision.</p> <p>Maintain as it is</p>
<p>Section 27</p>	<p>Deletion of paragraph (b) following the deletion in the penal Code</p>

<p>Section 33</p> <p>Detention of persons arrested without warrant</p>	<p>Proposal not adopted</p> <p>It deals with the detention rather than the release of suspects.</p>
<p>Section 35</p> <p>Offence committed in Magistrate's presence</p>	<p>This is historical, from the time magistrates were district commissioners and exercised administrative functions of maintaining law and order. Further there is a need to separate functions of arrest and adjudication.</p> <p>Proposed that the section should be repealed.</p>
<p>Section 36</p> <p>Arrest by Magistrate</p>	<p>This is historical, from the time magistrates were district commissioners and exercised administrative functions of maintaining law and order. Further there is a need to separate functions of arrest and adjudication.</p> <p>Proposed that the section should be repealed.</p>
<p>Section 39</p> <p>Duty to assist magistrate, etc.</p>	<p>Delete the word "from the provision as it is only applicable to Police officers in line with the recommendation in section 35</p>
<p>Section 41</p> <p>Security for good behaviour from persons disseminating seditious matters</p>	<p>Proposal not adopted</p>
<p>Section 44</p> <p>Security for good behaviour from habitual offenders</p>	<p>Proposal not adopted</p> <p>It is a good provision for the maintenance of public order</p>

<p>Section 45</p> <p>Order to be made</p>	<p>Maintain as it is</p>
<p>Section 50</p> <p>Inquiry as to truth of information</p>	<p>Maintain as it is</p>
<p>Section 73</p> <p>Offence near boundary of district</p>	<p>Amend section by replacing 10 miles with 15 km</p>
<p>Section 81</p> <p>Power of Director of Public Prosecutions to enter nolle prosequi</p>	<p>Introduce a new section on offering no evidence which will result into an acquittal</p>
<p>Section 82</p> <p>Delegation of powers by Director of Public Prosecutions</p>	<p>Repeal and replace with the provisions in NPA Act on delegation of powers by DPP</p>
<p>Section 83</p> <p>Criminal information by Director of Public Prosecutions</p>	<p>Adopted</p>
<p>Section 94</p> <p>Service when person summoned cannot be found</p>	<p>Adopted</p>
<p>Section 96</p> <p>Service on company</p>	<p>Adopted</p>

<p>Section 123</p> <p>Bail</p>	<p>The proposal not adopted</p> <p>The section should remain the way it was, because effecting the change will make it difficult to secure attendance of the accused persons on bail. (the proviso to subsection (1) should be maintained.</p> <p>There is no capacity to track the accused on bail so this provision is not tenable.</p> <p>Surety should be left to the court to determine who is eligible on a case by case basis and no definition should be given.</p>
<p>Section 123 (3)</p>	<p>The right to have bail conditions varied should be available to all the parties in a criminal trial.</p>
<p>Section 123 (4)</p>	<p>The proposal to insert the words “to a satisfaction of the court” was not adopted as the decision of the DPP may be based on classified (secret) information that may be inappropriate to disclose.</p>
<p>Section 123 (5)</p>	<p>Proposal not adopted</p> <p>The law has not provided for working sureties without exception where the court inappropriately demands for working sureties, that decision can be challenged in a superior court.</p>
<p>Section 126</p> <p>Amount of bail, and deposits</p>	<p>Insert a provision to deal with the subordinate court to vary bail condition but leave the one dealing with the High Court so as to allow people to appeal to the High Court</p>
<p>Section 149</p> <p>Procedure where person charged is called for defence</p>	<p>Replace this section with section 149 from the pre 1995 edition of the CPC on recall of witnesses and the marginal note should read “power to recall witness”. The section that deals with an accused as a witness for the defence is 158.</p>

<p>Section 150</p> <p>Refractory witnesses</p>	<p>Insert a section after this one, on hostile witness.</p> <p>The procedure for dealing with hostile witnesses is available in case law.</p> <p>See (the people v Munalula)</p>
<p>Section 151</p> <p>Cases where wife or husband may be called consent of accused</p>	<p>Bigamy was maintained under the penal code</p> <p>Leave it as it is</p>
<p>Section 172</p>	<p>Not Adopted</p>
<p>Section 175</p> <p>Power of court to order accused to pay compensation</p>	<p>There is need to provide for a modesty amount from k50 to k70,000 fee units</p>
<p>Section 183</p> <p>Person charged with treason may be convicted of treason-felony and person charged with treason or treason –felony may be convicted of sedition</p>	<p>With the guidance from the penal code regarding treason felony this section should be maintained.</p>
<p>Section 191</p> <p>Evidence to be taken in presence of accused</p>	<p>Insert provisions on video links for the accused person to fellow the proceeding where the accused person is not physically in court. (due to circumstances such as illness or security concerns)</p>
<p>Section 191 A</p> <p>Reports by medical officers in public service</p>	<p>Maintain as it is</p>

<p>Section 192</p> <p>Evidence of analyst</p>	<p>Insert provision for other expert evidence e.g. Ballistics, handwriting, cyber-crime to allow the receiving of other experts without the physical presence in court reserving the right of the accused person to request the court to call such witnesses and be cross examined.</p>
<p>Section 194</p> <p>Evidence of plans, theft of postal matters and goods in transit on railways</p>	<p>Adopted</p>
<p>Section 196</p> <p>Remarks respecting demeanour of witness</p>	<p>Adopted</p>
<p>Section 197</p> <p>Trial in subordinate court</p>	<p>Delete proviso</p> <p>Trial for treason and murder would never take place in the subordinate court</p>
<p>Section 197 A</p> <p>Witness statements to be availed the subordinate court</p>	<p>Adopted</p> <p>The statements should be availed to the accused person on or before from the time of appearance</p>
<p>Section 203</p>	<p>Art 18(12) (d) (i) of the Constitution allows the trial to proceed in the absence of the accused person where the law allows it.</p> <p>Currently this provision only allows the trial to continue if the offence is a misdemeanour, the provision must be amended to cover both felonies and misdemeanours.</p>

<p>Section 204</p> <p>Accused to be called upon to plead</p>	<p>Adopted</p> <p>The subsection should include the consequences of not informing the accused to have the right to legal representation.</p>
<p>Section 205</p> <p>Procedure on Plea of “not guilty”</p>	<p>Insert a provision for witnesses to provide evidence through the video link/TV was necessary.</p> <p>Insert a provision to deal with the protection of vulnerable witnesses, the provision will place limitations on accused persons, personally cross examining specified witnesses.</p>
<p>Section 217</p> <p>Court to hold preliminary inquiry</p>	<p>The provision relating to preliminary inquiry from section 223-226 then from 228-246 should be repealed.</p> <p>The introduction of the summary committal procedure under part VIII of the CPC was intended to limit the use of Preliminary Inquiry, it was lengthy and expensive as witnesses were required to come and give evidence in court and this was subjected to examination like in an ordinary trial. The procedure is archaic and should be removed as it is rarely resorted to.</p>
<p>Section 227</p> <p>remand</p>	<p>Recast to provide for remand of suspects awaiting committal (there is need to check if there are other sections providing for the remand of suspects).</p>
<p>Section 254</p> <p>Certifying of case as a summary procedure</p>	<p>Reference to the word “summary” in the provisions relating to committal procedure under Part VIII and any other part of the CPC should be removed</p>
<p>Section 258</p> <p>Statements, etc to be supplied to the accused</p>	<p>Harmonise with deletion of Part VII</p> <p>Need to remove the summary Part</p>

<p>Section 260 practice of High Court in its criminal jurisdiction</p>	<p>We need to look up the practice this provision relates to.</p>
<p>Section 271 Penalty for non-attendance of assessor</p>	<p>Adopted</p>
<p>Additional witnesses for prosecution</p>	<p>The provision was not adopted Further, in line with the committee's recommendation to repeal the part on preliminary Inquiry the provision should be recast to reflect the committee's proposed amendments.</p>
<p>Section 288 Depositions may be read as evidence in certain cases</p>	<p>Recast the section to only relate to evidence obtained through a commission</p>
<p>Section 289 Deposition of medical witness may be read as evidence</p>	<p>Section must be repealed because it relates to a preliminary Inquiry.</p>
<p>Section 290 Statement or evidence of accused</p>	<p>Section must be repealed because it relates to a statement that the accused gave during preliminary Inquiry</p>
<p>Section 293 Additional witnesses for defence</p>	<p>Section must be repealed because it relates to a statement that the accused gave during preliminary Inquiry.</p>

<p>Section 302 A</p> <p>proposed</p>	<p>Explore the possibility of inserting a new section on victim impact statements as is the case in other jurisdictions.</p> <p>Make provision for a formal hearing at sentencing to assist the court arrive at a decision. (see other jurisdictions)</p>
<p>Section 306</p> <p>Procedure where women convicted of capital offence alleges she is pregnant</p>	<p>The section should be maintained, following the retention of the death penalty under the penal Code.</p>
<p>Section 306 (a)</p>	<p>It is proposed that the application of community service should not be limited to misdemeanours but should also be extended to include felonies that are not aggravated.</p> <p>A schedule of offences to which community services will apply should be developed.</p>
<p>Section 321 A</p> <p>Appeals by Directors of Public Prosecutions</p>	<p>The time within which the appeal should be made by DPP must be increased to 30 days</p>
<p>(Proposed 321B)</p> <p>Appeals in private prosecutions</p>	<p>There is need to provide for the right to appeal of the complainant who has privately instituted the matter (under section 90) is not satisfied with the decision of the court, further, the DPP should have the right to join an appeal for purposes of advancing it and not withdrawing (because there is already a judgement).</p> <p>Find out from other jurisdictions where the law allows for private prosecution.</p>

<p>Section 322 Limitation</p>	<p>The time within which the appeal should be made must be increased to 30 days for both 322 (a) and (b)</p>
<p>Section 327 Powers of appellate court</p>	<p>According to the Supreme Court decision, when there is an appeal against the sentence, an appellate court may not impose a sentence higher than that which the trial court could have imposed. The CPC must reverse that decision by making a provision to the effect that the appellate court can impose a sentence it considers appropriate higher than the sentence the trial court would have imposed.</p>
<p>Section 334 Appeals to be heard by one judge unless the Chief Justice otherwise directs</p>	<p>Subsection 92) should remain the way it is. If there is a tie the decision of the lower court should stand and the option for the appellant is to appeal to a higher court. For one to succeed the decision making principles is by way of majority. Therefore , in the absence of such majority then the appellant has failed to convince the court</p>
<p>Section 335 Abatement of appeals</p>	<p>Insert a proviso to the effect that there are special circumstances an application, with leave of court, can be made to allow the appeals to proceed to hear and make the decision on the appeal.</p>
<p>Section 336 Bail in cases of appeal to Supreme Court</p>	<p>There is a need to change the wording in both subsection (1) and (2) from Supreme Court to Court of Appeal because the provisions relate to the appeals from the High Court to the Court of Appeal.</p>
<p>Section 351A High Court may enlarge time</p>	<p>The inclusion of court of appeal should not be made because the section only deals with appeals from the Subordinate Court to High Court and appellate court is appropriately defined as High Court</p>

<p>Section 355</p> <p>Disposal of exhibits</p>	<p>The provision should be amended to include the disposal of that may be exhibits in a trial at a point before the accused person is arraigned. (see section 42, and 43 of the Zambia Police Act Cap 107).</p>
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Submissions from the Technical Committee meeting held from 27th to 29th May 2020, in the commissions boardroom.

PENAL CODE

SECTION	PROPOSED	JUSTIFICATION
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<p>Section 6 liability for offences committed outside the jurisdiction or partly within and partly beyond the jurisdiction.</p>	<p>The jurisdiction of the Courts should be extended to a foreigner who commits an offence against a <i>Zambian</i> outside the republic or where the offence is committed outside <i>Zambia</i> but the consequences of the offence have effect in <i>Zambia</i>.</p> <p>Consider amending (2) by deleting “Partially”. (3) add the words “or acquitted” after the word “convicted”</p>	<p>There is a gap in the law with regards the jurisdiction of the Court when dealing with foreigners or offences committed outside <i>Zambia</i>.</p>
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Section 128 Unlawful disclosure	Adopted	
Section 250 Obstruction of an officer	<p>Ensure that the definition of law enforcement officer includes “wildlife officer, Anti-Corruption Officer” etc.</p> <p>(e) replace the word “him” to read “that person”</p> <p>Introduce a new subsection with the contents of the paragraph below (b) and maintain the penalty.</p>	<p>For clarity</p> <p>To observe gender neutral</p>
Section 125 False information to a public officer	Adopt the three years’ penalty and the fine of thirty thousand penalty units from the Road Traffic Act.	Adopt the sentence in the Act with the highest penalty.
Section 335 punishment	Adopted	

<p>Section 182 Official uniform</p>	<p>Maintain the provisions but amend the words after “as the president may, by statutory instrument prescribe “by adding the words “or any other authorised officer”</p> <p>Add a subsection for the offence of possession of a uniform without lawful authority.</p>	<p>To apply to Acts where it’s the Minister who prescribes.</p> <p>The offence of possession was not provided for.</p>
<p>Section 328 Arson</p>	<p>Maintain the provision as proposed, however delete the penalty of paying a fine.</p> <p>Maintain the graduation of the offence in the ZAWA for the second offender.</p>	<p>It is unreasonable for there to be a fine as an alternative to a long term of imprisonment.</p>
<p>Section 344 Making a false document</p>	<p>Maintain section 344. However add paragraphs that will have a different penalty for each of the Acts that have been outlined.</p>	<p>In order for the penalties to be relative to the gravity of the offence.</p>

<p>Section 177 obscene materials or things</p>	<p>Section 49(3)(c) of the Higher Education Act should be introduced as a paragraph in section 177 of the Penal Code.</p> <p>Incorporate paragraph (c) in section 177(1) of the Penal Code and adopt a general penalty from the Electronics, Communication and transactions Act of ten years.</p> <p>Replace the word Cinematography</p>	<p>To ensure that the conduct under the Higher Education Act is captured.</p> <p>The electronic communications and Transactions Act has the highest penalty and therefore there is a need to adopt it.</p> <p>For clarity</p> <p>For clarity</p>
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<p>Section 104 Perjury</p>	<p>Proposal adopted Remove the option of the fine</p>	<p>Perjury is a grave offence It doesn't make sense to have a sentence of seven years with an option of a fine.</p>
<p>Impersonating a professional-No provision in the Penal Code</p>	<p>Proposal adopted. However take provision closer to section 102 of the Penal Code.</p>	<p>For clarity</p>
<p>Section 169 Neglecting to provide food, etc., for children</p>	<p>Adopted</p>	

Marrying or marrying off a learner-No provision in the Penal Code	Adopt the provision in the Higher Education Act as it is.	The conversation of child marriage should be left to a larger forum.
Section 316 Obtaining registration,etc. ,by false pretence	Adopted	
Money Laundering -No provision in the Penal Code.	Adopted	

<p>Section 21 principal offenders/consp iracy</p>	<p>Delete the words “aids, counsels, abets and procures”</p> <p>Create a standalone provision on attempted money laundering and place provision in the new part.</p>	<p>Section 21 of the Penal Code will apply with regards to aiding, counselling, procuring and abetting. The offence of money laundering can have its own “attempt ”offence.</p>
<p>Section 188 Fouling Water</p>	<p>Water Act was repealed and replaced by Water Resources Management Act</p> <p>Check all offences in the Water resources Management Act and see which ones apply .</p>	<p>The Water Act was repealed.</p>
<p>Interfering with public water</p>	<p>The Water Act was repealed.</p> <p>Check all offences in the Water resources Management Act and see which ones apply.</p>	<p>The Water Act was repealed.</p>

<p>Offences relating to road transport and safety.</p> <p>Causing death by reckless driving.</p>	<p>Borrow graduating offences from the Canadian Criminal Code</p> <p>Introducing a new part for traffic related sentences.</p> <p>Section 192,193,195,196,197 and 198 should move to the Penal Code</p> <p>Proposal to introduce a penalty similar to that of manslaughter for the offence of causing death by dangerous driving was adopted</p>	<p>For clarity and efficiency</p>
<p>Stealing by persons in the public service</p>	<p>Proposal adopted.</p> <p>Maintain 5G (7) (a) in the fisheries Act.</p> <p>See related offences in the public finance management Act</p>	<p>The provision is regulatory</p> <p>For clarity</p>
<p>Section 126 Disobedience of statutory duty</p>	<p>The electricity Act was replaced by electricity Act 2019</p> <p>See Electricity Act of 2019 and see which offences apply.</p>	<p>The Act was repealed</p>

<p>Sale of recalled medicine</p>	<p>The pharmaceuticals Act was repealed and replaced by the Medicine and Allied Substances Act. See the Medicine and Allied Substances Act and see which offences apply</p> <p>Similar provisions can be found in section 186 and 187 of the Penal Code.</p>	<p>The Act was repealed</p>
<p>False labelling</p>	<p>The pharmaceuticals Act was repealed and replaced by Medical and allied substances Act See the Medicine and Allied Substances Act and see which offences apply.</p>	<p>The Act was Repealed</p>
<p>Section 308 false pretence</p>	<p>False advertising is different from false pretence Add provisions from the CCPA</p> <p>Give provisions in the insurance Act section 130 its own section to capture false advertising. *</p>	<p>For clarity</p>

Section 165 Fraudulent pretence of marriage	Adopted However do away with the words “hard labour”	For consistency
Failure to label product	Uplift section 49, 46 and 47 on offences from the Consumer Protection and Competition Act. See similar provisions in the food safety Act of 2019	For clarity
Drug related offences	Adopted See Dangerous and Drugs Act for related offences. Incorporate the definition of Trafficking from the NPSA to the Penal Code	For clarity
Section 257 Kidnapping or abducting in order to subject person to grievous harm, slavery etc.	Adopted Consider doing away with the penalty against the smuggled person under section 10 under the Santi Human Trafficking Act.	to comply with international law standards.

Publications of reports and proceedings. - Not in the Penal Code	Adopted Check provisions in the Juveniles Act on publication on reports of proceedings.	To ensure that the provisions are comprehensive.
Terrorism -Not in the Penal Code	Introduce a new part in the penal on offences against Terrorism See the Anti-Terrorism and proliferation Act section 19-38	To incorporate terrorism related offences
Pretending to be an officer	Adopted (replace section 102 of the PC)	
Corruption related offences.	Adopted The provision in the Anti-Corruption Act dealing with proceeds of crime is a duplication of provisions in forfeiture of proceeds. (section 34 of ACC Act, section 71 of Proceeds of Crime Act) There is a need to harmonise the two legislations.	

Offences related to electronic communications and transactions.	Adopted .However the penalty of paying fines should be removed.	See the Medicine and Allied Substances Act and see which offences apply.
Making a false representation as to trademark	Adopted	
Copyright related offences	Adopted	
Zambia wildlife related offences	Repeal offences from the Zambia wildlife Act and create a part in the Penal Code on wildlife related offences. See section 19,20,21,22,28,24,25,26,75,77,78,81,82,83,84,87,88,90,91,93,94,96,97,98,99,100,101,102,103,106	

General Comments:

- There is need to repeal sections 39(2) and (3) from the Gender Equity and Equality Act on sexual harassment, further generalise the provisions in the Penal Code in section 137A by deleting the words “Child”.

- A new legislation regulating cybercrime is being drafted by the MOJ. Ensure to harmonise the two law review processes with regards to offences related to electronic communication and transactions.

CRIMINAL PROCEDURE CODE

Section	Proposed Amendment	Justification
General Amendments	The proposal was not adopted; instead the TC directed that all law enforcement officers that use the CPC must be included in the definition.	Ensure that all law enforcement agencies are captured in the definition of law enforcement officer. However the distinction will be made between law enforcement officer and authorised officer when drafting.
Section 123 Bail	<p>Not adopted</p> <p>Maintain 57(1) in the Immigration and deportation Act but move the proviso from the Act to the PC and should specify the actual offence.</p> <p>Draft the amendments similar to section 123(4) of the CPC</p>	Section 57(1) of the immigration and deportation Act cross references the CPC and there is no need to repeal it from the immigration and deportation Act
Plea Negotiations	<p>Adopted</p> <p>Insert power of chief justice to issue guidelines by statutory instrument.</p> <p>Further include provisions to allow the state and the accused persons to agree on possible sentences.</p> <p>Insert provisions relating to agreement on restitution.</p>	<p>Allowing the Chief Justice to issue guidelines will make the provisions on plea negotiations more effective.</p> <p>While providing for the possible sentence will make the practice akin to some other jurisdiction.</p>

First schedule section 2	Do away with the schedule and state that all offences are cognizable except if otherwise provided. All new offences should be included in the schedule (clarify)	There are very few non cognizable offences in the PC
Arrest by private persons	Adopted	
Section 76 Court to open	Adopted	
Juveniles	Proposal to return to section 122 of the Juvenile Act before the Amendment was not adopted. Uplift Court procedures relating to juveniles from the juveniles Act and make a Part in the CPC specifically on procedures to be followed in the juveniles Court.	All Court procedures should be captured in the CPC while orders should be left under the Juveniles Act.

General Comment:

- Introduce a provision allowing the Court to dispense with the need for an accused person or a witness to appear in court in person but instead through Video link. See section 99 on appearance or attendance of the accused person. However this should only happen where it is impracticable to have the witness or the accused to appear in person
- Section 168 should be amended to include the provision of delivering judgement through a video link. This is to benefit the accused who is in custody and not to the one on bail.

Submissions from the Technical Committee meeting held from 4TH to 6TH AUGUST, 2021 in the Commission boardroom.

Penal Code Act:

SECTION	PROPOSED	JUSTIFICATION
Section 250 Obstruction of an officer	<p>Ensure that the definition of law enforcement officer includes “wildlife officer, Anti-Corruption Officer” etc</p> <p>Introduce a new subsection as follows.....</p> <p>“Any person who resists or wilfully obstructs a public officer who is not a law enforcement officer in the due execution of that officer’s duties or any person acting in aid of such person commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.</p> <p>In paragraph (e) replace the word “him” to read “that person”</p>	<p>For clarity</p> <p>To observe gender neutral</p>

Section 125 False information to a public officer	Adopt the three years' penalty and the fine of thirty thousand penalty units from the Road Traffic Act.	Adopt the sentence in the Act with the highest penalty.
Section 182 Official uniform	<p>Under subsection (1) maintain the provisions but amend the words after "as the president may, by statutory instrument prescribe "by adding the words "or any other authorised officer"</p> <p>Insert a new subsection (8) for the offence of possession of a uniform without lawful authority.</p>	<p>To apply to Acts where it's the Minister who prescribes.</p> <p>The offence of possession was not provided for.</p>
Section 328 Arson	Maintain the provision as proposed in the new subsection (3). In the new subsection (3) maintain the graduation of the offence in the ZAWA for the second offender. However, delete the penalty of paying a fine.	It is unreasonable for there to be a fine as an alternative to a long term of imprisonment.

<p>Section 344 Making a false document</p>	<p>Maintain section 344. However, add paragraphs that will have a different penalty for each of the Acts that have been outlined. In subsection (3) recast to clearly show the Act being referred to.</p>	<p>In order for the penalties to be relative to the gravity of the offence.</p>
<p>Section 177 obscene materials or things</p>	<p>Section 49(3)(c) of the Higher Education Act should be introduced as a new subsection (6) in section 177 of the Penal Code.</p> <p>Adopt the penalty for this offence from the Electronics, Communication and Transactions Act which is a maximum of ten year.</p> <p>Replace the word Cinematography in 1(a) – add the word video and maintain the word Cinematography.</p>	<p>To ensure that the conduct under the Higher Education Act is captured.</p> <p>The electronic communications and Transactions Act has the highest penalty and therefore there is a need to adopt it.</p> <p>For clarity</p> <p>For clarity</p>

<p>Section 104 Perjury</p>	<p>Proposal adopted Remove the option of the fine in subsection (1)</p>	<p>Perjury is a grave offence It doesn't make sense to have a sentence of seven years with an option of a fine.</p>
<p>Impersonating a professional-No provision in the Penal Code</p>	<p>Proposal adopted. However take provision closer to section 102 of the Penal Code.(we placed it as the new 102)</p>	<p>For clarity</p>
<p>Marrying or marrying off a learner-No provision in the Penal Code</p>	<p>Adopt the provision in the Higher Education Act as it is and insert it as a new section 164A</p>	<p>The conversation of child marriage should be left to a larger forum.</p>

<p>Section 21 principal offenders/consp iracy</p>	<p>Delete the words “aids, counsels, abets and procures” from the offence of Money laundering</p> <p>Create a standalone provision on attempted money laundering and place provision in the new section 362B.</p>	<p>Section 21 of the Penal Code will apply with regards to aiding, counselling, procuring and abetting. The offence of money laundering can have its own “attempt” offence.</p>
<p>Section 188 Fouling Water</p>	<p>Water Act was repealed and replaced by Water Resources Management Act</p> <p>Check all offences in the Water resources Management Act and see which ones apply .</p>	<p>The Water Act was repealed.</p> <p>Section 188 of the Penal Code is proposed to be repealed and replaced with section 48 of the water resources management</p>

<p>Offences relating to road transport and safety.</p> <p>Causing death by Reckless driving .</p>	<p>Introduce new Chapter XVIII A for Road Transport and safety related sentences. Section 192,193,195,196,197 and 198 of the road transport and safety Act should move to the Penal Code</p> <p>Insert new section 206A on causing death by reckless driving. This offence should have the same penalty as the offence of manslaughter.</p>	<p>For clarity and efficiency</p>
<p>Stealing by persons in the public service (sec 277PC)</p>	<p>Proposal adopted.</p> <p>Maintain 5G(7)(a) in the fisheries Act.</p> <p>See related offences in the Public Finance Management Act section 82</p>	<p>The provision is regulatory</p> <p>For clarity</p>

<p>Section 126 Disobedience of statutory duty</p>	<p>The electricity Act was replaced by Electricity Act 2019 See Electricity Act of 2019 and see which offences apply. (The offence no longer sits in the Electricity Act. Therefore, the provisions of the Penal Code will apply.</p>	<p>The Act was repealed</p>
<p>Sale of recalled medicine</p>	<p>The pharmaceuticals Act was repealed and replaced by the Medicine and Allied Substances Act. See the Medicine and Allied Substances Act and see which offences apply (see 187A of the Penal Code. Similar provisions can be found in section 186 and 187 of the Penal Code.</p>	<p>The Act was repealed</p>
<p>False labelling</p>	<p>The pharmaceuticals Act was repealed and replaced by Medical and allied substances Act See the Medicine and Allied Substances Act and see which offences apply. (see 187B)</p>	<p>The Act was Repealed</p>

<p>Section 308 false pretence</p>	<p>False advertising is different from false pretence (see new 308B) Add provisions from the new section 308A of CCPA Act on false or misleading representation. Add provisions from section 130 of the insurance Act in new section 308B</p> <p>Give provisions in the insurance Act section 130 its own section to capture false advertising. *</p>	<p>For clarity</p>
<p>Section 167A Fraudulent pretence of marriage</p>	<p>Adopted However do away with the words “hard labour”</p>	<p>For consistency</p>
<p>Failure to label product</p>	<p>Uplift section 49,46 and 47 on offences from the Consumer Protection and Competition Act. (see new section 377A of the Penal Code and the sections that follow) See similar provisions in the food safety Act of 2019</p>	<p>For clarity</p>

Drug related offences	<p>Adopted</p> <p>See Dangerous and Drugs Act for related offences. (see new chapter XVIII of the Penal Code)</p> <p>Incorporate the definition of Trafficking from the NPSA to the Penal Code</p>	For clarity
<p>Section 257</p> <p>Kidnapping or abducting in order to subject person to grievous harm, slavery etc</p>	<p>Adopted</p> <p>Consider doing away with the penalty against the smuggled person under section 10 under the S anti Human Trafficking Act.(see new chapter xxv on offences related to human trafficking)</p>	to comply with international law standards.
<p>Publications of reports and proceedings. -</p> <p>Not in the Penal Code</p>	<p>Adopted</p> <p>Check provisions in the Juveniles Act on publication on reports of proceedings. (See a new section 70A)</p>	To ensure that the provisions are comprehensive.
Terrorism -Not in the Penal Code	<p>Introduce a new part in the penal on offences against Terrorism (see new chapter VIIA on terrorism related offences)</p> <p>See the Anti-Terrorism and proliferation Act section 19-38</p>	To incorporate terrorism related offences

Corruption related offences.	<p>Adopted</p> <p>The provision in the Anti-Corruption Act dealing with proceeds of crime is a duplication of provisions in forfeiture of proceeds. (section 34 of ACC, section 71 of Proceeds of Crime Act)- see chapter XIIA on corruption related offences.</p>	
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General Comments:

- There is need to repeal sections 39(2) and (3) from the Gender Equity and Equality Act on sexual harassment, further generalise the provisions in the Penal Code in section 137A by deleting the words “Child”.
- A new legislation regulating cybercrime is being drafted by the MOJ. Ensure to harmonise the two law review processes with regards to offences related to electronic communication and transactions. See new Chapter XXXIVA on offences relating to electronic communication and transaction.

Criminal Procedure Code Act

Section	Proposed Amendment	Justification
General Amendments	The proposal was not adopted; instead the TC directed that all law enforcement officers that use the CPC must be included in the definition in section 2 of the Penal Code.	Ensure that all law enforcement agencies are captured in the definition of law enforcement officer. However the distinction will be made between law enforcement officer and authorised officer when drafting.
Section 123 Bail	Not adopted Maintain 57(1) in the Immigration and deportation Act but move the proviso from the Act to the PC and should specify the actual offence.	Section 57(1) of the immigration and deportation Act cross references the CPC and there is no need to repeal it from the immigration and deportation Act
Plea Negotiations	Adopted Insert power of chief justice to issue guidelines by statutory instrument. (see new section 196S) Further include provisions to allow the state and the accused persons to agree on possible sentences. See new section 196B (4) Insert provisions relating to agreement on restitution. See section 196J subsection (2)	Allowing the Chief Justice to issue guidelines will make the provisions on plea negotiations more effective. While providing for the possible sentence will make the practice akin to some other jurisdiction.

First schedule section 2	Do away with the schedule and state that all offences are cognizable except if otherwise provided. (see new section 6A) All new offences should be included in the schedule (clarify)	There are very few non cognizable offences in the PC
Juveniles	Proposal to return to section 122 of the Juvenile Act before the Amendment was not adopted. Uplift Court procedures relating to juveniles from the juveniles Act and make a Part in the CPC specifically on procedures to be followed in the juveniles Court. (See new part VIIA on provisions relating to court proceedings in which Juveniles are involved.)	All Court procedures should be captured in the CPC while orders should be left under the Juveniles Act.

CRIMINAL PROCEDURE

General Comment:

- Introduce a provision allowing the Court to dispense with the need for an accused person or a witness to appear in court in person but instead through Video link. See section 99 on appearance or attendance of the accused person. However this should only happen where it is impracticable to have the witness or the accused to appear in person.(see section 99 subsection (4) of the PC
- Section 168 should be amended to include the provision of delivering judgement through a video link. This is to benefit the accused who is in custody and not to the one on bail.(see 168A)

Submissions from the Technical Committee meeting held from 11th to 14th January 2022, at the Taj Pamodzi Hotel, Lusaka.

Section	Submission	Justification
2 (a) Saving of certain laws	Delete the words “common law” and replace with “constitution and any other law”	Section 2 (a) is in conflict with Article 18 (8) of the Constitution
5 Liability for offences committed outside the jurisdiction or partly within and partly beyond the jurisdiction	Replace section 5 of the PC with section 3 of the Anti- Terrorism non-proliferation Act. Note for MOJ to ensure that section 3 (2) is reconciled with the Section 5(1) of PC Act because section 3 (2) is peculiar to terrorism related offences.	Section 3 of the Anti-Terrorism Act is broader and is easier to understand. It provides the court with jurisdiction in matters where the accused person is a foreign national who commits an offence outside Zambia in which the victim is a Zambian citizen. (Ngati and others V The People)
29 Compensation	Correct cross reference in section. Insert a note for the MOJ to develop a schedule of offences where a penalty may be substituted for compensation. These may include misdemeanours and offences related to public order and conduct.	The discretion given to the adjudicators to substitute a penalty in legislation with compensation is too broad.
30 Security for keeping the peace	Insert a note for the MOJ to develop a schedule of offences where a penalty may be substituted for security for	The discretion given to the adjudicators to substitute a penalty in legislation with for security for keeping the peace is too broad.

	keeping the peace. These may include misdemeanours and offences related to public order and conduct.	
31 Costs	Delete the provision.	The court having discretion to order costs may induce an accused person to plead guilty to an offence rather than go to trial, for fear of having to pay costs incidental to the persecution should the accused person be convicted of the offence.
62 Unlawful publication of court proceedings	Amend Section 62 by incorporating section 38 of the AGBV Act	Section 38 of the AGBV Act provides that it is an offence for a person to publish proceedings under the Act without leave of the court, or to fail to protect the identity of a complainant and any witness to the proceedings.
241 Causing death by reckless driving	Ensure that the provisions of the Road Traffic Act on causing death by reckless and dangerous driving are incorporated into the PC and attract a penalty of up to life imprisonment. Causing death by careless driving should be introduced in to the PC and it should attract a penalty of imprisonment not exceeding five years.	Offences were omitted.
Division VIII Offences relating to Banking and Financial services	Remove offences relating to Banking and Financial Services from the PC.	The offences are all regulatory and should therefore remain the Banking and Financial Services Act.
Criminal Procedure Code Act		
12(2) Cases to be	Delete subsection 2	This provision is archaic. Under the colonial government

tried only by High Court		the Chief Justice would permit the subordinate court to try offences that would ordinarily be tried in the High Court, if the offences were committed by indigenous Africans.
40-60 Prevention of offences, Security for keeping the peace and for good behaviour	Delete sections 40-52	These offences are unnecessary and prejudice persons that are perceived as potential criminals. It requires a person to keep the peace without being convicted for an offence.
86 Power of the DPP to enter nolle prosequi	Provide for the DPP to offer no evidence	This is a Criminal Law principle that has been espoused in Case Law (Shamwana and 7 Others V The People) and should be provided for in legislation.
87 Delegation of powers by DPP	Delete the section	This provision is archaic. With the enactment of the National Prosecutions Authority Act and the establishment of the National Prosecutions Authority, this provision is no longer necessary as the Solicitor General and Parliamentary Drafts persons do not perform prosecutorial functions.
92 Withdraw from prosecutions in trials before the Subordinate Court	Delete the words “or on the instructions of the DPP”	In practice this is impossible because one would not show that they have instructions of the DPP.
93 Permission to conduct prosecution	Amend this section by indicating that a person will not require permission of the DPP to conduct a private prosecution.	Private prosecutions allow the public to prosecute matters where the DPP has failed to act. Requiring a person to get permission of the DPP defeats the purpose of private prosecutions. (It will assist with the rectification of the effect of the decision in the case of Wang Shunxue V The Attorney General and another)
94 (4)(b) Institution of	Delete reference to Public Prosecutor	Reference to Public Prosecutor is impractical as the Magistrate would be directing a public prosecutor to draw

proceedings		up a charge, when a private prosecution is being advanced possibly because of a failure on the part of the public prosecutor to act.
94(6) Institution of proceedings	Introduce provision to the effect that where the offence is one that requires consent of the DPP the Magistrate shall refuse to draw up the charge.	This is one of the instances where a private prosecution may not be conducted.
94(8)	Add Attorney General to be the respondent when there is an appeal against the decision of the Magistrate.	The provision is not clear on who the respondent is when there is an appeal against the Magistrate.
128 Bail	Under (1) include terrorism offences to the list of non-bailable offences.	Terrorism offences were omitted from the list of non-bailable offences.
131(2) Amount of bail and deposits	In (2) insert the words “or a deposit of title” after the words “a deposit of property”.	To provide for circumstances where property cannot be deposited to the court because of impracticality (e.g land), but instead title to the property may be deposited.
154 Evidence of a child of tender years	Reduce the age of a “child of tender years” from fourteen to ten.	This is because a child of ten has sufficient intelligence to be called as a witness.
	Introduce a section to provide for a voir dire to be conducted where a party raises an objection relating to the mental capacity of a witness.	This provision was omitted.
156 Refractory witness	Introduce a new provision to provide for procedure for hostile witness.	This is Criminal Law principle that has been espoused in Case Law and should be provided for in legislation (Munalula V the People).
157 Cases where wife or husband	Re-draft this provision in light of what is provided for in other	Currently the wife or husband can only be called as a witness with the consent of the accused person except in

may be called without consent of accused	jurisdictions.	exceptional circumstances.
268 Procedure related to Narcotic and Psychotropic substances	General comment is to remove provision relating to investigations as these are more appropriate for the Narcotic and Psychotropic substances Act. Sections 276-280 relate to Narcotic and Psychotropic substances offences (Presumptions). These should be placed under the appropriate part in the PC. Provisions on forfeiture should be removed and reconciled with the part on forfeiture. Delete section 281 and place provision under powers of DPP.	Provisions are misplaced.
339 The defence	Insert a provision to the effect that where the evidence in support of the charge other than the offence for which the accused was charged, the court may put the accused on his defence for a higher or lesser charge.	This is a Criminal law principle that has been espoused in Case law (Kambarange Kaunda V the people) and should be provided for in legislation.
463 Abatement of appeals	Introduce a provision to provide for circumstances where a convicted person dies before sentencing.	The law does not provide for abatement of the case upon the death of a convict before sentencing. The law should be clear that criminal proceedings shall abate upon the death of a convict.
466 Powers of High Court on	Amend (1)(a) (ii) to the effect that on revision the High Court may	This is to correct the effect of the judgement in the case of Gift Mulonda V The People (2004) where it was held that

revision	pass a sentence that is even higher than the jurisdiction of the subordinate court.	the High Court may only set a sentence that is within the jurisdiction of the subordinate court.
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Annex 5- Submissions from Drafting Team

The Drafting Team was required to populate a Drafting Matrix used to guide the drafting of the PC and the CPC Act. The general direction given to the Drafting Team was to consider the submissions from consultations in relation to each section of either Act; to identify countries considered to have best practises with regards to regulating criminal behaviour; review legislation (where necessary) for countries to have best practises; and to identify the relevant international instruments establishing minimum standards. The groups were further encouraged to propose new areas of the law that may require development. Thereafter, each group presented to the plenary and resolution were adopted to inform the drafting process.

2.2. Drafting Report and Resolutions

Penal Code

SECTION	PROPOSAL	JUSTIFICATION
<p>SECTION 2 (f) Saving of certain laws</p>	<p>Amend where it reads “Police Force” to read “Police Service.”</p>	<p>To bring it in line with the Constitution under Article 193 which renamed the Zambia Police force as the Zambia Police Service.</p>
<p>Section 3 General rule of interpretation</p>	<p>Repeal</p>	<p>The PC can no longer be interpreted in accordance with the Laws of England as Zambia is a Sovereign State.</p>
<p>Section 12 A (1) Defence of diminished responsibility</p>	<p>Repealed and Replaced with “A person who kills or is a party to the killing of another person, shall not be convicted of murder if that person was suffering from a mental illness , whether arising from a condition of arrested or delayed development of mind or any inherent causes or is induced by disease or injury which has substantially impaired that person’s mental responsibility for the acts or omissions in doing or being party to the killing, and such a person may plead the defence of diminished responsibility.”</p>	<p>There is need to delete the words such as ‘retard’ and ‘abnormal’ because they are derogatory.</p>

<p>Section 14 Immature age</p>	<p>Repeal the section and replace the age of criminal responsibility from eight to twelve years.</p>	<p>The proposal is in accordance with the recommendations contained in General Comment No.10 made by the Committee of Experts under the UNCRC.</p>
<p>Section 24 Different kinds of Punishment</p>	<p>Addition of orders to side note; removal of the death penalty and corporal punishment; inclusion of diversion, community service and diversion</p>	<p>Need to broaden the scope of orders the court can make and removal of death sentences to ensure compliance with international standards.</p>
<p>Section 25 Sentence of death</p>	<p>Repeal</p>	<p>The proposal to remove Death Penalty does not contravene Article 12 of the Constitution of Zambia. Further there is a need to ensure compliance with international standards as contained in the optional protocol of the ICCPR.</p>
<p>Section 28 Fines</p>	<p>Addition of (2)</p>	<p>There is a need to give adequate time for the convicted person to find money to pay the fine imposed as opposed to going to prison by default.</p>

Section 32 Costs	Repeal	It is too onerous for a person convicted to be liable to pay costs
Section 34 Deportation within Zambia- in cases of felony	Repeal	Not reasonably justifiable in a democratic society
Section 35 Provisions as to sentences of deportation	Repeal	It is connected to section thirty-four which has already been recommended to be repealed.
Section 39 Sentences cumulative unless otherwise directed	Removal of “other than a sentence of death”	The proposal to remove Death Penalty does not contravene Article 12 of the Constitution of Zambia. Further there is a need to ensure compliance with international standards as contained in the optional protocol of the ICCPR.

<p>Section 43 Treason</p>	<p>Replace sentence of death with life imprisonment Removal of paragraph (b)</p>	<p>The proposal to remove Death Penalty does not contravene Article 12 of the Constitution of Zambia. Further there is need to ensure compliance with international standards as contained in the second optional protocol of the ICCPR.</p> <p>The Paragraph is too broad and is inconsistent with the rights and freedom under Art 20 of the Constitution.</p>
<p>Section 44 Concealment of treason</p>	<p>Reducing punishment to not exceeding 30 years</p>	<p>All sentences that carried a death penalty were brought to life and all life sentences were reduced to thirty years.</p>
<p>Section 45 Treason felony</p>	<p>The section must be repealed</p>	<p>Elements of treason felony are already covered under the offence of treason.</p>
<p>Section 48 Inciting to mutiny</p>	<p>Replacing of “Police Force” with “Police Service”</p>	<p>To bring it in line with the Constitution under Article 193 which renamed the Zambia Police force as the Zambia Police Service.</p>
<p>Section 49 Aiding soldiers or police in acts of mutiny</p>	<p>Replacing of “Police Force” with “Police Service”</p>	<p>To bring it in line with the Constitution under Article 193 which renamed the Zambia Police force as the Zambia Police Service.</p>

Section 50 Inducing soldiers or police to desert	Replacing of “Police Force” with “Police Service”	To bring it in line with the Constitution under Article 193 which renamed the Zambia Police force as the Zambia Police Service.
Section 53 Prohibited publications	Repeal	Infringes Article 20 (2) of the Constitution which provides for press freedom and is not reasonably justifiable in a democratic society
Section 54 Offences in respect of prohibited publications	Repeal	Infringes Article 20 (2) which provides for press freedom and not is reasonably justifiable in a democratic society
Section 55 Delivery of prohibited publication to police station	Repeal	Infringes Article 20 (2) which provides for press freedom and is not reasonably justifiable in a democratic society
Section 56 (1) (c) Power to examine packages	Amend	The rank of sub-inspector is no longer in existence in Zambia Police service rank structure

Section 57 Offences in respect of seditious practises	Repeal	Not reasonably justifiable in a democratic society
Section 58 Legal Proceedings	Repeal	It is connected to section fifty-seven which has already been recommended to be repealed.
Section 59 Evidence	Repeal	It is connected to section fifty-seven which has already been recommended to be repealed.
Section 60 Seditious intention	Repeal	It is connected to section fifty-seven which has already been recommended to be repealed.
Section 61 Persons deemed to have published a seditious publication	Repeal	It is connected to section fifty-seven which has already been recommended to be repealed.
Section 62 Interpretation	Repeal	It is connected to section fifty-seven which has already been recommended to be repealed.

<p>Section 63 Unlawful oaths to commit capital offences</p>	<p>Amend sentence from Death to not exceeding Thirty years.</p>	<p>All sentences that carried a death penalty were brought to life and all life sentences were reduced to thirty years.</p>
<p>Section 65 Compulsion: how far a defence</p>	<p>Replacing of “Police Force” with “Police Service”</p>	<p>To bring it in line with the Constitution under Article 193 which renamed the Zambia Police force as the Zambia Police Service.</p>
<p>Section 66 (2) Unlawful drilling</p>	<p>Inclusion of the word “knowingly” Replace “guilty of a misdemeanour” with “commits a misdemeanour”</p>	<p>Offence not to be treated as a strict liability offence</p>
<p>Section 67 Publication of false news with intent to cause fear and alarm to the public</p>	<p>Repeal</p>	<p>Macdonald Chipenzi and two others v. The People HPR 03 2014. The Court held that the section is inconsistent with Article 20 (3) of the Constitutions</p>
<p>Section 68 Insulting the National Anthem</p>	<p>Repeal</p>	<p>It contradicts the freedom of conscience and freedom of expression.</p>

<p>Section 69 Defamation of President</p>	<p>Repeal</p>	<p>The president enjoys Presidential immunity; hence the provision should be repealed and should be regarded as a civil matter. In a democratic state this is not reasonably justified.</p>
<p>Section 70 (2) Expressing or showing hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour</p>	<p>Inclusion of religion, birth, disability, conscience, belief culture, sex and language</p> <p>Repeal subsection (2) requiring consent from the DPP</p>	<p>Persons not to speak any words or do acts intended to incite enmity</p> <p>Matters have been delayed; qualified magistrates and prosecutors to deal with this</p>
<p>Section 71 Defamation of Foreign Princes</p>	<p>Repealed</p>	<p>Not reasonably justified in a democratic society and its Archaic</p>
<p>Section 73 Piracy</p>	<p>Repeal</p>	<p>Zambia is a landlocked country, piracy highly unlikely to be committed.</p>

<p>Section 74 Definition of unlawful assembly</p>	<p>Replacing of “neighbour” with “neighbourhood”</p>	<p>To broaden scope of application</p>
<p>Section 75 Punishment of unlawful assembly</p>	<p>Inclusion of fine not exceeding fifty thousand and Amendment of sentencing term to not more than six months.</p>	<p>The sentence is too severe and is prone to political abuse. The Punishment was aligned with the sentence in the Public Order Bill section 75</p>
<p>Section 76 Punishment of riot</p>	<p>Reduce the sentence from seven years to two years.</p>	<p>The punishment was too excessive and some riots arise from the exercise of fundamental rights that are guaranteed under the Bill of Rights. To grant the Court discretion to non-custodial sentences and exercise the option of fines.</p>
<p>Section 79 Rioting after proclamation</p>	<p>Amendment of punishment from ten years to not exceeding more than three years</p>	<p>The sentence is too severe and is prone to political abuse. To grant the Court discretion to impose non-custodial sentences.</p>
<p>Section 80 Preventing or obstructing the making of proclamation</p>	<p>Amendment of punishment from ten years to not exceeding more than three years</p>	<p>The sentence is too severe and is prone to political abuse.</p>

<p>Section 81 Rioters demolishing buildings, etc.</p>	<p>Reduce sentence from life imprisonment to thirty years</p>	<p>All sentences that carried a death penalty were brought to life and all life sentences were reduced to thirty years</p>
<p>Section 82 Rioters injuring buildings</p>	<p>Reduce sentence from seven years to three years</p>	<p>To grant the Court discretion to impose non-custodial sentences The sentence was too severe</p>
<p>Section 84 Going armed in public</p>	<p>Replace “lawful occasion” with “lawful excuse”</p>	<p>Lawful occasion creates a degree of ambiguity</p>
<p>Section 85 Possession of offensive weapons or materials</p>	<p>Amendment of sentence to not exceeding three years Amendment of 85(2) Repeal of 85(3)</p>	<p>Sentences too severe. To grant the Court discretion to impose non-custodial sentences. Competent magistrates and prosecutors to deal with such matters. The requirement for granting of consent has occasioned delays in the administration of justice.</p>
<p>Section 87 Forcible detainer</p>	<p>Insertion of “a claim” in place of “colour” Amend to read “commits a misdemeanour”</p>	<p>Make provision clearer</p>

Section 90 Threatening violence	Reduce sentence from five years to two years	Sentences too severe.
Section 91 Proposing violence or breaches of the law to assemblies	Reduce sentence from seven years to five years Repeal 91 (2)	The Sentence is too severe Competent magistrates and prosecutors to deal with such matters. The requirement for granting of consent has occasioned delays in the administration of justice.
Section 92 Wrongfully inducing a boycott	Repeal	The provision violates the right to freedom of expression and assembly. Therefore, not reasonably justifiable in a democratic society.
Section 99 Abuse of authority of office	Repeal	Competent magistrates and prosecutors to deal with such matters. The requirement for granting of consent has occasioned delays in the administration of justice. This provision was repealed by Amendment Act No.3 of 2012 and the offence now seats in the ACC Act

<p>Section 106 Punishment of perjury and subordination of perjury</p>	<p>Reduce punishment from seven years to five years Amend to read “commits a misdemeanour”</p>	<p>To grant the Court discretion to impose non-custodial sentences and the sentence is too harsh</p>
<p>Section 108 Fabricating evidence</p>	<p>Reduce penalty from seven years to five years</p>	<p>To grant the Court discretion to impose non-custodial sentences and the sentence is too harsh</p>
<p>Section 112 Conspiracy to defeat justice and interference with witnesses</p>	<p>Reduce punishment from sentence from seven years to five years</p>	<p>To grant the Court discretion to impose non-custodial sentences and the sentence is too harsh.</p>

<p>Section 117 (2)(a) Prohibition on taking photographs, etc., in court</p>	<p>Addition of the following Courts: Subordinate court; Small Claims Court; Local Court; Court of Appeal; Supreme Court;</p> <p>Deletion of the words in subsection (2)(c) “or in the building, or the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the courtroom or any such building or precincts as aforesaid”.</p>	<p>Compliance with current Zambian Court Structure.</p> <p>The prohibition of taking pictures should be restricted to court rooms, the taking of pictures in the precincts does not interfere with the court proceedings.</p>
<p>Section 132 Definition of rape</p>	<p>Replace “unlawful carnal knowledge of a woman” with “sexual intercourse with another person”</p> <p>Replace woman or girl with person</p> <p>Removal of “in the case of a married woman, by personating her husband”</p>	<p>Provide for gender neutrality</p> <p>Carnal knowledge is replaced with sexual intercourse for simplicity.</p>
<p>Section 133 Punishment of rape</p>	<p>Increase punishment to not exceeding thirty years</p>	<p>The punishment was severe and all sentences that carried life have been reduced to thirty years.</p> <p>To grant the Court discretion to impose a sentences</p>

<p>Section 134 Attempted rape</p>	<p>Amend to “commits a felony and is liable on conviction” Reduce sentence to thirty years’ imprisonment</p>	<p>The punishment was severe and all sentences that carried life have been reduced to thirty years.</p>
<p>Section 135 Abduction</p>	<p>Replace “carnal knowledge” with “sexual intercourse” Replace “her” with “that woman”</p>	<p>Carnal knowledge is replaced with sexual intercourse for simplicity.</p>
<p>Section 137 Indecent assaults on females</p>	<p>Replace “child” with “another person” Reduce sentence to ten years (2) (a) Replace “any girl or woman” with “any person”</p>	<p>Application should be broad Sentence was too severe Gender neutrality</p>
<p>Section 137A Sexual harassment</p>	<p>Replace “child” with “another person” Addition of fine not exceeding two thousand penalty units Removal of mandatory minimum sentence (2) Removal of community service</p>	<p>Application should be broadened Community service not applicable to children</p>

<p>Section 138</p> <p>Defilement of girls under sixteen</p>	<p>(1) Replace “carnal knowledge” with “sexual intercourse”</p> <p>Replace sentence to not exceeding thirty years</p> <p>(3) Replace sentence to not exceeding thirty years</p> <p>(4) Removal of Community Service</p> <p>Inclusion of another subsection</p>	<p>Carnal knowledge is replaced with sexual intercourse for simplicity.</p> <p>Community service not applicable to children</p> <p>To demonstrate that reasonable steps were taken for holding such a belief.</p>
<p>Section 139</p> <p>Defilement of idiots or imbeciles</p>	<p>Replace “imbecile or idiot” with “mental disability”</p> <p>Replacing of sentence to not exceeding thirty years</p> <p>Addition of (2)</p> <p>Replace carnal knowledge with sexual intercourse</p>	<p>There is a need to delete the words such as “imbecile” and “idiot” because they are derogatory.</p> <p>The position is that all mandatory minimum sentences should be removed to grant the court discretion.</p> <p>Provide for definition of mental disability</p> <p>Carnal knowledge is replaced with sexual intercourse for simplicity.</p>
<p>Section 140</p> <p>Procuration</p>	<p>Replace sentence with “period not exceeding thirty years”</p>	<p>To grant the Court discretion to impose sentences</p>

<p>Section 141 Procuring defilement by threat or fraud administering drugs</p>	<p>Replace minimum sentence with “period not exceeding thirty years”</p>	<p>To grant the Court discretion to impose sentences</p>
<p>Section 142 House-holder, etc., permitting defilement of child on his premises</p>	<p>Replace “child” with “any person below the age of sixteen” Replace sentence to a “period not exceeding thirty years” Removal of child and his from the marginal note</p>	<p>Categorically state what age constitutes a child To grant the Court discretion to impose a sentences</p>
<p>Section 143 Selling or trafficking in children, etc.</p>	<p>Repealed</p>	<p>Offences that should seat in a specialized Act the Anti-Human Trafficking Act</p>
<p>Section 144 Detention with intent or in brothel</p>	<p>Replace sentence with “period not exceeding thirty years”</p>	<p>To provide the Court with wider discretion as opposed to restricted discretion to impose sentences.</p>
<p>Section 148 Power of search</p>	<p>Replace “woman or girl” with “any person”</p>	<p>Gender neutrality</p>

Section 149 Brothels	Reduce minimum mandatory sentence from fifteen years to not less than five years	To provide the Court with wider discretion as opposed to restricted discretion to impose sentences and the Sentence was too harsh
Section 150 Conspiracy to defile	Remove minimum mandatory sentence from fifteen years and liable to life to not less than Thirty years Replace carnal knowledge with sexual intercourse	Removal of mandatory minimum sentence and the Sentence was too harsh For simplicity
Section 151 Attempts to procure Abortion	Reduce nature of offence from felony to misdemeanour	Offence not grievous
Section 152 Abortion by woman with child	Reduce nature of offence from felony to misdemeanour	Offence not grievous
Section 153 Supplying drugs or instruments to procure abortion	Reduce nature of offence to misdemeanour	Offence not grievous

<p>Section 155 Unnatural offences</p>	<p>Replace sentence to a period not exceeding thirty years</p>	<p>There was a tie-on way to proceed with respect to this provision. The TWG should provide guidance, should this section remain “order of nature” should be defined.</p>
<p>Section 156 Attempt to Commit unnatural offence</p>	<p>Reduce from maximum sentence from seven years to five years</p>	<p>The sentence was too harsh and we are reducing all sentences from seven to five years.</p>
<p>Section 157A Harmful cultural practises</p>	<p>Replace sentence with a period not exceeding thirty years Exclusion of child marriages as a harmful cultural practice</p>	<p>The position is that all mandatory minimum sentences should be removed to grant the court discretion. Does not fall within realm of harmful cultural practises</p>
<p>Section 159 Incest</p>	<p>Replace “Carnal Knowledge” with “Sexual Intercourse” Replace sentence with period not exceeding thirty years</p>	<p>For simplicity The position is that all mandatory minimum sentences should be removed to grant the court discretion.</p>

<p>Section 161 Consent to incest</p>	<p>Replace sentence with a period not exceeding thirty years Removal of community Service</p>	<p>The position is that all mandatory minimum sentences should be removed to grant the court discretion and all sentences with life were reduced to thirty years .</p> <p>Community service not applicable to children</p>
<p>Section 162 Test of relationship</p>	<p>Amend test of relationship</p>	<p>To provide clarity on the test to be applied.</p>
<p>Section 164 Sanction of Director of Public Prosecutions</p>	<p>Repeal</p>	<p>We have qualified prosecutors and consent perpetrates delays in the administration of justice.</p>
<p>Section 165 Fraudulent pretence of marriage</p>	<p>Repeal</p>	<p>No adult can reasonably be duped into marriage.</p>
<p>Section 166 Bigamy</p>	<p>Repeal</p>	<p>Remedies can be sought under civil law</p>

<p>Section 167 Marriage ceremony fraudulently gone through without lawful marriage</p>	<p>Repeal</p>	<p>Consequential to repeal of section 166</p>
<p>Section 168 Desertion of children</p>	<p>Reduce sentence from seven years to a misdemeanour</p>	<p>The offence despite being serious has the effect of breaking family union where a parent has been convicted and given a longer term of imprisonment.</p>
<p>Section 169 Neglecting to provide food, etc., for children</p>	<p>Reduce sentence. Offence should be a misdemeanour and impose fine of which such fine should in whole or in part be given to the children as compensation/upkeep</p>	<p>Not beneficial to children if parent imprisoned and where fine paid wholly paid to the state; it defeats the purpose of provision.</p>
<p>section 181 beggars and wanderers</p>	<p>Deletion of paragraph (a) Reconsider use of words 'rogue' and 'vagabond'</p> <p>Delete words in paragraph (d) 'rogue' and 'vagabond' "</p> <p>Deletion of words in (c) "has no visible means of subsistence"</p>	<p>the words are derogative</p>

Section 182 Offences relating to official uniform	Amend police force to read police service	To bring it in line with the Constitution under Article 193 which renamed the Zambia Police force as the Zambia Police Service.
section 201 Punishment for murder	Remove death penalty, and recast provision. Maximum penalty should be life imprisonment and Do away with extenuating circumstances Deletion of subsection 1 (a) (b)	Death penalty should be abolished and replaced with life imprisonment. The proposal to remove Death Penalty does not contravene Article 12 of the Constitution of Zambia. Further there is a need to ensure compliance with international standards as contained in the optional protocol of the ICCPR.
Sections 202 Punishment of manslaughter	reduce from life to thirty years	All life sentences should be reduced, and the sentence will not exceed 30 years' imprisonment.
Section 215 Attempted to murder	Reduce from life imprisonment to thirty years	All life sentences should reduce, and the sentence will be not exceeding 30 years' imprisonment
Section 216 Attempt to murder by convict	Section is redundant	The provision is already covered under section 215

<p>Section 218 Written threat to Murder</p>	<p>Offence should be a misdemeanour</p>	<p>The punishment is too severe</p>
<p>Section 221 Child destruction</p>	<p>Reduce penalty from life to- not exceeding thirty years</p>	<p>All life sentences should reduce, and the sentence will be not exceeding thirty years' imprisonment</p>
<p>Section 222 Disabling with intent to commit felony or misdemeanour</p>	<p>Reduce penalty from life to- not exceeding thirty years</p>	<p>All life sentences should reduce, and the sentence will be not exceeding thirty years' imprisonment</p>
<p>Section 223 Stupefying with intent to commit felony or misdemeanour</p>	<p>Reduce penalty from life to- not exceeding thirty years</p>	<p>All life sentences should reduce, and the sentence will be not exceeding 30 years' imprisonment</p>

<p>Section 224 intended to cause grievous harm or prevent arrest</p>	<p>Reduce penalty from life to- not exceeding thirty years</p>	<p>All life sentences should reduce, and the sentence will be not exceeding thirty years' imprisonment</p>
<p>Section 225 Preventing escape from wreck</p>	<p>Reduce penalty from life to- not exceeding thirty years</p>	<p>All life sentences should be reduced, and the sentence will not exceed thirty years' imprisonment.</p>
<p>Section 226</p>	<p>Deletion of subsection (2)</p>	<p>It was redundant after amendment to subsection (1)</p>
<p>Section 228 Acts endangering the safety of persons travelling in motor vehicles.</p>	<p>Reduce penalty from life to- not exceeding thirty years</p>	<p>All life sentences should reduce, and the sentence will be not exceeding thirty years' imprisonment</p>

Section 229 Grievous harm	Proposal to include “intent” has been adopted	This will form the intention to commit the crime.
Section 248 A Assault or battering of a child	Do away with mandatory minimum sentence but maintain the maximum penalty	The position is that all mandatory minimum sentences should be removed to grant the court discretion.
section 249 Assaults on persons protecting wrecks	Reduce sentence from seven to- not exceeding five years’ imprisonment	The sentence was too severe
Section 252 Definition of kidnapping from lawful guardianship	The age of the child victim, whether male or female, should be 16 years	Whether male or female child needs protection
Section 254 Punishment for kidnapping	Reduce penalty from seven to five years’ imprisonment	The sentence was too severe

<p>Section 256 Kidnapping or abducting with intent to confine person</p>	<p>Reduce penalty from seven to five years' imprisonment</p>	<p>The sentence was severe</p>
<p>Section 261 Buying or disposing of any person as a slave</p>	<p>It should be repealed</p>	<p>It is already provided for in the Anti-Human Trafficking Act.</p>
<p>Section 262 Habitual dealing in slaves</p>	<p>It should be repealed</p>	<p>It is already provided for in the Anti-Human Trafficking Act.</p>
<p>Section 275 Stock theft</p>	<p>Remove mandatory minimum sentences, but keep the maximum sentences.</p>	<p>The position is that all mandatory minimum sentences should be removed to grant the court discretion</p>

<p>Section 275 A Stealing copper cathodes, copper bars, cobalt, lead, zinc or vanadium</p>	<p>Include 'or any other minerals' to the provision.</p>	<p>The provision was limited and as such it was necessary to broaden its application to other Minerals.</p>
<p>Section 281A Stealing of motor vehicle</p>	<p>Removing the mandatory minimum sentence</p>	<p>The position is that all mandatory minimum sentences should be removed to grant the court discretion.</p>
<p>Section 294 Aggravated robbery</p>	<p>In 294(1) remove mandatory sentence of fifteen years and substitute with sentence not exceeding thirty years The sentencing period in subsection (2) should be reduced from Death to life</p>	<p>All life sentences should reduce, and the sentence should not exceed thirty years' imprisonment All sentences with Death where reduced to life</p>
<p>Section 295 Aggravated assault with intent to steal</p>	<p>Removing the mandatory minimum sentence</p>	<p>The position is that all mandatory minimum sentences should be removed to grant the court discretion.</p>
<p>Section 296 Demanding property by written threats</p>	<p>Reduce sentence from fourteen to not exceeding seven years</p>	<p>The sentence was too severe</p>

<p>Section 297 Attempts at extortion by threats</p>	<p>Subsection 1 (c) (i) “death” should be deleted and replaced with “life imprisonment”.</p> <p>Paragraph (c) (iii), Carnal knowledge against the order of nature should be defined.</p> <p>Indecent assault to be extended to both male and female.</p> <p>Carnal knowledge to be substituted with sexual intercourse (see comment under rape)</p> <p>Adopted (gender neutral provision on indecent assault)</p>	<p>All life sentences should reduce, and the sentences should not exceed thirty years’ imprisonment</p> <p>For clarity</p> <p>Gender neutrality</p> <p>For simplicity</p>
<p>Section 302 Entering dwelling house or other building with intent to commit felony</p>	<p>Amend sentence to from seven to five years’ imprisonment.</p>	<p>The sentence was severe</p>

<p>Section 305 Persons found armed, etc., with intent to commit felony</p>	<p>Delete “or blackened”</p>	<p>The provision was used during the colonial era</p>
<p>Section 328 Arson</p>	<p>Reduce sentence from life to thirty and delete proviso relating to death</p>	<p>All life sentences should reduce, and the sentence should not exceed thirty years’ imprisonment</p>
<p>Section 335 Punishment for malicious injuries in general</p>	<p>Rebase the fines in subsection (1)(a) (b) Reduce the sentence from twelve to three years in subsection (1) Reduce the sentence from life to thirty years in subsection (2)</p>	<p>Currency was rebased in the republic and hence the need to equate it to the current rebased currency.</p> <p>Sentence was too severe</p> <p>All life sentences should reduce, and the sentence should not exceed 30 years’ imprisonment</p>
<p>Section 339 Wilful damage, etc., to survey and boundary marks.</p>	<p>The fine should be change from six hundred penalty units to three thousand penalty units</p>	<p>The fine was too minimal</p>

Section 340 Penalties for damage, etc., to railway works	The fine should be change from six hundred penalty units to three thousand penalty units	The fine was too minimal	
Section 348 Forgeries punishable by imprisonment for life	The sentence should be changed from life to thirty years.	All life sentences should be reduced, and the sentence should not exceed thirty years' imprisonment.	The fine was
Section 364 Counterfeiting coin	The sentence should be changed from life to 30 years	All life sentences should reduce, and the sentence should not exceed thirty years' imprisonment	
Section 365 Clipping	The sentence should be changed from life to 30 years	All life sentences should reduce, and the sentence should not exceed thirty years' imprisonment	

Criminal Procedure Code

SECTION	PROPOSAL	JUSTIFICATION
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<p>Section 7</p> <p>Powers of subordinate courts</p>	<p>The need to enhance the sentencing jurisdiction of magistrates as follows;</p> <p>(i) Chief resident and principal resident magistrate not exceeding 25 years.</p> <p>(ii) senior resident magistrate not exceeding 20 years</p> <p>(iii) resident magistrate not exceeding 15 years</p> <p>(iv) magistrate of the first class not exceeding 10 years</p> <p>(v) the rest of the classes other than the chief ,principal , senior , resident and first class magistrates not exceeding 7 years and any other.</p>	<p>There's need to enhance the sentencing jurisdiction to avoid delays occasioned by the requirement for committal, for sentencing and confirmation of sentences.</p>
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<p>Section 9 (1) Sentences requiring confirmation</p>	<p>The sentence for class one requiring confirmation should be increased from two years to seven years.</p> <p>The Fine increased from 3 thousand to 10 thousand penalty units in subsection(2)</p> <p>Increase sentences requiring confirmation from 1 year to 5 years in subsection (3)</p> <p>The Fine increased from one thousand five hundred to six thousand penalty units in subsection(4)</p> <p>Delete subsection (6)</p> <p>Add court of appeal</p>	<p>The requirement for confirmation of sentences results in delays in the dispensation of justice.</p> <p>Over time the fine has become too minimal hence the requirement for enhancement.</p> <p>Over time the period requiring confirmation have become too minimal hence the requirement for enhancement.</p> <p>Over time the fine has become too minimal hence the requirement for enhancement.</p> <p>With effect to the removal of death penalty</p> <p>Judiciary has been expanded</p>
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<p>Section 27 Arrest of vagabonds, habitual robbers, etc</p>	<p>redrafted to be clearer deleted words “who has no ostensible means of subsistence”</p>	<p>Words are derogatory</p>
<p>Section 33 detention or release</p>	<p>Remove offence punishable by death</p> <p>Redraft the marginal note to read “detention or release of person arrested without warrant</p>	<p>Under the PC the punishment of death penalty has been removed.</p> <p>To capture the meaning in the section.</p>
<p>Section 41</p>	<p>There is need to repeal</p>	<p>There is a proposal for all offences on sedition to be repealed in the penal code</p>

<p>Section 44 Security for good behaviour from habitual offenders</p>	<p>There is need to repeal this section</p>	<p>It is not reasonably justifiable in a democratic society and it violates the presumption of innocence.</p>
<p>Section 45 Order to be made</p>	<p>deletion of “forty-four”</p>	<p>Section forty-four has been repealed.</p>
<p>Section 50 Section 50 (3) Inquiry as to truth of information</p>	<p>The subsection should be deleted.</p>	<p>Following the deletion of section forty-four</p>
<p>Section 83 Criminal informations by Director of Public Prosecutions</p>	<p>There is a need to repeal.</p>	<p>It’s no longer applied in Zambia</p>

<p>Section 94 Service when person summoned cannot be found</p>	<p>The need to insert gender neutral terms and to allow service of process on female persons</p>	<p>it should be gender neutral</p>
<p>Section 96 Service on company</p>	<p>Repeal and align it to section 34 and 35 of the companies Act 2017 To redraft the provision</p>	<p>The provision was redrafted with necessary modifications in line with the Companies Act No.10 of 2017 for consistency.</p>

<p>123 Bail</p>	<p>Include Court of Appeal</p> <p>Delete proviso to subsection (1)</p> <p>Include definition of surety</p>	<p>The Constitution expanded the court structure.</p> <p>All offences will be bailable so as to operationalize the presumption of innocence.</p> <p>Courts were imposing bail conditions for suspects to provide working sureties and in some cases they would require persons in senior government positions.</p> <p>This is disadvantaging persons who are poor and people who work in informal sector</p>
<p>Section 126 Amount of bail and deposits</p>	<p>Amend subsection(3) by replacing the word “High Court” with “Court” and deleting the words “direct that the bail or deposits required by a Subordinate Court or by the Police Officer”</p>	<p>To enable the Subordinate Court to vary bail conditions</p>

<p>Section 151</p> <p>Cases where wife or husband may be called without consent of accused</p>	<p>Delete 'bigamy' in (1)(b)</p>	<p>There is a proposal to repeal the offence from the Penal Code</p>
<p>172</p> <p>Costs against accused or prosecution</p>	<p>Delete subsection (1). It is onerous for the accused person who has been convicted to pay costs to the State</p>	<p>Criminal proceedings are instituted by the State hence the need for them to pay costs.</p>

<p>175</p> <p>Power of court to order accused to pay compensation</p>	<p>Remove “not punishable by Death”</p> <p>Delete the proviso imposing K50 compensation</p>	<p>Proviso should be amended so that the court has discretion to determine the amount payable. Delete K50.</p>
<p>183 Person charged with treason may be convicted of treason-felony and person charged with treason or treason-felony may be convicted of sedition</p>	<p>Repeal section</p>	<p>The sections relating to treason felony and sedition have been repealed in the penal code.</p>

196 Remarks respecting demeanour of witness	Replace 'magistrate' with 'court'	There is need to generalise the reference to the Court
Section 197 A Depositions to be availed	Insert a new section	To allow the accused person to adequately prepare for his defence as dictated by the Constitution.
204 Accused to be called upon to plead	Insert a provision obligating the Court to inform the accused of his right to legal representation.	Accused persons not informed on the right to legal representations in most cases. Such lack of awareness may be detrimental to their case
217 Committal to High Court for sentence	Amend the age to 'below the apparent age of nineteen, but not below the age of sixteen'	To avoid a child been given a custodial sentence

<p>223 Court to hold preliminary inquiry</p>	<p>Insert in a provision to the effect that, the PI shall be held within 14 days of the accused appearing before the court.</p>	<p>The accused should not be kept in custody longer than is necessary</p>
<p>260 Practice of High Court in its criminal jurisdiction</p>	<p>Repeal</p>	<p>Provision is archaic and does not apply.</p>
<p>271 Penalty for non-attendance of assessor</p>	<p>Replace K50 with three thousand penalty units.</p>	<p>The amount is negligible</p>

<p>286 Additional witnesses for prosecution</p>	<p>Amendment of the section by way of the deletion of the last sentence “No such notice need be given if the prosecution first became aware of the evidence which the witness could give on the day on which he is called.”</p>	<p>The continuing addition of witnesses will disadvantage and defeat the course of justice and amounts to investigation of the matter during the course of proceedings.</p>
<p>306 Commission of further offence</p>	<p>Repeal</p>	<p>Death penalty has been done away with under the Penal Code</p>
<p>334 Appeals to be heard by one Judge unless the Chief Justice otherwise directs</p>	<p>Amendment to include subsection that provides that where there is a tie, the matter should be decided in favour of the accused person</p>	<p>Where there is a tie, the appeal should be decided in favour of the accused person because the benefit of doubt should be resolved for the benefit of the accused.</p>

351A Interpretation	Addition of Court of Appeal and Supreme Court	The Constitution expanded the court structure.
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3. CONCLUSION

The Drafting Team, having considered the recommendations from stakeholders and the Technical Committee, proceeded to drafting the PC (Amendment Bill), and CPC (Amendment) Bill. The Bills, when enacted into law, will repeal and replace the PC Chapter 87 of the Laws of Zambia, and the CPC Chapter 88 of the Laws of Zambia respectively. In her closing remarks, Zambia Law Development Commission Director, Mrs. Hope Ndlhovu-Chanda, thanked all the participants for their dedication to the assignment and for having managed to complete the review of the PC, and the CPC Act, within the allocated time frame. Further, Zambia Law Development Commission extended its appreciation to GIZ for providing support to the process and for being with the Drafting Team throughout the drafting process.

ANNEX 6- FINDINGS FROM THE COMPARATIVE STUDY VISITS

In-depth study visits were undertaken to Zimbabwe, Uganda, South-Africa, Hong kong, Canada and Australia.

The following is a summary of the findings:

a. Zimbabwe

The historical development of the CJS in Zimbabwe has been largely based on Roman Dutch Law. However, criminal law in Zimbabwe has recently undergone a number of changes necessitated by the enactment of a new constitution in 2013. In response to this new development, Zimbabwe has also reviewed its criminal law by enacting the criminal Law codification and reform act (Chapter 9:23). The Act essentially regulates criminal law in Zimbabwe. It codifies all the major aspects of the common law criminal law and incorporates many of the offences that were previously contained in various statutes.

Generally, there are a number of players in the CJS of Zimbabwe. These primarily include inter alia, the Police, the Courts, the National Prosecution Authority (NPA), Defence Counsel for the accused, the Prisons and Correctional Services and the Community Service Department. When looked at from a glance, the Zimbabwe CJS does not have a very glaring difference with that of Zambia.

However, there are a number of lessons that Zambia can draw from Zimbabwe. Hereunder, the lessons learnt during the study visit have been outlined in a manner that is according to the various stakeholders consulted.

1. Zimbabwe's new Constitution, passed close to two years ago, has and is going a long way to reshape the CJS in the country, more for the better than otherwise.
2. There is in place an element of 'evidence' in the equivalent of Zambia's Criminal Procedure Code, i.e the Criminal Procedure and Evidence Act. This helped guide both adjudicators and parties at trial of accused persons on such issues as admissibility and relevance of evidence. In a way it creates a standard to be applied where evidence is concerned.
3. Once the court has convicted and accused, in cases where the accused is liable to imprisonment for not more than 24 months the court has discretion to impose a community service sentence. This normally occurs when the accused is a first offender. It also occurs in

instances where the court is of the option that a custodial sentence will not yield any positive results in as reforming the accused is concerned;

4. Community service sentences are well coordinated among the relevant players owing to Zimbabwe having put in place adequate multi sector guidelines to that effect ;
5. The community service sentencing system that has been put in place from as far back as 1992 has proved to be very useful in reducing congestion in prisons;
6. Zimbabwe's Prisons and Correctional Services has in place a gratuities system. This system entails that a prisoner during the period of incarceration earns a gratuity of some kind that is given to him or her upon release. This gratuity is earned of the produce normally produced by the PCS;
7. Following the passing of the new Constitution, the PCS took on an additional role of not only tending to prisoners during the period of their incarceration but has now been extended to issues of reintegration of prisons back into society once released from the custody of PCS;
8. As a matter of practice at the beginning of trial the magistrate asks the accused whether or not he or she has any problems faced during police detention which he or she wishes to bring to the attention of the court. This is because the courts are of the view that as a neutral arbiter it is their role to ensure that detainees are not mistreated by police.
9. In Zimbabwe, the Constitution recognizes Chiefs as having a judicial function, although this does not extend to criminal matters;
10. Because of the challenges of access to the formal court structures, it was advised that Zambia consider extending judicial functions to Chiefs and in such extension include the adjudication of otherwise petty offences. This was advised would go a long way in decongesting the already overburdened formal court system;
11. The advantage of using the Chieftaincy as a judicial institution lies in its informality and flexibility. This entails a faster way of disposing of cases. These courts are also more accessible in far flung areas;
12. Community service sentencing would be best placed if it was linked to the Chieftaincy or otherwise community leadership so as to ensure that the right areas are serviced by convicts sentenced to community service. failing this there is a risk of such convicts loafing on account of no work being available;
13. Zimbabwe has in place a Judicial College for continuous training of members of its legal profession with a bias towards its

judicial officers and their support staff. The essence of the college is not in academic training but rather needs based training that focuses on creating a more efficient and responsive judicial system. It is provided for in law with an enabling piece of legislation;

14. Training of judicial officers does not come cheap. It is expensive. A country should be willing to spend on such a venture if at all it wants to reap the benefits of a judicial system consisting of well trained personnel. Which training is based on needs identified by and with the said judicial officers.
15. When it comes to the re-training of judges, it is important to apply tack in doing this so as to ensure the desired results are achieved. This extends to ensuring that the judges are part and parcel of the of the development of materials and also that the facilitators and trainers of such trainings are persons respected by the bench;
16. Zimbabwe does not have specific legislation to tackle the issue of torture. To that end recommendations have been made for legislation to be put in place to cater for the same with a hope that on account of the country now having new pieces of legislation that will result therefrom.
17. One issue that does come out is the concern that Police should not be allowed to investigate acts of torture as in most cases they themselves are the culprits. To this end it has been recommended that the independent mechanism provided in the new Constitution be actualized as soon as could be possible.
18. The Constitutional Court of Zimbabwe has recently held that the Constitution contains the rule by which it imposes on the State, through its agents, the obligation not to admit or use in any legal proceedings, information or evidence obtained from an accused person or defendant or any third party by torture, to inhuman or degrading treatment.
19. The Zimbabwe Human Rights Commission, unlike its Zambian Counterpart or most other International Human Rights Institutions (IHRI) is empowered to make decisions following its investigations into alleged human rights abuses. Beyond making those decisions the Commission is also empowered to register the same with the courts and have them enforced as if it were an order of the court.

Recommendations

1. In reforming the law pertaining to its CJS Zambia should consider making amendments to its Constitution, as the supreme law of its land;

2. Zambia should consider including an element of 'evidence' in its CPC Act;
3. Zambia should consider community service sentencing as an alternative to custodial sentences especially for offence attracting a sentence for less than 24 months or for those instances where the court is of the opinion that a custodial sentence will not yield any positive results in as far as reforming the accused is concerned;
4. This community service sentences should be well coordinated among the relevant players and to do this guidelines to those players should be legislated upon;
5. Zambia should consider putting in place a gratuities system for those incarcerated in prisons which shall be earned during his or her stay in prison and given to him or her upon release from prison;
6. Zambia should consider granting Chiefs a judicial function, which should extend to petty criminal matters;
7. Zambia should, if it does go ahead to include community service as an alternative to custodial sentences, consider linking the same to either the Chieftaincy or community leadership so as to ensure that the right areas are serviced by convicts sentenced to community service;
8. Zambia should consider putting in place a judicial college for continuous training of members of its legal profession with a bias towards its judicial officers and their supporting staff. The essence of the college should not be in academic training but rather needs based training that focuses on creating a more efficient and responsive judicial system within the criminal justice sector;
9. Zambia should be ready to spend on the training of judicial officers as the same does not come cheap;
10. When it comes to the re-training of judges Zambia should apply tact in doing this so as to ensure the desired results are achieved. This should extend to ensuring that the judges are part and parcel of the development of materials and also that the facilitators and trainers of such trainings are persons respected by the bench;
11. Zambia should put in place specific legislation to tackle the issue of torture. This should be done in line with the country's Constitution and relevant Regional and International Convention Zambia is a member party to ;
12. Police should not be allowed to investigate acts of torture as in most cases they themselves are the culprits. To this end it

is recommended that the independent mechanism be provided to do this;

13. legislation must be enacted which shall imposed upon the State, through its agents, an obligation not to admit or use in any legal proceedings, information or evidence obtained from an accused person or defendant or any third party by torture, or inhuman or degrading treatment;
14. To tackle such human rights abuses as torture and gender based violence, Zambia should amend the current Human Rights Commission Act and therewith empower the Human Rights Commission with powers beyond those of merely making recommendations, but should extend the powers to allow the Human Rights commission to make orders that are enforceable in more or less the same manner as orders of the court.

b. Uganda

Uganda just like Zambia has two types of offences namely, Felonies and misdemeanours. In terms of the Ugandan Penal Code, a felony is defined as a serious offence which is not a misdemeanour whereas a misdemeanour is defined as an offence which is not a felony and attracts two years of imprisonment or a fine. Misdemeanour are considered to be less serious than felony charges. These include crimes like: public drunkenness, vandalism, drug possession, shoplifting, trespassing and petty theft.

The study noted that the Ugandan courts are finding it difficult in making a distinction between a felony and a misdemeanour as the definitions are vague and extremely ambiguous. There is a discrepancy in the punishment given to the different misdemeanours yet they all qualify to be misdemeanours.

To this effect, the law reform commission has gone a step further in addressing the discrepancies between the felonies and misdemeanours by providing clarity in the PC Bill.

The PC bill has acknowledged the problems that the terms have caused especially when meting down judgements. This lack of uncertainty as to what constitutes a misdemeanour and a felony has led to the change in names for misdemeanours and felonies to that of Indictable and summary offences. The study learnt that the change in names was necessitated by the need of the judicial system in moving with the international standards of dispensation of justice. It was noted that a thorough perusal of advanced

jurisdictions showed that the use of misdemeanours and felonies were archaic.

Summary offences thus constitute petty or small offences while Indictable offences constitute more serious and robust offences. Under the Zambian criminal law, an accused person can either be charged with a felony or a misdemeanour.

Similar to the Zambian situation, the law in Uganda provides that a person convicted of treason is to suffer death. The section thus leaves no discretion on the court with regards to the penalty to be imposed. The Ugandan Courts have thus dealt with these issues in the case of Attorney General Vs Susan Kigula and 417 Others Appeal No. 03 of 2006. In this case, the appellants were on death row awaiting hanging for a very long time for treason and similar offences. The court held that an accused person has a right to mitigate. Furthermore that the death penalty should be discretionary be passed after hearing the evidence presented to court to the conclusive and justifiable limit.

The Court further went on to state that killing someone who has murdered somebody does not yields any deterrence as there no statistics that prove that killing murders stops would be offenders. As such the court did not declare Death penalty unconstitutional but it emphasized on the fact that every accused person has the right to mitigation. That prohibiting discretion when life is on the line violates equal protection. The court further held that a person who is sentenced to death ought to be executed within three years failure to which the sentence is to be converted to life imprisonment.

The Ugandan law reforms have reached an advanced stage relating to certain offences, For instance an offence such as insulting the queen has been done away with. The Ugandan law reform has gone further in holding that defamatory laws must be left for civil matters as the main agenda for civil litigation is to seek to redress by an individual person or a group of persons (Case action Lawsuit).

In Zambia, offences against morality are contained in chapter XV of the PCand are similar to the Ugandan acts as contained in chapter XIV of the Ugandan Penal Code. The Ugandan courts have however given life to the chapter by defining consent for the purposes of the chapter xiv. To this effect, consent means, Consent freely and voluntarily given by a person with the cognitive capacity to give consent. It was further held that, without limiting the said definition of consent, a person's consent to an act is not freely and voluntarily given if it is obtained-

- a) By force; or
- b) By threat or intimidation; or
- c) By fear of bodily harm; or
- d) By exercise of authority; or
- e) By false and fraudulent representation about the nature and purpose of the act; or
- f) By a mistaken belief induced by the accused persons that the accused person was the person's sexual partner.

In the year 2007, an amendment to the definition of defilement was effected to adopt a gender sensitive and broader definition of what constitutes a sexual act. This amendment defines a sexual act to mean:

- a) Penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ;
- b) The unlawful use of any object or organ by a person on another person's organ. "Sexual organ means a penis or vagina".

In Uganda, the provisions for defilement in the PC were similar to Zambia until the year 2007. The escalating number of reported cases of defilement necessitated the amendment to the PC in 2007. It was felt at the time that offences such as defilement needed to be graduated to include aggravated and simple defilement. Just like Zambia, Uganda experiences some gruesome cases of defilement involving babies as young as one week old and disabled children.

The introduction of an offence of aggravated defilement was meant to enhance punishment for certain circumstances of defilement. Section 129(3) provides that any person who performs the a sexual act with another person who is below the age of eighteen years of any circumstances specified under (4) commits a felony called aggravated defilement and is upon conviction, liable to suffer death.

Section 129(4) of the amended Ugandan PC spells out what constitutes aggravated defilement to include:

- Having carnal knowledge of a VICTIMS below the age of fourteen years;

- where the offender is infected with the Human Immunodeficiency Virus (HIV);
- where the offender is a parent or guardian of or a person in authority over the person against whom the offence is committed;
- where the victim of the offence is a person with a disability; or where the offender is a serial offender.

Furthermore, the 2007 amendment act makes it mandatory for persons charged with the offence of defilement to undergo HIV testing.

The courts have ruled that collaboration is not a requirement in sexual offences. The rationale for arriving at such a finding was to ensure that there is no unfair dispensation of justice as it has been held in a number of cases that it is quite difficult for the DPP to come up with collaborative evidence when dealing with sexual offences as they occur in privacy. It is for this reason that the courts only rely upon proof beyond reasonable doubt and insist on all principles of evidence be adhered to in all criminal matters.

Furthermore, it was submitted that corroboration rules work particularly to the disadvantage of the victim in sexual offences having in mind that most of the victims are women and children who are very vulnerable beings. The fact that these rules are applied indiscriminately is an insult to the victims of vices such as rape as the first perception is that the victim is lying about the allegations.

SUMMARY OF RECOMMENDATIONS

1. The Zambian legal system should do away with the distinction of misdemeanours and felonies and replace them with the indictable and summary offences. In the alternative, if we are to return the distinction, the penalties for all misdemeanours should be three years to provide clarity in the law.
2. The wording in section 200 and treason offences should be recast to do away with mandatory death penalty. This will provide the accused person with an opportunity to mitigate as well as the adjudicator to exercise their discretion when sentencing.
3. The use of the Death penalty should be abolished and replace it with life imprisonment as this is the position in most jurisdictions. The death penalty has equally been said to be an archaic and barbaric way of punishment. Most modern societies are moving towards the human rights approach.

4. In terms of laws relating to terrorism, there is a need for Zambia to adhere to the regional and international agreements it has signed by incorporating and transferring them into domestic law. This can be done by enacting an Anti-Terrorism Act.

This Recommendation has been over-taken by recent event as our legislature enacted into law an Act titled the Anti-Terrorism Act No.21 of 2007).

5. The jurisdiction of the courts (subordinate Courts) have to be enhanced to help in the escalating backlogs of persons awaiting sentencing especially in sexual offences.

6. There is a need to utilise the magistrates' hierarchy for the purposes of appeal procedure. This can be done by enhancing the roles and mandate of the Chief Resident Magistrates who can review court cases and judgements executed in the lower courts.

7. The definition of publications has to be revisited and adopted by the Ugandans which is "an act or process of producing a book, magazine or any other matter, making it available to the public.

8. The laws relating to publications should be revisited and benchmarked with the right to freedom of expression and access to information.

9. The law on sedition must be repealed as it is not applicable in most commonwealth Jurisdictions. We must also consider the reasoning of the Ugandan court decisions cited above.

10. The law relating to publication of false news should be repealed.

11. The law relating to insulting the president should be repealed and have the aggrieved person have recourse under civil law. This will level the playing field in the political terrain.

12. Archaic sections like insulting the national anthem insulting the queen and foreign princess and princesses should be repealed as they are no longer applicable in Zambia.in the alternative, the law should be redrafted to read "insulting or defaming foreign dignitaries"

13. There ought to be a definition for offensive weapons in terms of the laws relating to public tranquillity as it is too wide.

14. Zambia should adopt the Ugandan mode of the distinction between the aggravated defilement and simple defilement to ease the burden of borderline cases.

15. The Definition of rape should be clear and in plain English. This should thus be borrowed from the Ugandan amendment of 2007 to mean “non-consensual penetration of the valve, vagina, mouth, anus, however slight, of any person by a sexual organ; the unlawful use of any object by a person on another person’s sexual organ. To this effect, organs should be defined as vagina and penis.

16. There should be a provision for marital rape

17. Similar to the Ugandan law of defilement, there ought to be a distinction of aggravated rape and simple rape. With the factors being the victim infected with HIV and vices such as gang rape among other things.

18. The penalties for attempted rape and indecent assault should be reviewed downwards.

19. There ought to be an order of compensation to the victim in rape and defilement cases by the accused.

20. The requirement for corroboration should be abolished for the reasons stated above.

21. In terms of unnatural offences, the section that talks of bestiality should be retained with the other sections be decriminalized as they are almost impossible to prove were there is no complainant

22. Indecent assault should be graded and the penalties reduced.

23. The law on Bigamy should be decriminalized and covered under marriage laws

24. The requirement for the express consent of the DPP to proceed in most cases has been found to be repugnant to the principle of free and fair express justice framework as guaranteed by the constitution. This provision should only be exercised in exceptional cases.

25. The withdrawal of cases by the DPP should be with leave of court.

26. The entering of nolle prosequi by the DPP should be done with reasons. This should not mean that the courts can reject or uphold the nolle, it is imperative that the accused persons follow the proceedings with reason.

27. The police should only charge a person with the consent of the DPP to avoid the waiting instructions theory.

28. The Directorate of public prosecution must provide prosecution-related advice to police investigators.

29. In areas where the Directorate of Public Prosecution has no offices, there may be a need to appoint private practice lawyers to prosecute cases on behalf of the DPP.

30. The 'arrest then investigate strategy' which is mainly employed by the Zambia Police must be discouraged. An arrest should only be effected after comprehensive investigation as well as a belief of reasonable and probable grounds that an offence has been committed.

31. There is need for the decentralisation of the police functions by making police commissioners more autonomous from the centre in terms of decision making

32. A robust legal aid system in Zambia must be established to ensure that the numbers of unrepresented litigants is reduced. This can be enhanced by having NGO's establishing and providing legal aid services.

33. Promotion and support of partnerships with external stakeholders; government, community and other police services, aimed at the prevention and reduction of crime must be enhanced.

34. There must be clear guidelines on when the police may hold someone in custody by providing the police with a check-list of what may precipitate holding a person in police cells.

35. The Constitution needs to authorise Parliament to establish a general court of appeal for Zambia, as well as any additional courts for better administration of the laws in Zambia.

The Recommendation above has been overtaken by the event relating to enactment of the Constitution of Zambia Amendment No.2 of 2016. The relevant provision of having a general court of appeal is Article 130 which states herein that "There is established the court of Appeal which consists of such number of judges as prescribed". Further-more , Parliament has enacted the Court of Appeal Act No.7 of 2016 to provide for powers and functions of the court.

The Constitution of Zambia Amendment No.2 of 2016 has also established the Constitutional Court of Zambia under Article 127 of the

Constitution as amended, In addition, Article 133(2) of the constitution as amended has established division of the High-Court of Zambia and these are, The Industrial Relations Court, Commercial Court, Family Court and Children's Court

36. The judiciary as well as the prosecutors need to move towards specialisation of courts. This will enhance efficiency and quick disposal of cases.

37. There is a need to have a general Court of Appeal between the High Court and the Supreme Court.

This recommendation has been overtaken by the establishment of the Court of Appeal by the Constitution of Zambia amendment No.2 of 2016 and the enactment of the Court of Appeal Act No.7 of 2016

38. There is a need to have a constitutional court in place to help in expediting constitutional matters.

This recommendation has been overtaken by the events of the creation of the Constitutional Court under Article 127 of the Constitution of Zambia Amendment No.2 of 2016

39. In light of the freedom of expression provisions in the Zambian constitution, the issue of prohibited publications must be removed to encourage divergent discourse.

c. South Africa

The criminal procedure Act forms part of procedural or adjectival law, and describes the means by which its substantive counterpart, South Africa criminal law, is applied. It has its best mainly in English law. When the British occupied the cape permanently in 1806, they retained the Roman Dutch legal system. They concluded, however, that the criminal justice system was archaic, and so introduced one based on their own in 1828. It has been developed over the years to suit local conditions. The South Africa system today is basically accusatorial: that is, the state accuses, and the accused defends. The accusation and its proof are state driven, with a state appointed prosecuting authority. In South Africa, the sources of the criminal procedure lie in the constitution, the criminal procedure Act, other statute law (for instance, the magistrates court act, the supreme court Act and the Drugs and Drug Trafficking Act) and the common law. Criminal procedure overlaps with other branches of the law, like the law of evidence and the substantive law. The criminal procedure can be divided into three stages or phrases, namely pre-trial, trial and post-trial. These divisions are

not watertight. The basic principle of South African criminal procedure is that of access to courts, in accordance with section 34 of the constitution.

While the study of South Africa criminal laws has shown that prior to April 2010, children who committed crime were dealt with, in terms of the criminal procedure Act, which as well deals with adults who commit crimes. The minimum age of criminal capacity in South Africa then used to be 7 years of age, one of the lowest in the world. Thereafter, the country introduced the child justice Act, which raised the minimum age of criminal capacity from 7 to 10 years of age. It also retained a presumption that children who are 10 years or older but under the age of 14 years at the time of the commission of the alleged offence are presumed to lack criminal capacity. The presumption is rebuttable and there is an onus on the state to prove that the child had criminal capacity at the time of the offence. The Act also provides for a review of the minimum age, with a view to raising it, within five years of the Act commencement.

Although these amendments moved South Africa from the unpleasant prior position of having one of the lowest minimum ages of criminal capacity in the world, the study revealed that the current minimum age of criminal capacity provisions still fall short of internationally accepted standards. The aim of the Act is to set up a child justice system for children in conflict with the law. This means that children under the age of 14, who are suspected to have committed crimes, will not be dealt with in terms of the criminal procedure act but the child justice process will be followed. The Act also seeks to ensure that matters relating to children are managed in a right based manner so as to assist children suspected of committing crimes in turn their lives around and become productive members of society by engaging with the child in restorative justice measures, diversions and other alternative sentencing options.

In South Africa, the study revealed that the law in place is called the criminal law (sexual offences and related matters) Amendment Act. This law protects communities against rape or victims of rape (especially women, children and people living with mental disabilities) and other sexual related crimes. This law codified the law relating to sex offences and repealed various common law crimes (including rape and indecent assault) and replaced them with statutory crimes defined on a gender-neutral basis. It expanded the definition of rape, previously limited to vaginal sex, to include all non-consensual penetration and it equalised the age of consent for heterosexual and homosexual sex at 16, (the of consent for both girls and boys is now 16 years).

The Act defines rape as an act of sexual penetration of a victim, without their consent rape occurs when:

- (a) someone inserts their genital organs into the mouth, anus or genital organs of a victim;
- (b) any part of someone's body, such as a finger into the anus or genital organs of the victim;
- (c) any object, like a stick or a bottle is put into the anus or genital organs of the victim;
- (d) the genital organs of an animal are put into mouth of the victim;

The act also provides various services to the victims of sexual offences, including free post exposure prophylaxis for HIV, and the ability to obtain a court order to compel HIV testing of the alleged offender. It also creates the National Registrar for sex offenders, which records the details of those convicted of sexual offences against children or people who are mentally disabled.

The study revealed that sex acts become crimes in South Africa when they are performed without the permission (consent) of the person they are performed on. Therefore, a person is said not to have consented to a sex act if they are;

- (a) intimidated, forced or threatened in any way, through violence or threats of violence against them or someone they love, or damage to their property
- (b) compelled by someone who abuses their power or authority for instance if someone tells them that they will lose their job if they do not have sex with them;
- (c) lied to by a doctor or other health worker who tells them that a sex act is part of a physical examination, or is necessary for their mental or physical health;
- (d) when they are asleep, unconscious, under the influence of drugs or alcohol, a child under the age of 12, and a person with a mental disability.

The following offences are prohibited by the act.

- (a) Rape (section 3)
- (b) compelled rape (section 4)
- (c) sexual assault (section 5)
- (d) compelled sexual assault (section 6)
- (e) Compelled self-sexual assault (section 7)
- (f) Compelling or causing a person of 18 years or older to witness a sexual offence, a sexual act, or self-masturbation (section 8)

- (g) exposing or displaying or causing the exposure or display of genital organs, anus or female breasts to a person 18 year or older (flashing) Section 9
- (h) exposing or displaying or causing the exposure or display of child pornography to a person 18 year or older (section 10)
- (i) engaging the sexual services of a person 18 years or older (section 11)
- (j) Incest (section 12)
- (k) bestiality (section 13)
- (l) committing a sexual act with a corpse (necrophilia) (section 14)
- (m) committing an act of consensual sexual penetration with a child (statutory rape) Section 15
- (n) committing an act of consensual sexual violation with a child (statutory sexual assault) section 16.
- (o) sexual exploitation of a child; being involved in, furthering, benefiting from or living from the earnings of the sexual exploitation of a child; or promoting child sex tours (section 17).
- (p) sexual grooming of a child or promoting the sexual grooming of a child (section 18)
- (q) Exposing or displaying or causing the exposure or display of a child pornography or pornography to a child (section 19).
- (r) Using a child for or benefiting from the child pornography (section 20).
- (s) compelling or causing a child to witness a sexual offence, a sexual act or self-masturbation (section 21).
- (t) exposing or displaying or causing the exposure or display of genital organs, anus or female breast to a child (section 22).
- (u) sexual exploitation of a person who is mentally disabled being involved in, furthering, benefiting from, or living from the earnings of the sexual exploitation of a person who is mentally disabled; or promoting sex tours with persons who are mentally disabled (section 23).
- (v) sexual grooming of a person who is mentally disabled (section 24)
- (w) exposing or displaying or causing the exposure or display of child pornography or pornography to a person who is mentally disabled (section 25).
- (x) Using, or benefiting from using, a person which is mentally disabled for pornography purposes (section 26).

The study established that in cultures that practice marital monogamy, bigamy is the act of entering into a marriage with one person while still legally married to another. Bigamy is a crime in most western countries, and when it occurs in this context often neither the first nor second spouse is aware of the other. In countries that have bigamy laws, consent from a prior spouse makes no difference to the legality of the second marriage, which is

usually considered void. However, in South African, under civil law marriages (regulated by the Marriage Act), any marriage in addition to an already existing one is invalid (but not criminalised).

d. Australia

There are two sets of laws in Australia, namely state laws and federal (commonwealth) laws. The state of Queensland has a criminal code which is a consolidated state piece of legislation that is developed on the Griffith Model providing for nearly all the offences and punishment thereof. Be that as it may, the criminal legislation of Queensland has a few specialised Acts of Parliament which address specific crimes, like the drugs misuses act and the proceeds of crime act. The QLRC's mandate is on state laws. There are federal laws too, commonly referred to as the commonwealth. The principle act for commonwealth criminal legislation is the Australian Criminal Code.

In respect of the unified system of criminal laws as provided for in the Queensland criminal code, the QLRC has as one of its functions to keep under review the laws applicable to Queensland with a view to its systematic development and reform having regard to its codification, the elimination of anomalies and of obsolete and unnecessary enactments, the reduction of the number of separate enactments, and generally the simplification and modernization of the law. Thus, it is apparent that the Queensland criminal justice system is particular about upholding the unified criminal code, as compared to having numerous statutory enactments and reliance on the common law.

The Queensland criminal code Act is styled on the Griffith code model, and not the common law with scattered numerous statutes. The unified system makes the criminal law usage very friendly in that every offence is provided for, and procedure to follow clearly spelt out, including the penalty for each offence. This leaves less room for speculating and twisting the law around. Further, from the prosecutorial point of view, the unified system enables one to identify the gaps in the law in respect of offences which are not provided for. Hence it becomes easy to establish other offences. For instance, a gap was noted regarding the offence of contaminated food, which was not there up to 2014, but has since been provided for in the code.

The interaction with the ODPP revealed the advantages of the unified criminal legislation. It was learnt that the unified criminal code makes the law more predictable and certain as everything is written down, rather than relying on common law. From the ODPP's point of view, there is a high degree of certainty when prosecuting matters under the codified system in Queensland. Hence other states in Australia are copying and implementing the codification of criminal legislation.

Other findings in respect of the unified criminal code is that, codes are enacted into law by parliament. Compared to the common law which has evolved by the court precedents set by judges, a unified criminal code is made by an elected parliament thereby embodying democratic values since it is enacted by an elected parliament.

Connected to the democratic value are the values of prospectivity and certainty that comes with codification. Codes, being an ultimate authority in the form of legislation, impose an essential prospective governance in the sense that the existence of a rule (and the authority to sanction) emerges with the act of passing the legislation. An Act or code cannot be found to have existed where no declaration of them was made, as is the case in the common law. And codes require deductive reasoning insofar as conclusions are reached from fixed premises (legislation) rather than inductive reasoning which draws general rules (for example the elements of an offence) from observed instances, as is the basis of the common law.

A unified criminal code aims at being systematic. It requires laws to be presented not merely as a compilation of unrelated rules in one enactment but as a systematic or organic whole. The gathering function of a code and its legislative form highlight its systematic nature and coherence.

Codification can also be sought with the aim of reforming the law. On the specific level they provide an opportunity to remedy inconsistencies in the old law or create new, updated or revised rules. They are restatements of the law, retaining what is working and altering what is not. Codes can represent more general reform also in that they are often part of larger trends around constitutional change and modernising the exercise of state power.

There is another crucial effect of codification, that of creation of uniformity and identify between or among firmly distinct jurisdiction. Instead of having unpredictable outcomes of criminal matters before courts of law, a unified criminal code makes the law certain and predictable in different jurisdictions but within the same political or jurisdictional boundaries. In other words, the use of a unified code has an administrative aspect to it. The aim of convenience in the smoother administration of disparate/separate jurisdiction districts from other states or nations. Thus, codification of the criminal law in Australia was, and is also driven by an aim of uniformity, political identity and state or nation building.

The fact that a code (or any statute) is enacted by a parliament means that its reach is limited to the clear boundaries of that legislature. This is in contrast to the common law where boundaries do not necessarily follow

precisely sovereign parliamentary limits. The common law crosses political boundaries.

Thus, the often-stated reasons why jurisdictions codify laws revolve around the aims of accessibility for legal workers and lay citizens, the ideal of parliamentary sovereignty and coherence and reform of the area of law involved. But the aspirations of state/nation building and uniformity between jurisdictions are also major motivations.

The foregoing is against the backdrop of often cited arguments that unified criminal codes are not flexible because courts can create offences when necessary to uphold the fundamental principles of the law, to protect the order, safety and morals of the state.

In light of the foregoing findings and analysis, it remains for Zambia as a jurisdiction to either go for a unified criminal code or maintain the common law system with numerous statutes addressing different sectors.

e. HONG KONG

The legal system of the Hong Kong Special Administrative Region (HKSAR) is based on the rule of law and the independence of the Judiciary. The constitutional framework for the legal system is provided for in the Basic Law sanctioned by the National People's Congress. Under the principle of one country, two systems' the HKSAR legal system, which is different from that of Mainland China, is based on the common law, supplemented by local legislation.

The laws in force in the HKSAR include the following:

- the Basic Law
 - national laws listed in annex III to the Basic Law
 - the Laws, including the common law and the rule of equity, in force before July 1, 1997, apart from a small number of statutory provisions which were declared by the Standing Committee of the National People's Congress to contravene the Basic Law ; and
 - laws enacted by the legislature of the HKSAR
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The Hong Kong law provides that under common law, all crimes, whether common law or statutory in origin, are divided, for various procedural and substantive purposes into three broad categories; treason, felony and misdemeanour. Felonies are purportedly more serious offences than misdemeanours, though in practice this distinction does not always hold true.

Historically, all of these categories of offence were treble on indictment (i.e. before a judge or jury). Subsequently, a fourth category known as 'summary

offences' came into force when the English parliament enacted a body of relatively minor statutory offences; it also provided that they should be dealt with by way of a more informal 'summary' procedure (i.e. by a judge or Magistrate alone, without a jury).

In Hong Kong the study established that before 1990, admission to bail was not a fundamental right, even though it could be extended from the principle of presumption of innocence. So, back then, if the accused did not know or request for admitting to bail, the accused could literally be stuck in a police station forever. But in 1991, the law changed. In 1991, the government enacted the Hong Kong Bill Rights Ordinance, Article 5(3), which recognizes the right to bail. Like many other fundamental rights, the right to bail is not absolute. Depending on the situation, the police or the prosecutor may refuse the accused from admitting to bail (like, if the prosecutor believes there is a strong possibility that the accused would annoy or threaten any witnesses of the case). Under that situation, the accused may request to bring the question before a magistrate. If the magistrate follows the prosecutor's advice and refuses the accused from admitting to bail, the accused still has the last chance to bring the question to the High Court. By the same token, if the magistrate allows the accused to bail, the prosecutor can also bring the question to the High Court.

The study also established that the term 'defilement' is not used. Hong Kong law prohibits intercourse with a girl under the age of 13 by virtue of Article 123 of the Crime Ordinance. It states: subject to subsection (2), a man who has unlawful sexual intercourse with the girl under the age of 13 shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life'

In addition, intercourse with a girl under sixteen (16), is prohibited under Article 124 of the Crimes Ordinance. It states: subject to subsection (2), a man who has unlawful sexual intercourse with a girl under the age of sixteen (16) shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for five (5) years.

Hong Kong Law provides for abduction of an unmarried girl under eighteen (18) for sexual intercourse under Article 128 of the Crimes Ordinance it states:

"A person who takes an unmarried girl under the age of eighteen (18) out of the possession of her parent or guardian against the will of the parent or guardian with the intention that she shall have unlawful sexual intercourse with men or with a particular man shall be guilty of an offence

and shall be liable on conviction on indictment to imprisonment for seven (7).”

The study also revealed that ‘Capital Punishment’ in Hong Kong was formally abolished in 1993, following the repealing of the Corporal Punishment Ordinance.

Before then, capital punishment given the establishment of the Crown Colony of Hong Kong for offences such as murder, kidnapping ending in death, and piracy. The last execution in Hong Kong was carried out on 16 November 1966 when Wong Kai-Kei, aged 26 was hanged at Stanley Prison. Following this, the death penalty was suspended. The Governor of Hong Kong would as a matter of course commute the sentences of those so convicted under the death penalty to life imprisonment under the Royal Prerogative of mercy. In April 1993, capital punishment was officially abolished in Hong Kong. Since then, life imprisonment has been the most severe punishment in Hong Kong.

Under the principle of independence of legal system in Hong Kong Basic Law, Hong Kong has continued its repudiation of capital punishment after its handover to the People’s Republic of China despite the fact that capital punishment is still carried out in China.

The study established that the basic law of Hong Kong via Article 63 entrenches the constitutional principle of prosecutorial independence by providing that the Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference. “Criminal prosecutions include the decisions of whether or not to prosecute, whether to give consent to prosecute where there is an express statutory requirement of such consent. Whether to take over a private prosecution and whether to enter a nolle prosequi. The Secretary for Justice when making such decisions acts in a quasi-judicial capacity and does not take orders from the government, politicians, the law enforcement agencies, or anyone else. The established constitutional principle is that he is entitled to exercise his quasi-judicial powers in a completely independent manner.

This constitutional principle is consistent with the constitutional convention in leading common law Prosecutorial independence Continuity and Development jurisdictions such as the United Kingdom and Canada: the Attorney General there in making prosecution decisions enjoys independence.

The recent decision of the Court of Appeal (“CA”) in Re C (A Bankrupt) on the prosecutorial independence entrenched under Article 63 of the Basic

Law is of particular relevance. The Court held that: The Prosecutorial independence of the Secretary of Justice is a linchpin of the rule of law. He is in the discharge of that duty to be 'actuated by no respect of persons whatsoever' and 'the decision whether any citizen should be prosecuted or whether any prosecution should be discontinued, should be a matter for the prosecuting authorities to decide on the merits of the case without political or other pressure....any practice savouring of political pressure, either by the executive or Parliament, being brought to bear upon the Law Officers when engaged in reaching a decision in any particular case, is unconstitutional and is to be avoided at all costs.

The Criminal Procedure Ordinance emphasised that the prosecution independence of the Secretary of Justice is central to the rule of law and that the function of Article 63 is to continue this fundamental principle in Hong Kong, consistent with the entire theme of continuity in the Basic Law. The same principle is also underpinned by a number of statutory provisions such as sections 14(1), 14B and 15(1) of the Criminal Procedure Ordinance

f. Canada

In the 15th century, the French and the British settled on the Atlantic coast. After a seven year long territorial war between the French and the British forces, France ceded to the British nearly all of its colonies in North America except Quebec in Canada. By 1867, Canada had gained its independence from British rule and had its first supreme governing statute enacted called the Constitution Act of 1867. By virtue of its origin, the Constitution Act of 1867 was a creation of the United Kingdom Parliament. Its main purpose was to unite three colonies in Canada namely Nova Scotia, New Brunswick and Quebec into one Dominion under the name of Canada, and provided for executive, legislative and judicial organs of governance for the Dominion of Canada. Furthermore, the Constitution Act of 1867 conferred exclusive legislative powers on the Federal Parliament as well as the provinces. Because its powers are "exclusive", Canada's legislative power acts as a limit on provincial legislative power. In terms of the Criminal Justice dispensation, the Federal Government makes the legal laws to be used across Canada including the Criminal Code while the provincial legislation provides the mechanisms for the enforcement of the criminal laws such as the procedure to be enforced.

The Canadian Criminal Code was originally enacted in 1892 and has never been fundamentally revised, although there were consolidations in 1906, 1927 and 1953. The pinnacle of the Canadian Criminal Law reform took place in 1953. The focus of these reforms was to reconcile inconsistencies that common law (case law) had on the changing needs of the Canadian

society. It was for this reason that a drastic change occurred in the Canadian Criminal dispensation. Some of the steps that were undertaken during the 1953 reforms were to abolish all Common-Law offences. However common law defences and justifications were preserved during the exercise as they were seen to be commonly acceptable and still relevant to Canadian society.

Currently, amendments to the Canadian Criminal Code have been made almost yearly to keep abreast with the technological, social and economic changes in society. Unlike the Zambian PCCap 87 and the CPCand Cap 88 which are separate pieces of legislation, the Canadian Criminal Code not only defines types of conduct that constitute criminal offences but also establishes the kind and degree of punishment that may be imposed when an individual is convicted of an offence and the procedures to be followed throughout the criminal process. Unlike most of the commonwealth countries including Zambia, the Canadian Criminal Code imposes an obligation on the judges to consider written statements of victims which describe the harm done to them and the losses suffered when deciding a convict's sentence. The courts also enjoy a wider discretion to order restitution or compensation from an offender to the victims of a crime and these orders will be enforceable through the process of civil execution.

The Canadian criminal justice system is well coordinated in that all institutions that are involved in the dispensation of justice work together but are autonomous from each other. This simply means that no institution can be influenced by the other in their operations. Canada's National Police service is called the Royal Canadian Police. There are however two provincial police service institutions in Ontario. All police officers across Canada enforce the Criminal Code in a similar manner. In Canada the police have the powers to either arrest or apprehend an accused person after the conclusion of their investigations. When the police elect to apprehend a person, it is for the purposes of compelling the person to attend some medical examination such as the enforcement of the Mental Order Act. This normally happens under due instructions from the Court.

The set standard in terms of the law under which a person can be arrested by the police is when a police (arresting) officer has "reasonable and probable grounds" to believe that an offence has been committed. This standard has been set to avoid unreasonable arrests by protecting the people's rights to freedom of movement. The police are only allowed by law to impose investigative detention only in circumstances such as noise making in the neighbourhood or breach of peace. This provision is mostly applicable to persons who are intoxicated or violent. These persons are kept

at the police station until they either calm down or sober up. During this period no fingerprints or any scientific investigations are conducted.

As earlier stated there are three main types of offences in Canada namely 'pure summary', 'indictable' and 'summary'.

i. Pure summary offences

These are the least serious offences and attract the lowest penalties. The Code does not prescribe the penalty for these offences. Instead it provides in Section 798(1) of the Criminal Code that anyone convicted of an offence punishable on summary conviction is liable to a fine of not more than five thousand dollars or to a term of imprisonment not exceeding six months or to both. In Zambia, these offences could be equated to those offences that the police administer through the Admission of guilty procedure at the police station with the exception being that in the Canadian setup, only the court could administer the pure summary convictions as they are considered to be in the best position with fundamental legal knowledge to execute a conviction. It was equally submitted that the pure summary offences are administered by the courts to ensure that there is total independence and serious checks and balances between the Police, Crown and the Courts.

ii. Pure Indictable offence

These are more serious offences and carry with them some severe punishment. The code prescribes for all the maximum sentences on indictable offences. The provision of maximum sentences on pure indictable offences is to guide the bench on how long a sentence could go for each offence.

iii. Hybrid offences

The majority of the offences contained in the code are Crown (DPP equivalent) elect. This simply means that the Crown can elect to proceed summarily or by way of indictment. All hybrid offences are accompanied with a specific sentence to which the bench lays its sentencing foundation.

v. Principle of Full Disclosure

In Canada, an accused person is entitled to have sight of all the evidence to be adduced in court prior to the commencement of any criminal proceedings. In an instance where the accused has not been furnished with all the evidence by the crown, such evidence cannot be admitted by the court once an objection has been raised. Unlike Canada, In the Zambian

subordinate courts, the practice is that of trial by ambush. This simply means that the accused person only gets to have sight of the evidence while on stand. This kind of practice was said to be very unfair and is in conflict with the right to fair trial as enshrined in the Bill of rights.

Just like the Zambian PC provides for criminal sanctions on insulting the president, most of the provisions in the Canadian Criminal Code still have a British hangover. As such, a provision such as insulting the queen still exists in the Canadian Criminal Code. This provision has however never been used since the advent of the Charter. It was submitted that such laws cannot pass the charter test and the Police as well as the Crown are extremely reluctant in using them. Furthermore, it was submitted that all public figures should be susceptible to criticism and that civil law is sufficient in ensuring that whoever is injured by public criticism uses the civil method of obtaining recourse. This provision was said to be in line for repeal in the near future.

In order to aid the speed and efficiency of the disposal of cases, courthouses have been fitted with case management systems which assist adjudicators in easily accessing court records electronically and thereby eliminating the problem of lost files. The case management systems also assist in producing documents which require judges only to sign. In some cases, the case Management systems are also useful in providing the adjudicators' with skeleton judgments thereby reducing the time within which judgments are prepared.

Annex 7- Participants of Virtual Stakeholder Consultation

List of participants- Consultative and Validation Meetings, and Public Call for Submissions

No.	ORGANISATION
1.	ActionAid Zambia
2.	Alliance for Accountability Advocates Zambia
3.	Caritas
4.	Centre for Young Leaders in Africa
5.	Chapter One Foundation
6.	Child Justice Forum
7.	Christian Churches Monitoring Group (CCMG)

8.	Civil Society for Poverty Reduction (CSPR)
9.	Dignity Initiative
10.	DMI.St-Eugene University
11.	Foundation for Democratic Process (FODEP)
12.	GEARS Zambia
13.	Human Rights Commission (HRC)
14.	International Labour Organisation
15.	Judiciary
16.	Justice Forum
17.	Law Association of Zambia (LAZ)
18.	Legal Aid Board
19.	Ministry of Justice
20.	National Legal Aid Clinic For Women (NLACW)
21.	Paralegal Alliance Network (PAN)
22.	Prison Care and Counselling Association (PRISCCA)
23.	Prisoner Reintegration and Empowerment Organisation (PREO)
24.	Prisoners Future Foundation (PFF)
25.	Shining Future Zambia
26.	Transbantu Association of Zambia
27.	Undikumbukire Project (UP) Zambia
28.	University of Lusaka (UNILUS)
29.	University of Zambia (UNZA)
30.	Women in Law and Development in Africa (WILDAF)
31.	Women and Law In Southern Africa (WILSA)
32.	Zambia Centre for Communication Programmes- Kwatu (ZCCP)
33.	Zambia Civic Education Association (ZCEA)

34.	Zambia Centre For Inter-Party Dialogue (ZCID)
35.	SADC Lawyers Association
36.	Private citizens



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