



**JOINT PORTFOLIO COMMITTEE ON JUSTICE LEGAL AND
PARLIAMENTARY AFFAIRS; AND THEMATIC COMMITTEE ON
HUMAN RIGHTS**

REPORT

ON

**THE CRIMINAL LAWS AMENDMENT (PROTECTION OF CHILDREN
AND YOUNG PERSONS) H.B 4, 2024**

FIFTH SESSION- 10th PARLIAMENT

MAY 2024

DISTRIBUTED BY VERITAS

E-mail: veritas@mango.zw Website: www.veritaszim.net

VERITAS MAKES EVERY EFFORT TO ENSURE THE PROVISION OF RELIABLE INFORMATION,
BUT CANNOT TAKE LEGAL RESPONSIBILITY FOR INFORMATION SUPPLIED.

1. Introduction

Section 141 of the Constitution of Zimbabwe gives Parliament an obligation to engage the general members of the public during its law making procedures and ensure that all interested parties are consulted on Bills being considered by Parliament to be enacted into law. In fulfillment of this constitutional obligation, Parliament, through the Portfolio Committee on Justice, Legal and Parliamentary Affairs together with the Thematic Committee of Human Rights held public consultations on the Criminal Laws Amendments Bill, to gather views of the people from the 6th to the 11th of May 2024. The Bill which was gazetted on the 1st of March 2024 seeks to amend the Criminal Law (Codification and Reform) Act [Chapter 9:23] and the Criminal Procedure and Evidence Act [Chapter 9:07].

2. Background to the Bill

Two applicants, young Zimbabwean feminists and human rights activists with special interest and concern for children, gender, women's and socio economic rights, filed an application to the High Court of Zimbabwe as a public interest application to protect the rights of children. In their application they averred among other things that the current age of sexual consent in Zimbabwe is 16. This age is derived from Section 61 of the Criminal Law Code which defines a 'young person' as a boy or girl under the age of 16 years. However, Section 81 of the Constitution makes it clear that a "child" is anyone below the age of 18. Therefore, according to them a "young person" should be defined in the Criminal Law Code to mean a boy or girl under the age of 18 years.

The Constitution being the supreme law of Zimbabwe, any law, custom, conduct or practice that is inconsistent with the same is invalid. According to them the Criminal Law Code is unconstitutional as it fails to recognize that a child is anyone below the age of 18 years. More particularly the Criminal Law Code is unconstitutional in that it defines the age of sexual consent to be 16. That being the case this Bill will confirm amendments made by a Presidential emergency decree that was necessitated by the implementation of the Constitutional Court's judgment in **Kawenda v Minister of Justice & Others** where it was ruled that sections 70, 76, 83 and 86 of the Criminal Law Code are declared unconstitutional and be set aside. Further, it seeks to recriminalize deliberate transmission of HIV.

3. Methodology

In partnership with SADC Parliamentary Forum, the Committee was split into two teams covering all the country's 10 provinces making use of 10 venues. Team A covered Mashonaland West, Midlands, Bulawayo, Matebeleland North and Matebeleland South while Team B conducted consultative meetings in Mashonaland Central, Harare, Mashonaland East, Manicaland and Masvingo. Public hearings were conducted to gather the views from the general members of the public. The Committee also received written submissions from various stakeholders.

4. Overview of the Consultations

The committee managed to reach a total of 866 people, with 56.1% men and 44.4% women together with 1.8% of persons with disability. There was low turnout in some places which may be attributed to low willingness of the public to participate during such consultations. However, the committee managed to get very insightful contributions. The Committee considered and deliberated on the submissions gathered to develop this comprehensive report.

5. General submissions

The public applauded Parliament in reaching their communities seeking their views pertaining to the Bill which is before Parliament. There was general consensus among the public which expressed that the Bill should seek to protect the rights of all ages in Zimbabwe and leave no one behind for the development of our country. Hence, the majority of the crowd agreed with the alignment of age of consent from 16 years to that of 18 years as provided for in the supreme law of the country which is the Constitution.

6. Specific Submissions

- i. **Clause 3: This clause will amend definitions of “extra-marital sexual intercourse” and that of “young person.”**

The public applauded this amendment and agreed to the definitions given in the bill.

- ii. **Clause 4: Repeal of section 70 of the Criminal Law Code**

There was a general consensus in support of the provisions of this clause.

Various organizations representing interests of children and young women submitted that this Clause will provide sanctuary for children and young persons, that is to say boys and girls under the age of 18, with the protection to which they are entitled under section 81 of the Constitution.

It was further submitted that, the introduction of a “Romeo and Juliet” clause into the Code will make special provision for sexual intercourse between young persons where the age difference between them is no more than three years. It was their opinion that, since such cases will be prosecuted only with the specific authority of the Prosecutor-General, this means that sexual

intercourse between children and teenagers will not be brought automatically before the criminal courts.

Majority of the members of the public argued that without curbing religion and traditional issues child sexual exploitation will not be remedied. They went on further to state that religion sects like *Mapositori* are still practicing child marriage and labelled them as the most perpetrators of child sexual exploitation in the society. The public further emphasized on the need for awareness campaigns against sexual exploitation of children and young persons and make it known to the public that the penalty for such actions are hefty for purposes of deterrence.

iii. **Clause 5: Amending section 73 of the Criminal Law Code to make reference to the new definition of “young person”.**

Some members of the public raised concerns on the wording of the clause and recommended for a rephrase of the clause as follows:

“Section 73 (“Sodomy”) (3) of the principal Act is amended by the deletion from paragraphs (b) and (c) of “sixteen years” and the substitution with “eighteen years”

iv. **Clause 7: Complicity to sexual crimes**

There was general consensus in support of this clause. Majority of the public applauded the Bill as it seek to forbid adults from taking advantage of children and young persons for their personal gains. It was submitted that, some parents and guardians are still participating in child marriages; hence they should be brought to book.

v. **Clause 8: Criminalization of deliberate transmission of HIV among the sexually transmitted diseases covered by the Criminal Law Code.**

Some members of the public were in support of the clause. It was their submission that the provisions of this clause will correct an anomaly whereby it is criminal to infect someone with a sexually transmitted disease, but not with HIV.

However, some were against this clause as they argued that during the crafting of the Marriages Act in 2022, the Government agreed to the lobbying of people living with HIV and other support groups and civil society organizations to decriminalize willful transmission of HIV. It was further submitted that there is no method of establishing the period one may have been infected with HIV and who would have transmitted to virus between the two when the statuses of both were unknown. It was further submitted that there is need for the drafters of this clause to first explain why they intend on recriminalizing deliberate transmission of HIV, a crime that was repealed two years ago.

vi. **Clause 11: Amendment to section 319A of the Criminal Procedure and Evidence Act.**

The public applauded this clause as it seeks to be protect rights of children and other persons with hard hearing challenges and will be allowed to give evidence in Court in writing or by signs or by augmentative and alternative communications. It was submitted that, this is a positive step towards the effectiveness of our judiciary processes.

7. Committee Observations

The Committee observed the following:

- i. The public was in support of the amendments being proposed by the Bill as they seek to protect children and young persons below the age of 18 years.
- ii. Young boys were against the increase of age of consent.

8. Committee Recommendations

The Committee therefore recommends the following:

- i. The Bill should be passed by both Houses taking into consideration the submissions from the public
- ii. Criminalization of deliberate transmission of HIV.

9. Conclusion

In conclusion, the public welcomed the Bill stating it is a positive step towards the country's legal system. Not only does it protect all children from sexual predators it also protects the boy child using the Romeo-Juliet clause against vindictive parents and guardians who are against adolescent relationships. Further, the public welcomed the re-introduction of deliberate infection of HIV as a crime as it will deter malicious individuals from getting away with infecting others with a chronic illness deliberately. Be that as it may, the Bill as a whole was welcomed along with a few additions and subtraction as indicated above.