



**PORTFOLIO COMMITTEE ON JUSTICE LEGAL AND PARLIAMENTARY AFFAIRS**

**REPORT**

**ON THE CRIMINAL LAW (CODIFICATION AND REFORM) AMENDMENT BILL  
H.B. 15, 2022]**

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**FIFTH SESSION - 9<sup>TH</sup> PARLIAMENT**

**March 2023**

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## **1. Introduction**

Section 141 of the Constitution requires Parliament to engage the general members of the public in its legislative processes and ensure that all interested parties are consulted about Bills being considered by Parliament. In fulfillment of this constitutional obligation, the Portfolio Committee on Justice, Legal, and Parliamentary Affairs conducted public consultations on the Criminal Law (Codification and Reform) Amendment Bill, to gather the views of the people from the 20<sup>th</sup> to the 25<sup>th</sup> of February 2023. The Bill which was gazetted on the 23<sup>rd</sup> of December 2022 seeks to amend the Criminal Law (Codification and Reform) Act [Chapter 9:23].

## **2. Background to the Bill**

Criminal law is a social mechanism that is used to coerce members of society, through the threat of pain and suffering, to abstain from conduct that is harmful to various interests of society. Its objective is to promote the welfare of society and its members by establishing and maintaining peace and order. In Zimbabwe, the Criminal Law Code gathers all the main aspects of that branch of law in one piece of legislation. Previously the law was widely dispersed in common law and a large number of different statutes hence making it difficult to locate common law dealing with crime. The Code also effects a series of reforms and improvements to existing law. Over the years, the Code

has created several new crimes and modified many of the existing crimes. The Bill thus seeks to effect amendments on crimes of damaging national sovereignty, rape, dangerous drugs, and abuse of public office.

### **3. Methodology**

The Committee was split into two teams covering all the country's 10 provinces covering 19 venues. Team A covered Mashonaland West, Midlands, Bulawayo, Matabeleland North, and Matabeleland South while Team B conducted public hearings in Mash Central, Harare, Mashonaland East, Manicaland, and Masvingo. Public hearings were conducted to gather the views of the general members of the public.

### **4. Overview of the consultations**

Team A managed to reach a total of 319 people comprising 44% females and 56% males. Team B reached 177 citizens, comprising 45% females and 55% males. The aggregate reach was therefore 496 people, 44% being females and 56% males (see Appendix 1). 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 on the Bill**

The public applauded Parliament for reaching their communities and seeking their views pertaining to the Bill which is before parliament.

The public expressed that the Bill should seek to protect the rights of the people of Zimbabwe for the development of the country.

## **6. Specific submissions on the Bill**

### **6.1. Clause 1: Short title**

There were no objections raised concerning the title of the bill in all ten provinces.

### **6.2. Clause 2: Crime and penalties for willfully damaging the sovereignty, dignity, and independence of Zimbabwe**

There were mixed feelings about this clause. Some members of the public proposed for the removal of the clause citing a violation of Section 58 (freedom of assembly and Association) of the Constitution. It was their view that the clause will deliberately disrupt freedom of speech in Zimbabwe which is also contrary to the bill of rights in the Constitution. It was their opinion that if complaints are submitted in a nonpartisan manner, they should not be treated as crimes but rather as suggestions and constructive criticism.

On the other end, some members of the public commended the clause and highlighted that the new crime was long overdue as it will go a long way in protecting the image of the country. It was their opinion that the law should protect the heritage of the country and not be used as a violation of the rights of citizens. They further submitted that patriotism is a key pillar for the development of a nation.

Some members of the public submitted that the Bill proposes that the penalty for attending a meeting to consider or plan armed intervention be the same as for treason yet under section 20 of the Code, the penalty for treason is death. However, section 48 of the Constitution states that the death penalty can be imposed only on persons convicted of murder committed in aggravating circumstances, hence it cannot be imposed on persons convicted of treason in the new crime.

It was further submitted that the penalty of deprivation of citizenship which can be imposed on someone convicted of attending a meeting to consider sanctions infringes Section 39 of the Constitution. It was their view that citizenship by birth can be revoked only if it was obtained by fraud or mistake, and this is so whether or not the person has dual citizenship.

It was also submitted that the penalty of prohibition from being a registered voter contravenes paragraph 2 of the fourth schedule of the

Constitution, which allows a person to be disqualified from registration as a voter only if he or she has committed an offense under the Electoral Act. It was therefore recommended that the clause should clearly define national interests and political interests, be non-partisan, penalties only apply to those who damage the image of the country in the international arena, and there be a referendum on the clause

### **6.3. Clause 3: Mandatory minimum sentences for rape**

The majority of the public applauded this clause and highlighted that it was a positive development since rape is an abhorrent crime that has devastating and lasting effects on the victim. Some members of the public were of the view that a mandatory minimum sentence of 15 years for rape committed in aggravating circumstances, is not deterrent enough to curb the crimes of rape. It was recommended that for rape committed in aggravating circumstances, the mandatory minimum sentence be set at 20 years while for rape committed with no aggravating circumstances, the mandatory minimum sentence be set at 10 years. It was also submitted that the amendment only covers two sexual crimes, that is, rape and aggravated indecent assault whilst other sexual offences do not have any prescribed minimum mandatory sentences.

On the other hand, some members highlighted that mandatory minimum sentences are unconstitutional unless there is some provision in the law

for them not to be imposed in special circumstances. It was also their view that the Bill does not clearly define what these aggravating circumstances are. It was therefore recommended that the Bill should clearly specify what constitutes aggravating circumstances.

#### **6.4. Clause 4: Definition of dangerous drugs**

The public noted with great concern that drug abuse has become rampant in communities across the country. It was highlighted that the fight against drug abuse will only be successful if it is dealt with from the root cause, that is, the sources of drugs and how they enter the country. It was submitted that most of these drugs were not being manufactured locally, hence they get into the country through the borders and airports. The public, therefore, applauded this clause and further recommended that every illicit intoxicating substance be considered a dangerous drug. Examples of such substances included drugs being made from diapers, TV cables, a mixture of Mazoe orange crush and Cerevita, glue, and many other illicit brews. It was, therefore, recommended that a mandatory minimum prison sentence for drug dealers be set at 15 years.

#### **6.5. Clause 5: Abuse of office by public officers**

Some members of the public highlighted that there is no justification for ignorance of the law. They were concerned that the clause will promote

abuse of offices by senior public officers who will cite that they were not aware that what they were doing was illegal.

## **6.6. Additional Clauses**

### **6.6.1. Protection of children from sexual exploitation by adults**

Organizations advocating for sexual and reproductive health rights for young persons proposed for additional amendments to be made to the Criminal Law Code to strengthen the protection of children from sexual exploitation by adults. It was their view that the objective of the law should be to protect children from sexual exploitation by adults by setting the minimum age at which young people can consent to sexual intercourse.

It was submitted that the conflict of laws around the age of consent to sexual intercourse has been recently determined by the Constitutional Court of Zimbabwe and Parliament was given one year to amend various sections of the Criminal Law Code that are in conflict with the Constitution. While the Constitution defines a child as anyone below the age of 18, section 61 of the Criminal Law Code defines a young person as anyone below the age of 16. It was therefore recommended that Parliament should give effect to the ruling made by the Constitutional Court by amending sections 61, 62, and 70 of the Criminal Law Code by setting the age of young persons at 18 years.



It was further recommended that consensual intercourse between minors should not be criminalized. It was their view that the law should state expressly what should happen in instances of consensual sexual intercourse between minors as long as the older partner is no more than two years older. This is commonly referred to as the Romeo and Juliet clause.

To strengthen the protection of children from sexual exploitation by persons who have authority over them like teachers, it was recommended that there be the establishment of a National Sex Offenders Register. The register will contain the names of persons who have been convicted on charges of sexual offenses committed against a child or a mentally disabled person. The penalty for anyone whose name appears on the National Sex Offenders Register be that person should not be employed in any capacity in an institution that works with children.

#### **6.6.2. Sexual violence that occurs within the context of a romantic relationship.**

It was also submitted that non-consensual sexual intercourse that occurs in the context of a romantic relationship, commonly referred to as “date rape” should be clearly recognized as a sexual offense within the law.

#### **6.6.3. Termination of pregnancy for victims of sexual exploitation**

Organizations advocating for sexual and reproductive health rights submitted that although the Termination of Pregnancy Act provides for termination of pregnancy in cases where the pregnancy is a result of unlawful sexual intercourse (rape), pregnancies in cases of having sexual intercourse with a minor (s70 of the Code), cases of consensual intercourse between minors and cases of child prostitution (s87 of the Code) are not covered. It was therefore recommended that section 60 of the Criminal Law Code be amended to allow for the termination of pregnancy if it is as a result of any sexual offense mentioned in the Criminal Law Code.

## **7. Committee observations**

The Committee made the following observations:

- 7.1. The public was concerned that their input to Parliament public hearings yields no results.
- 7.2. There was a perception among the public that the laws that are being made by Parliament lack implementation.
- 7.3. The proposed new crime of willfully damaging the reputation of the country attracted different political views.
- 7.4. There was a general consensus on the need to have mandatory minimum sentences for rape.
- 7.5. There was a consensus on the effects and penalties of drugs across the country.

## **8. Committee recommendations**

The Committee, therefore, recommends that:

- 8.1. Law enforcement agencies should implement the laws without any exceptions.
- 8.2. There should be tight security at border posts and airports to curb the importation of drugs into the country
- 8.3. Amendment of sections 61, 62, and 70 of the Criminal Law Code by setting the age of young persons at 18 years.

## **9. Conclusion**

The Bill makes a commendable effort in legislating societal conduct by threatening punishment and trying to suppress anti-social conduct likely to disrupt society. In this regard, the Bill seeks to amend the Criminal Law (Codification and Reform) Act by punishing people whose conduct is deemed to hurt the country's interests and those who engage in unlawful sexual activity by providing mandatory sentences for rape. The Committee, therefore, believes that passing this Bill after consideration of the views of the people and their recommendations will help to shape the country's criminal justice system.

## Appendix 1

Venue	Male	Female	Total
Mhangura Golf Club	29	21	50
Chegutu Welfare Centre	4	3	7
Gokwe Cheziya Community Hall	32	19	51
Kwekwe Mbizo Youth Centre	31	23	54
Bulawayo Selbourne Hotel	20	11	31
Luveve Beit Hall	50	53	103
Lupane Community Hall	0	0	0
Filabusi Mthwakazi Hall	7	5	12
Gwanda Jahunda Primary Hall	7	4	11
Bindura Chipadze Hall	0	0	0
Ambassador Hotel	12	11	23
Murehwa	18	12	30
Marondera Mbuya Nehanda Hall	1	1	2
Nyanga Nyamhuka Hall	11	11	22
Mutare Chikanga	9	7	16
Nyika BSPZ	12	5	17
Masvingo Mucheke	11	20	31
Chivi	22	13	35
Zvishavane	1	0	1
<b>Total</b>	<b>277</b>	<b>219</b>	<b>496</b>

