



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE**

**ON THE**

**THE PENAL CODE (AMENDMENT) BILL, N.A.B. NO. 17 OF 2024**

**FOR THE**

**FOURTH SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY**

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## **FOREWORD**

Honourable Madam Speaker, the Committee on Legal Affairs, Human Rights and Governance, has the honour to present its Report on the consideration of the Penal Code (Amendment) Bill, N.A.B No. 17 of 2024, for the Fourth Session of the Thirteenth National Assembly. The Committee is mandated to consider any Bills that may be referred to it by the House, as per Standing Order 207(j) of the National Assembly Standing Orders, 2024.

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders, the list of which is at Appendix II. The Report highlights a summary of submissions from stakeholders and the observations and recommendations made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it the opportunity to scrutinise the Penal Code (Amendment) Bill, N.A.B No. 17 of 2024. Further, appreciation is extended to the Clerk of the National Assembly for the support and guidance rendered throughout the Committee's deliberations.



Dr Clement Andeleki, MP  
**CHAIRPERSON**

November, 2024  
**LUSAKA**

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## **1.0 COMPOSITION OF THE COMMITTEE**

Dr Clement Andeleki, MP (Chairperson); Mr Sunday Chanda, MP (Vice Chairperson); Ms Tasila Lungu, MP; Mr Lukas Simumba, MP; Mr Monty Chinkuli, MP; Mr Lameck Hamwaata, MP; Mr Joseph Munsanje, MP; Mr Francis M Fube, MP; Mr Menyani Zulu, MP; and Mr Chinga Miyutu, MP.

## **2.0 BACKGROUND**

The *Penal Code Act, Chapter 87 of the Laws of Zambia* did not criminalise the possession, conveyance and receipt of vandalised property or material, and actions that, among others, caused an uprising that could degenerate into strife in the Republic or incite hatred, ridicule or contempt for a person or group of persons.

Further, the Penal Code did not specifically provide for the offence of stealing critical information infrastructure, electronic communications apparatus, medicine, allied substances, medical supplies and medical equipment.

The Penal Code (Amendment) Bill, N.A.B No. 17 of 2024, sought to amend the Penal Code so as to, among others, strengthen the law on the offence of expressing or showing hatred, ridicule or contempt for a person or group of persons; provide for the offence of stealing medicine, allied substances, medical supplies, medical equipment, critical information infrastructure and electronic communications apparatus; revise the penalties relating to vandalism; and make the possession, conveyance and receipt of vandalised property or material an offence.

The Bill, once enacted, would prevent and deter actions that, among others, could cause an uprising that could degenerate into strife in the Republic; deter the theft of medicine, allied substances, medical supplies, medical equipment, critical information infrastructure and electronic communications apparatus; address the rampant shortage of medicine allied substances, medical supplies and medical equipment; and address the scourge of vandalism and illegal possession of electricity installations and critical information infrastructure in the country.

## **3.0 OBJECTS OF THE BILL**

The object of the Bill was to amend the *Penal Code Act, Chapter 87 of the Laws of Zambia* so as to strengthen the law on the offence of expressing or showing hatred, ridicule, or contempt for a person or group of persons; provide for the offence of stealing medicine, allied substances, medical supplies, medical equipment, critical information infrastructure and electronic communication apparatus; and redefine the word vandalise, revise the penalties relating to vandalism.

## **4.0 PROVISIONS OF THE BILL**

### **Clause 1 – Short title**

The clause provided the short title of the Act, once enacted.

### **Clause 2 – Amendment of section 4**

The clause provided for the amendment of section 4 by the insertion of new definitions such as “allied substances”, “critical information infrastructure”, “electronic communications apparatus”,

“medical equipment”, and “medicine”, among others, in order to make the law easier to understand by citizens and those mandated to implement it.

### **Clause 3 - Repeal and replacement of section 70**

The clause sought to repeal and replace section 70 of the principal Act so as to prohibit a person from uttering any words or publishing any writing expressing or showing hatred, ridicule or contempt for a person or group of persons on the basis of race, tribe, ethnicity, region, religion, place of origin or colour.

The clause also prohibited a person from performing any action that, among others, incited hatred, ridicule or contempt for a person or group of persons on the basis of race, tribe, ethnicity, region, religion, place of origin or colour, caused an uprising that could degenerate into strife in the Republic or created sectarianism, ethnic or tribal divisions or alienation and provided for a sanction for the offence.

### **Clause 4 - Insertion of section 281C, 281D and 281E**

The clause sought to insert new sections 281C, 281D and 281E immediately after section 281B of the principal Act, so as to provide for the offence of stealing medicine, allied substances, medical supplies, critical information infrastructure and electronic communications apparatus and provide for sanctions for the offences.

## **5.0 SUBMISSIONS AND CONCERNS OF STAKEHOLDERS**

Stakeholders submitted that the amendment of the Penal Code was generally progressive. However, there was need for variations on specific provisions as outlined.

### **(a) Proposed Amendment to Section 70—Expressing or Showing Hatred, Ridicule or Contempt of Persons**

Stakeholders provided that the amendment under section 70 sought to achieve two major things as outlined below.

#### **(i) Penal Sentence from Maximum of 2 years to 7 years for First Offender as Minimum Sentence and between 10 and 20 years for the Second and Subsequent Offenders**

Stakeholders expressed concern that the sentence increase from 2 years to minimum of 7 years for first offender was too harsh. They submitted that the increase in sentence removed the offence from the realm of misdemeanours and placed it under felonies. They argued that there were no justifiable extenuating circumstances for increasing the sentence to 20 years maximum for a second offender.

The stakeholders submitted that with the advent of social media, sentiments that would amount to hate speech or tribal remarks had become prevalent and could potentially degenerate the country into civil war or cause uprising against tribes. In that regard, there was need to enhance the Law and curb possible situations.

However, stakeholders expressed concern that the sentence being proposed was too harsh and that there was no guarantee that by its increase, there would be deterrence to would-be offenders. The stakeholders, therefore, submitted that there should be proportionality in sentencing and this could

be achieved by reducing the minimums, for both first and second offenders, to as low as 3 years and 7 years, respectively.

Some stakeholders submitted that making offences attracting 7 years, triable by subordinate courts, would create congestion at the high court, as most magistrates would not have jurisdiction to sentence convicts. They submitted that magistrates and adjudicators, generally, needed to have latitude to sentence individuals depending on the aggravating circumstances observed during trial. To this end, they justified the proposal of reducing the proposed maximum for both categories of offenders.

Other stakeholders submitted that the lack of interpretations of terms like ‘ridicule’, ‘contempt’ and ‘degrades’ were inherently subjective. They submitted that this was vagueness and could lead to arbitrary enforcement, where interpretations may depend on the biases or interests of law enforcement and prosecutors. The stakeholders relied on the provisions of Article 18(8) of the Constitution of Zambia, which made it a requirement that “a person must not be convicted of a criminal offence unless that offence was defined...”

On the above provision, they suggested specific definitions as follows:

1. **Hatred:** expression intended to incite violence or hostility against individual or groups.
2. **Contempt:** expressions aimed solely at degrading the inherent dignity of individuals or groups.

The stakeholders submitted that, defining words would be constitutionally correct and would not only remove absurdity and whims and feelings of adjudicators, but also provide guidance.

To that effect, they stated that the proposed section 70(2)e which provided that... *“a person shall not utter any words that promotes, in any other way, feelings of ill-will...”* must be deleted because establishing of feeling of ill will was an impossible task by the adjudicators.

Some stakeholders submitted that ordinary words did not require interpretation unless they had acquired new meanings.

## **(ii) Increase the Categories of Actions that would Constitute Hatred, Ridicule and Contempt against a Person or Persons**

The Committee was informed that the grounds for holding an accused person amenable to hate speech had been enhanced by an addition of three categories, namely ethnicity, region and religion. Stakeholders submitted that while this was a welcome move, lack of definitions, as earlier alluded to, would create problems as every adjudicator would interpret it as they felt. They submitted that legal reform and enforcement must never be left to the feelings of other people.

Further, stakeholders submitted that gender and disability appeared in the definitions section of the Bill but had not been used in the main wording. The Committee was informed that it would be prudent to add persons with disabilities and gender as categories that could collectively or individually be brought to ridicule and contempt.

**(b) Proposed Amendment to Section 281C–Stealing of Medicine, Allied Substances or Medical Supply**

Stakeholders submitted that criminalising the theft of medicine, medical supplies and equipment with imprisonment of up to 10 years for a first offender and up to 15 years for a repeat offender signalled a strong commitment to protecting the healthcare sector.

They stated that given the critical nature of these resources, especially in the context of public health emergencies, this amendment, aimed at deterring individuals from compromising the health care system, was progressive. However, stakeholders submitted that meeting the elements of theft of medicines could be problematic and, therefore, the law must add the element of possession as well. They submitted that being found in possession of medicines suspected to be stolen may enhance the protection of the healthcare system.

**(c) Proposed Amendment to Section 281D AND 281E–Stealing of Critical Information, Infrastructure and Stealing of Electronic Communications Apparatus**

Stakeholders submitted that given the increasing reliance on digital systems, such offences could have severe economic and security implications. They submitted that introducing harsh penalties of up to 25 years for critical infrastructure and 15 years for communication equipment would safeguard digital assets and infrastructure.

## **6.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS**

The Committee notes that witnesses who appeared before it supported the Bill but with proposals to make alterations that made more realistic provisions on the punishments to be meted out. The Committee also fully supports the Bill. In supporting the Bill, the Committee makes the following observations and recommendations.

**1. Amendment of Section 70 - Offence of Causing Ridicule and Contempt against Person or Group of Persons**

- (i) The Committee notes that the provision on the offence of uttering words that will cause ridicule and contempt on a person or group of persons as provided in section 70 of the *Penal Code Act, Chapter 87 of the Laws of Zambia*, was enacted in 1965. The Committee acknowledges that the Bill seeks to enhance the penalty for offenders in this cluster of offences.

The Committee, recognises that tribal remarks, or any utterance have potential to degenerate the country into chaos, and that such inimical sentiments are not welcome in a modern society. The Committee further recognises that citizens whose urge to incite hostility against other citizens must be incarcerated and be used as examples for would-be offenders. However, the Committee is of the view that the proposed increase in the penal sentence from a maximum of 2 years to 7 years for a first offender as minimum sentence and between 10 and 20 years for a second and subsequent offenders, is too harsh.

The Committee, therefore, recommends that first offenders found liable should be sentenced to a maximum of 5 years. The proposed amendment should read “*A person who*

*contravenes subsection (1) and commits an offence is liable, on conviction, in the case of a first offender, to imprisonment not exceeding 5 years.”*

- (ii) The Committee is of the considered view that, creating sentences that will be out of the jurisdiction of most magistrates is retrogressive to the prison decongestion campaign and will not address the huge backlog that exists in the disposal of court cases. The Committee is of a strong view that a maximum sentence of 5 years as proposed above will give magistrates powers to sentence the convicts within their jurisdiction without having to commit matters to the High Court for sentencing.

In this regard, the Committee urges the Executive to amend the maximum sentence to 5 years.

- (iii) With regard to second and subsequent offenders, the Committee recommends that the sentence must be up to a maximum of 10 years.
- (iv) The Committee notes with concern that while the terms ‘gender’ and ‘disability’ appear in the definitions section of the Bill, they have not been referred to in any of the provisions. The Committee recommends that the Executive consider adding persons with disabilities and gender as categories that can collectively or individually be brought to ridicule or contempt.
- (v) The Committee observes that the proposed section 70(2) e provides for causing ill feeling and in agreeing with stakeholders, recommends that it should be deleted in its entirety as it is ambiguous.

## **2. Proposed Amendment to Section 281C – Stealing of Medicine, Allied Substances or Medical Supply**

With regard to the proposed amendment of section 281C, the Committee recommends that the offence of “possession” be added. In this way, persons that are found in possession of medicine and medical equipment will be held liable, if they fail to account ownership. This is due to the critical nature of these resources, especially in the context of public health emergencies.

## **7.0 CONCLUSION**

The Committee considers tribal remarks and any utterances of divisive elements unwelcome in a modern society and especially in a country like Zambia where there are many tribal groupings. The Committee agrees with the stakeholders that citizens must coexist and that ideas must be debated based on ideals without degenerating into one’s tribe, colour, ethnicity, gender, religion or region, among others. The Committee also agrees that although the law must not be too harsh, it must provide for the incarceration of those who make society inimical to harmonious living. The Committee wishes to extend its heartfelt gratitude to all stakeholders who provided valuable oral and written submissions. The Committee also appreciates the guidance of the Honourable Madam Speaker throughout its deliberations. The Committee further appreciates the professional services rendered to it by the Office of the Clerk of the National Assembly.

We have the Honour to be, Madam, the Committee on Legal Affairs, Human Rights and Governance mandated to consider the Penal Code (Amendment) Bill, N.A.B No. 17 of 2024.

A handwritten signature in black ink, appearing to read 'C. Andeleki', with a horizontal line underneath.

Dr Clement Andeleki, MP  
**CHAIRPERSON**

November, 2024  
**LUSAKA**

## **APPENDIX I - National Assembly Officials**

Mrs Doreen N C Mukwanka, Director – Social Committees

Mrs Chitalu Mumba, Deputy Director– Social Committees

Ms Betty Zulu, Senior Committee Clerk (SC2)

Mr Sanford Mwiinde, Committee Clerk

Mrs Vivian M Banda, Administrative Assistant

Mr Daniel Lupiya, Senior Committee Assistant

Mr Muyembi Kantumoya, Parliamentary Assistant

Ms Taona Chabinga, Committee Assistant

## **APPENDIX II - List of Witnesses**

Ministry of Justice  
National Prosecution Authority  
The Judiciary  
Legal Aid Board  
Eden University, School of Law  
Law Association of Zambia  
Zambia Law Development Commission  
University of Zambia  
Magistrates and Judges Association of Zambia  
The Human Rights Commission  
The National Prosecution Authority  
Zambia National Congress of Students Union  
Zambia Civil Liberties Union  
Advocacy for National Development and Democracy  
Zambia Medicines Regulatory Authority  
Chapter 1 Foundation  
Mr George Kangwa Chisanga, MP