



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE

ON THE

PENAL CODE (AMENDMENT) BILL, N.A.B. NO. 13 OF 2022

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

Published by the National Assembly of Zambia

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REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE ON THE PENAL CODE (AMENDMENT) BILL, N.A.B NO. 13 OF 2022 FOR THE FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY.

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Dr Clement Andeleki, MP (Chairperson); Ms Tasila E Lungu, MP (Vice Chairperson); Mr Chinga Miyutu, MP; Mr Edgar Sing'ombe, MP; Mr George K Chisanga, MP; Mr Anthony Kasandwe, MP; Mr Francis M Fube, MP; Mr Lameck Hamwaata, MP; Mr Monty Chinkuli, MP; and Mr Jay E Banda, MP.

The Honourable Madam Speaker
National Assembly
Parliament Buildings
LUSAKA

Madam

The Committee has the honour to present its Report on the Penal Code (Amendment) N.A.B No. 13 of 2022 for the First Session of the Thirteenth National Assembly referred to it by the House on Thursday, 7th July, 2022.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are set out in Standing Orders No. 197(f) and 198 of the National Assembly of Zambia Standing Orders, 2021. Among other functions, the Committee is mandated to consider Bills that may be referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held six meetings to consider the Penal Code (Amendment) Bill, N.A.B No. 13 of 2022.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed at Appendix II.

5.0 OBJECT OF THE BILL

The object of the Bill was to amend the *Penal Code, Chapter 87 of the Laws of Zambia* so as to revise the age of criminal responsibility of a child.

6.0 BACKGROUND

In Zambia, the law relating to children was fragmented and set out in different pieces of legislation. It had, therefore, become necessary to reform and consolidate the law relating to

children. Consequently, this has culminated in the Children’s Code Bill, 2022 whose provisions had necessitated an amendment to the Penal Code. Therefore, the amendment to the Penal Code would align its provisions with the Children’s Code Act, 2022, once enacted, and international best practices. In that regard, the Government of the Republic of Zambia introduced the Penal Code (Amendment) Bill, N.A.B. 13 of 2022 (hereinafter referred to as “the Bill”). The Bill seeks to amend the Penal Code so as to revise the criminal responsibility of a child.

7.0 SALIENT PROVISIONS OF THE BILL

The salient features of the Bill are set out below.

7.1 Clause 1 – Short title

Clause 1 provided for the short title of the Act, and that it was to be read as one with the principal Act.

7.2 Clause 2 – Repeal and Replacement of Section 14

Clause 2 sought to amend the principal Act by the repeal of Section 14. Section 14 provided for criminal responsibility of a child.

Further, section 14 provided for criminal responsibility of a child. It provided for the categories of children who could not be held responsible for committing an offence. In that regard, a person under the age of eight years could not be held responsible for a crime. Additionally, a twelve-year-old could not be held responsible for committing a crime, unless it was proved that at the time of committing the crime, he or she had capacity to know that he or she should not commit the crime. Lastly, it provided that a boy under the age of twelve years was presumed to be incapable of having carnal knowledge.

8.0 STAKEHOLDERS’ SUBMISSIONS AND CONCERNS

8.1 Clause 2 – Amendment of section 14

Stakeholders submitted that in order to have comprehensive understanding of the proposed amendment, it was imperative to consider other pieces of legislation that also focused on the rights of children, namely, the *Constitution of Zambia (Amendment) Act No.2 of 2016*, the *Penal Code, Chapter 87 of the Laws of Zambia*, and the *Juveniles Act, Chapter 53 of the Laws of Zambia*. Stakeholders further submitted that the provisions of section 14 of the *Penal Code, Chapter 87 of the Laws of Zambia*, in its present form, stipulated that:

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

(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.*

(As amended by No. 20 of 1953).

Arising from the foregoing, stakeholders submitted that section 14 of the Penal Code presented three distinct scenarios as outlined below.

- (i) Section 14 (1) offered absolute immunity to children below the age of eight years old. That was to say, any child below the age of eight years was considered mentally immature to conceive and let alone, comprehend criminal responsibility in the sense of forming *mens rea*. Children below the age of eight were therefore, considered *doli incapax*, that was to say, incapable of crime or committing crime.
- (ii) Section 14 (2) appeared to offer limited immunity for children between the ages of eight to twelve years on general criminal responsibility. That was to say, if a child above the age of eight years but below the age of twelve years committed an offence and it could be proved that such a child had capacity to know that he or she ought not have committed the act in question or to have omitted to do an act that constituted a crime or part of a crime, then that child was criminally responsible.
- (iii) Section 14 (3) related to sexual offences and appeared to afford children different treatment. The provision only imposed criminal liability against a male child above the age of twelve years. It made no mention of the criminal liability of the girl child.

Upon analysis of the section 14(1) (2) and (3), stakeholders submitted that the threshold for criminal liability stipulated under section 14 (1), was quite low. Further, the law defined crime in terms of an act or omission (*actus rea*) and mental state (*mens rea*). This was premised on the mental state (*mens rea*) of an eight-year-old child. Stakeholders further submitted that the requisite mental element for criminal culpability was one that was intentional, with knowledge, wanton (reckless), or negligent. In order to fully appreciate the interpretations of the terms, the following definitions were presented:

- (i) **Intentional:** an intentional mental state entailed that the perpetrator consciously engaged in a given indiscretion fully aware of the outcome, and that he or she desired the results brought about by their action. That was to say, the ultimate result must have been borne out of a conscious deliberate effort. Put differently, the perpetrator must consciously engage in conduct whose results the perpetrator intended to achieve.
- (ii) **Knowledge:** in the context of *mens rea*, knowledge entailed that the perpetrator was aware that perpetrator's conduct was criminal, or it would bring about particular objectionable results.
- (iii) **Wanton or Reckless:** This mental element entailed that the perpetrator consciously disregarded a substantial risk that his or her conduct would bring about given results.

- (iv) Negligent: Criminal negligence referred to conduct in which a person ignored a known or obvious risk or disregarded the life and safety of others. This was a form of recklessness, where a person acted significantly different than an ordinary person under similar circumstances.

Other stakeholders argued that given the thought process that had to go in the execution of an act with criminal intent, it was highly doubtful that a child aged eight or twelve years old would have cognitively developed to an extent that the child would have a firm understanding of the nature of their act to fathom that they were in the process of committing an offence. This argument was supported by developmental and neuroscience evidence indicating that adolescent brains continued to mature even beyond the teenage years, thereby affecting certain kinds of decision-making.

Some stakeholders were concerned that section 14 (2), presented some challenges, firstly, it afforded discriminatory treatment of children in the same age group and afforded law enforcers and the court discretion to determine, which of the children falling within the prescribed age-group of eight to twelve years possessed requisite cognitive development to be culpable of crime, and ones who fell below the bar. Stakeholders further submitted that while cognitive development within the same age group could be a relevant consideration, it was also susceptible to abuse. Secondly, section 122 of the *Juveniles Act, Chapter 53 of the Laws of Zambia*, as amended, presented an interesting dynamic which was quite uncharitable to a juvenile offender below the age of fourteen years old. The section provided as follows:

122. Where, in any criminal or civil proceedings against any person, a child below the age of fourteen was called as a witness, the court shall receive the evidence, on oath, of the child if, in the opinion of the court, the child was possessed of sufficient intelligence to justify the reception of the child's evidence, on oath, and understands the duty of speaking the truth:

Provided that-

- (a) if, in the opinion of the court, the child was not possessed of sufficient intelligence to justify the reception of the child's evidence, on oath, and does not understand the duty of speaking the truth, the court shall not receive the evidence; and
- (b) where evidence admitted by virtue of this section was given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating the accused.

The Committee learnt that the *Juveniles Act* did not define the word 'person.' Further, section 3 of the *Interpretations and General Provisions Act, Chapter 2 of the Laws of Zambia* defined person in the following words: "*person*" includes any company or association or body [of] persons, corporate or unincorporate". To that effect, stakeholders submitted that the word 'person' retained the meaning assigned to it in common parlance, and that meaning was extended to a company, association, or corporate and unincorporated body. The word person as understood in common parlance meant *a human being regarded as an individual*. If that was the common understanding of the meaning of the word person, it meant, therefore, that section 122 of the *Juveniles Act* aforesaid applied to Juveniles between the ages of eight to twelve years that were

in conflict with the law. So that even when such a child was appearing before the court and a witness below the age of fourteen appeared, the Court must apply the provisions of the said section.

Stakeholders informed the Committee that in an instance where a juvenile in conflict with the law opted to testify in his or her defence, the child at that point became a witness in that child's defence, and if the child was below fourteen years, then that child's evidence could not be received as of right. The receipt of that evidence was subject to the court's discretion upon assessment of the child's cognitive ability vis-à-vis the child's level of intelligence, and the child's appreciation of telling the truth. Stakeholders argued that if the law doubted the credibility of a child below the age of fourteen years in relation to his/her ability to invariably give convincing evidence on oath, then why should the law invariably assume mental competence for an eight year old or twelve year old child to commit an offence? Stakeholders submitted that such a position was irreconcilable and could not guarantee a fair trial for a child below fourteen years as envisaged under Article 18 of the Constitution, Chapter 1 of the Laws of Zambia.

With regard to section 14 (3), some stakeholders submitted that the section afforded different treatment to children of different sexes. For instance, section 14(3) only presumed *mens rea* (the requisite intent to the commission of a crime) in relation to a boy child above the age of twelve years. Stakeholders further submitted that there was no similar provision for a girl child above the age of twelve. The only provision that tended to apply to a girl child in relation to sexual offences was section 138 of the Penal Code aforesaid. Section 138 (1) provides as follows:

138. (1) Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.

Stakeholders submitted that the above cited section sought to protect children against sexual exploitation thus in terms of culpability, it did not matter whether the child initiated the act or consented to the act, the perpetrator would still be held culpable. Stakeholders were of the view that the law in this case insulated a child from sexual responsibility. On the definition of child, section 131A of the Penal Code provided thus: *131A. In this Part "child" meant a person below the age of sixteen years.* The Committee was informed that it was irreconcilable that the law that sought to protect children below the age of sixteen could impose criminal responsibility in sexual related crimes on a child above twelve years old. The Committee learnt of another inconsistency in the law in relation to section 138 (4) of the Penal Code aforesaid, the section provided as follows:

(4) A child above the age of twelve years who committed an offence under subsection (1) or (2) was liable to such community service or counseling as the court may determine, in the best interest of the children.

Some stakeholders were of the view that section 14 (3) of the Penal Code which imposed criminal liability on a boy child who was twelve years and above should be harmonised with section 138 (1) which served to protect children against sexual exploitation and insulated them from sexual responsibility. The Committee was further informed that section 138 (4) also

recognised that a child aged twelve years and above, but below sixteen years old could commit a sexual offence and prescribed the manner in which such a child should be dealt with. Further examination of sections 14(3), 131A, 138(1) and 138(4) suggested that the law discriminated against the boy child in that by section 14(3), only the boy child had capacity to commit sexual offences. Stakeholders submitted that if it was widely accepted that the law in question was discriminatory, then it offended Article 23 of the Constitution which, among others, outlawed discrimination on account of sex.

Other stakeholders informed the Committee that the proposed amendment was well-timed stating that it would prevent children being institutionalised through the penal system. However, the Committee learnt that Zambia had high levels of unemployment and poverty which forced children at a tender age to be on the streets, with a high risk of committing petty crimes. In that regard, stakeholders called for more investment in crime prevention, rehabilitation and community-based programmes to assist children.

Some stakeholders submitted that the proposed amendment was timely as it was in conformity with international and regional instruments on children's rights. For instance, the United Nations (UN) Convention on the Rights of the Child (CRC), was an international treaty that recognised children's rights. The CRC also ensured that children grew up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. It was noteworthy that Zambia became a signatory to the treaty in 1990 and ratified it in 1996 with no reservations. Article 40 of the CRC provided as set out below.

3. State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children as alleged as, accused of, or recognised 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;

The Committee learnt that based on Article 40 of the CRC, State Parties were obligated to set a minimum age of criminal responsibility. Further, the Committee on the Rights of the Child in General Comment No. 24 (201x) in Paragraphs 30 -36 recommended that the Minimum Age of Criminal Responsibility (MACR) be no lower than fourteen, and it stated as follows:

"State Parties are encouraged to increase their minimum age to at least 14 years of age."

Stakeholders submitted that according to the UN General Comment No. 24 (2019), the MACR was defined as the minimum age below which children should be presumed not to have the capacity to infringe the criminal law. Stakeholders further submitted that there was no categorical international standard regarding the age at which criminal responsibility was imputed on a child. However, several provisions in international and regional human rights instruments prescribed different ages.

Stakeholders further submitted that the UN Guidelines for the Prevention of Juvenile Delinquency also referred to as the Riyadh Guidelines, provided guidance to States for strategies to prevent children from becoming involved in the commission of crimes. These guidelines

sought to answer the question of what to do about children committing criminal offences within the context of development, and they propounded that States must make genuine efforts to provide a continuum of services which tackled the problem of juvenile offending before it occurred, followed by supporting services based in the family and the community. Stakeholder argued that without this developmental approach, no child justice system was effective. To achieve this, governments ought to establish policies conducive to raising children in stable family environments and ensure that families in need of services to achieve this goal should be granted such services.

The Committee was informed that the UN Standard Minimum Rules for the Administration of Juvenile Justice also referred to as the Beijing Rules, provided a model of the essential elements of an effective juvenile justice system. These stipulated that the MACR should not be too low as it should bear in mind the child's emotional, mental and intellectual maturity. For example, Article 4 (1) provided that:

"In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed too low an age level."

Stakeholders informed the Committee that on the continental level, there was in place the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, which was ratified by Zambia in 2008. The ACRWC notes in its preamble, that the situation of most African children remained critical due to, among others, the unique factors of their social-economic, cultural, traditional and developmental circumstances, armed conflict, exploitation on account of their physical and mental immaturity which required special safeguards and care. The Charter also aimed to protect children's welfare and address the protection of children in conflict with the law. Specifically, Article 17 of the Charter provided that;

4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Stakeholders submitted that the above stated international instruments provided a blueprint of what an ideal child justice system should include and also gave an indication of the ideal MACR. The Committee learnt that while most instruments did not set out a specific MACR, the UN General Comment No. 24 (2019) had set the age as fourteen in the international standards.

The Committee was informed that according to the UN General Comment No. 24, the differences children bore in their psychological and physical needs constituted the basis for lesser culpability. The Committee was further informed that fixing an age which considered a person's emotional, intellectual, and mental maturity would be the ideal way to tackle the question of setting an age for criminal responsibility. The following arguments were put forward by activists proposing the increase of the age of criminal responsibility:

(i) Discriminatory Application

In many situations, the child's best interests were, in theory, prioritised, systemic issues crippled the juvenile justice system. Young offenders that the Juveniles Act referred to as "juvenile in need of care" who needed additional administrative attention were often subjected to prolonged

periods in custody. Arguing that because of the harsh environments in custodial institutions, only much older children must be subjected to such environments, not children as young as twelve.

(ii) Infrastructure Inadequacies

The juvenile justice system did not provide adequate measures to help children who came in conflict with the law. Although it was implied that children would undergo counseling in reformatory institutions, the practical implementation of the provisions did not account for the existing systemic inadequacies that the juvenile justice system faced.

(iii) Contravention with International Obligations

The Activists additionally stated that laws that provided for very low ages of criminal responsibility were in direct discord with international standards and practices concerning children's rights. Accordingly, General Comment No. 24 of 2019 recommended that the age of criminal responsibility was higher than the age of twelve, which was the age previously agreed on by the Committee.

Stakeholders submitted that the General Comment No. 24 of 2019 by the CRC Committee, in paragraph 23, argued that children below the MACR should be provided with assistance and services according to their needs by the appropriate authorities and should not be viewed as children who had committed criminal offences. However, the CRC Committee provided very little guidance as to whether procedural guarantees for children in conflict with the law as laid down in Article 40 of the CRC were also applicable when children below the MACR got involved in the justice system. Stakeholders further submitted that child justice advocates believed that the CRC Committee's silence on the matter was that children who could not be held criminally responsible should not be subjected to pre-trial or trial proceedings. Therefore, children who committed an offence below the MACR should not be "viewed as children who have committed criminal offences", neither should they be subjected to procedures, sanctions or punishment typically associated with criminal justice systems and indicative of criminal responsibility such as detention. Instead, interventions should be focused on the needs of the child in terms of guidance, treatment, and support (also for the parents or others responsible for the upbringing of the child), while taking into account the child's evolving capacities, as provided for in Article 5 of the CRC.

The Committee learnt that in the case of *ICJ v Czech Republic*, the European Committee of Social Rights (ESR) stated that in such a context, it was essential that the child and the parents or legal guardians were provided with assistance to find the best support for the child. The assistance needed to be upgraded to legal assistance if the court was approached for a child protection order, especially when the child's out-of-home placement or deprivation of liberty was a possibility. The ESR Committee considered that, even though children below the MACR could not be held criminally liable, they needed to be afforded adequate legal procedural protections if they were involved in pre-trial and trial proceedings due to allegedly committing an unlawful act. This was because those proceedings could have negative consequences for a child's social and economic protection, especially when, such as in the Czech Republic, those proceedings could result in 'protective measures' that deprived the child of their liberty.

Stakeholders submitted that according to the ESR Committee, the rationale behind such consideration was that failure to provide adequate legal procedural protections to children in conflict with the law was likely to have significant and wide-ranging implications for the child's short-term circumstances. It would also affect the child's longer-term mental, moral, and social development, thus violating their right to social and economic protection.

Other stakeholders submitted that the proposed amendment should have also stipulated what would happen to children who came in conflict with the law, but fell below the MACR. Stakeholders stated that there were no clear provisions on what happened to children who should be afforded mandatory legal assistance upon arrest to ensure that the children did not experience pre-trial detention that included delays in processing or confirming the fact that the child was criminally irresponsible.

Some stakeholders submitted that the proposed amendment was not peculiar to Zambia, in that some countries complied with the age of criminal responsibility. Stakeholders, however, stated the age of criminal responsibility varied from country to country and was informed by different considerations as set out below.

- (i) Kenya and South Sudan placed the age of criminal responsibility at twelve years.
- (ii) Algeria, Benin, Burkina Faso, Chad, Comoros, Republic of Congo, Djibouti, Gabon, Niger and Tunisia all placed the age of criminal responsibility at thirteen years.
- (iii) Angola, Botswana, Central African Republic, Democratic Republic of Congo, Libya, Rwanda, Sierra Leone and South Africa placed the age at fourteen years.

Some proponents of the Bill highlighted some of the ramifications of the proposed amendment as set out below.

- (i) Uniform Age of Criminal Responsibility - currently, the age of criminal responsibility was at two levels, namely, at eight years and twelve years. However, the Bill sought to have one uniform age of fourteen. Having one age of criminal responsibility meant that the courts would no longer have to determine whether the child in conflict with the law understood that what it was doing was wrong.
- (ii) Reduced Juvenile Case Loads - raising the age of criminal responsibility from a minimum of eight years to fourteen years would result in a reduced case load for Juvenile Courts as juvenile offenders under the age of 14 would no longer be prosecuted for any offences.
- (iii) Similar treatment of children aged the same - the current section 14 of the Penal Code means that children aged below twelve would receive different treatment depending on their mental capacities. By raising the age of criminal responsibility to fourteen, all children that came in conflict with the law would be treated equally.
- (iv) Removal of *doli incapax* presumption - By raising the age to 14, the presumption of *doli incapax* currently enshrined in section 14(2) of the Penal Code falls away as all children under the age of fourteen were not criminally liable for any offence they may commit.

Some stakeholders submitted that a person above the age of twelve years was capable of distinguishing what was right and wrong. Based on this opinion, stakeholders were of the view that if there was complete immunity from criminal responsibility up to the age of fourteen years, there would be increased number of criminal activities perpetrated by persons in the age group. Stakeholders informed the Committee that the majority of street kids who found themselves in conflict with the law were twelve years and above, some of whom were deeply entrenched in criminality. An example was cited where an elderly woman was raped and stabbed to death by street kids in Lusaka who were aged between twelve to fourteen years. Stakeholders submitted that such children needed to be admitted to reformatory facilities for rehabilitation, to become responsible citizens, but with complete immunity, this would not be tenable. Stakeholders were of the view that older persons outside the proposed age threshold may want to take advantage of the immunity by engaging such children in the pursuit of their criminal agenda and/or activity. In that regard, stakeholders argued that increasing the age criminal responsibility to fourteen years would result in high numbers of crime.

Some stakeholders informed the Committee that while it was desirable for a child to have immunity from criminal responsibility, fourteen years was too high a threshold for such immunity and could have negative impact from the security point of view. Stakeholders further informed the Committee that in order to ensure that children were protected and at the same time maintain public security, the proposed age limit for the immunity should be limited to twelve years. Stakeholders submitted that some of the most heinous crimes in the country had been committed by children between the ages of twelve to fourteen.

Some stakeholders who were against the proposed amendment argued children were exposed to various developmental technologies that had potential to advance their psychosocial, mental, emotional, and psychological development. The Committee was informed that children were exposed to a vast array of technologies and had access to an overwhelming amount of information. They were, therefore, aware of and responsible for any acts or omissions that may constitute a criminal offence.

9.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

General Observation

- (i) The Committee observes that the Ministry of Justice, as the drafters of the Bill, indicated when they appeared before it that Clause 2 of the Bill seeks to amend section 14 of the principal Act, by the repeal and substitution thereof of the following “A child under the age of *“twelve”* years is not criminally responsible for any act or omission,” and not *“fourteen”* years as indicated in the Bill.

The Committee takes note of the “amendment” made by the Ministry of Justice in their oral presentation. However, the Committee observes, as evidenced by development in neuroscience that the maturity and the capacity for abstract reasoning in children aged twelve to thirteen years is still evolving and not yet fully developed. In this regard, the position of the Committee is that the age of criminal responsibility for a child should be fourteen years and above.

Further, the Committee notes that as State Party to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, Zambia should recognise the significance of aligning its national laws to international human rights instruments with regard to children. In this regard, the best interest of the child, even with regard to punitive measures, must be a primary consideration owing to their vulnerability.

The Committee, therefore, recommends that the age of criminal responsibility and their subjection to the criminal justice system of children in Zambia should be fourteen years.

Specific Observations

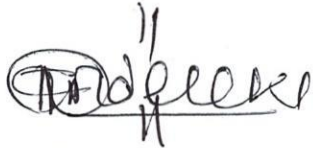
- (ii) The Committee notes that the promotion and protection of children's rights is the primary responsibility of the State. The Committee is of the considered view that children below the age of fourteen who come into conflict with the law must not be subjected to the penal system. In this regard, the Committee recommends that the National Diversion Framework, which has been developed by the Ministry of Community Development and Social Services in the context of national child reform efforts, and which sets out the scope, criteria, process and options for the use of diversion must be fully implemented to respond to child offending by way of diversion from the mainstream criminal justice system.
- (iii) The Committee is cognisant that some unscrupulous individuals may take advantage of the increased age of criminal responsibility of children, if enacted, and engage them in criminal activities knowing fully well that they shall be presumed not to have the capacity to infringe the penal law. The Committee, therefore, calls on the Government to stiffen the laws against adults that involve children in criminal activities, as a safeguard.

10.0 CONCLUSION

The Committee supports the proposed amendment as it would allow Zambia to implement more significant safeguards for children and develop a greater diversion system for children who may come in conflict with the law. However, it is imperative that the Government directs the necessary resources that are required to implement various programmes under the diversion system to assist children who abrogate the law but do not fall under the minimum age of criminal responsibility. In addition, the amendment will signify Zambia's commitment in as far as domesticating some of the provisions of the United Nations Convention on the Rights of the Child and Article 17(4) of the African Charter on the Rights and Welfare of the Child, to which Zambia is a signatory.

The Committee wishes to express its gratitude to all stakeholders who appeared before it to render both oral and written submissions. The Committee also wishes to thank you, Madam Speaker, and the Office of the Clerk for the guidance and services rendered to it throughout its deliberations.

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. 13 of 2022 for the First Session of the Thirteenth National Assembly.

A handwritten signature in black ink, appearing to read 'C. Andeleki', with a horizontal line drawn through the middle of the signature.

Mr Clement Andeleki, MP
CHAIRPERSON

July, 2022
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Mr Francis Nabulyato, Acting Principal Clerk of Committees (SC)

Mrs Chitalu K Mumba, Acting Deputy Principal Clerk of Committees (SC)

Mrs Angela M Banda, Senior Committee Clerk (SC)

Ms Betty Zulu, Committee Clerk

Mrs Sharon B M Nyirongo, Committee Clerk

Mrs Ruth N Mwiinga, Typist

Mr Danny Lupiya, Committee Assistant

APPENDIX II–LIST OF WITNESSES

MINISTRY OF JUSTICE

Mr S Banda, (Parliamentary Counsel)

CHAPTER ONE FOUNDATION

Ms N L Kabayi, (Programme Assistant)

Ms K C Kamina, (Programme Officer)

ZAMBIA POLICE

Mr E S Sindandumuna, (Assistant Director - Legal)

Mr T Mudenda, (Assistant Director - Crime 1, General Investigations)

Mr C A Banda, (Assistant Superintendent - Senior Research and Planning Officer)

Mr G Msoni, (State Advocate, Legal Unit)

JUDICIARY

Mr E Zulu, (Acting Chief Registrar)

Mr I Iduma, (Registrar – Constitutional Court)

Mr S Nyimbiri, (District Registrar)

MAGISTRATES’ AND JUDGES’ ASSOCIATION OF ZAMBIA

Mr N Samaubi, (National Secretary and Senior Research Advocate)

UNIVERSITY OF ZAMBIA

Dr E T M Siang’andu, (Head of Department – Public Law, School of Law)

HUMAN RIGHTS COMMISSION

Mrs S Sichone, (Director)

Mr J Mulemwa, (Legal Counsel)

Mr I Nyambe, (Chief Investigation and Legal)

SHAMWANA AND COMPANY LEGAL PRACTITIONERS

Mr S M Lungu, SC

NATIONAL LEGAL AID CLINIC FOR WOMEN

Ms Mandy Manda, (Executive Director/Secretary)