



## CTPD'S MONDAY OPINION

This is a weekly column aimed at sharing CTPD's perspective and steering public debate on various issues pertaining to Trade & Investments Law, Public Finance Management, Extractives and Human Development.

TODAYS TOPIC

### Unpacking the proposed reforms to the penal code



IN THIS week's Monday Opinion, I'll break down the proposed penal code reforms. The following issues will be considered: the repeal of "insult laws"/criminal defamation, the use of gender-neutral language in sexual offenses, the raising of the criminal age of responsibility from eight to fourteen, the abolition of the death penalty, and the abolition of bigamy.

The Zambia Law Development Commission ("ZLDC") (a statutory body charged with, among other things, making recommendations for the revision and reform of Zambian law) recently published a project report proposing changes to the Penal Code, Zambia's primary piece of legislation codifying criminal offenses and their corresponding penalties; a project that has been in the works for the past ten years.

Although some amendments have been made to a select few provisions over the years, the Penal Code has had never been comprehensively reviewed since it was enacted in 1931. This essentially entails that the country's criminal justice system has been governed by a somewhat outdated law with colonial antecedents, and provisions that neither reflect contemporary times nor the socio-political values of the Zambian people. Therefore, reform to the Penal Code has been long overdue and its amendment must be given at most priority by the government.

While many reform proposals have been made by ZLDC, let us look at some of the key reforms and proposals made to the Penal Code ("PC").

#### 1. Removal of "insult laws"/criminal defamation.

It is an offence under the PC to insult the national anthem (section 68 PC), to defame the President (section 69), to defame a foreign prince (section 70), and to publish any defamatory material concerning another person (section 191). The removal of the insult laws is being justified on two main fronts: (a) they contradict the constitutional right to freedom of expression; and (b) the constitutive acts of the said offences are not grievous/serious enough to warrant criminal prosecution and imprisonment, and in any case remedies for defamation can be sought

under civil law in an action for damages. We think this will be progressive and go a long way in promoting tenets of democracy, especially freedom of speech, we have witnessed in the recent past how citizens continue to be dragged to courts on grounds that they have insulted the president with this revision, such would become moderated.

#### 2. Use of gender-neutral language in sexual offences.

The offences of rape and indecent assault are expressed under the PC to be committed only against females (sections 133 & 137). This thus implies that rape and indecent assault on males are not recognised as offences under our law, thereby leaving victims with no redress and consequently reinforcing problematic and harmful stereotypes and prejudices about male and female sexuality. CTPD is of the considered view that this would also be progressive.

#### 3. Increment of criminal age of responsibility from eight to fourteen.

A child below the age of 8 cannot be held liable for committing a criminal offence, and a child between the ages of 8 and 12 can only be held criminally responsible if it proved that at the time of committing an offence, they had the capacity to understand that it was wrong to do so (section 14 PC). This contrasts with the recommended international law standard of 14 years, according to which children under that age are still developing mentally and thus unlikely to understand the consequences of their actions or criminal proceedings. We think this is a step in the right direction on Juvenile Justice.

#### 4. Abolishment of the death penalty.

Although the death penalty has not been executed in Zambia since 1997, treason, murder and aggravated robbery with a firearm nonetheless carry the death penalty. The ZLDC has proposed that the death penalty should be abolished in its entirety and replaced with life imprisonment on the grounds that it is cruel, severe, and inhumane. However, the removal of the death penalty is one that we should trade carefully. On

the one hand, the proposed reasons for its removal are legal under international law, and in some cases, innocent people have been wrongfully sentenced to death because of the criminal justice system. The serious/grave nature of these offenses, on the other hand, necessitates a correspondingly severe punishment. Moreover, the death penalty is justified under the Constitution (Article 12) as an exception to the constitutional right to life. Government should consider subjecting this to more debate.

#### 5. Removal of bigamy.

The offence of bigamy (marrying someone whilst already married to another) which carries a penalty of five years imprisonment (section 166 PC) is rooted in colonial English law, this will need to be subjected to public sensitization, there will be need for the country to reconcile our traditional and religious beliefs, ultimately arrive at a position that reflects the realities we also live with.

Other reforms include the removal of derogatory phrases such as 'imbecile' and 'idiot' to refer to persons with mental disabilities; the reduction of the offence of abortion from a felony to a misdemeanour as it is not a grievous offence and raises more of a moral issue than a legal issue; and the incorporation into the PC of all other offences contained in other specialised Acts to prevent duplication of offences, promote uniform application of the law, and ease administration of criminal law.

We believe that several of the proposed changes are progressive; however, we would like to urge the government to create platforms for debate and increased public awareness. Based on reactions from a variety of media outlets, it is clear that citizens are unaware of the proposed changes.

Join us next week as we look at other legal matters.

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