

A Critical Analysis of the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025): Implications for the Presumption of Innocence and Criminal Justice Reform in Zambia

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ABSTRACT

This article critically analyses the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), focusing on its potential impact on Zambia's criminal justice system, particularly the presumption of innocence. The Bill proposes non-bailability for serious offenses like defilement, rape, stock theft, and theft of critical infrastructure, raising concerns about compliance with international human rights standards. Through comparative legal analysis, the article examines similar provisions in other jurisdictions, highlighting their effects on due process and fundamental rights. It argues that while the Bill aims to deter crime, it risks infringing on the right to a fair trial and presumption of innocence due to the lack of safeguards for pre-trial detention. The article concludes with recommendations for judicial oversight and reforms to balance crime prevention with individual rights protection.

ARTICLE INFORMATION

Received: 05 January 2026

Accepted: 20 January 2026

Published: 22 January 2026

Cite this article as:

Prof. Munyonzwe Hamalengwa, Roy Chafwakale. A Critical Analysis of the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025): Implications for the Presumption of Innocence and Criminal Justice Reform in Zambia. *International Journal of Innovative Studies in Humanities and Social Studies*, 2026;2(1); 19-31.

<https://doi.org/10.71123/3067-7319.020103>

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Organization of the Article

Abstract

A concise summary of the article's focus on the *Criminal Procedure Code (Amendment) Bill*, examining its impact on the presumption of innocence and pre-trial detention.

Introduction

An introduction of the Article.

Background

An overview of the Bill, its provisions on non-bailable offenses, and their implications for the Zambian legal system, alongside efforts to modernize forensic procedures.

Problem Statement

Identifying the key issues arising from the Bill, particularly the tension between crime deterrence and individual rights, focusing on pre-trial detention and the presumption of innocence.

Objectives

Outlining the general and specific objectives of the study, including a comparative analysis of the Bill with international human rights standards.

Significance of the Study

Highlighting the importance of this research for legal professionals, policymakers, and scholars, with emphasis

on preserving constitutional rights amidst criminal justice reforms.

Conceptual Framework

Detailing the key legal concepts analyzed in the study: presumption of innocence, non-bail provisions, natural justice, and criminal justice reform.

Literature Review

A survey of existing scholarly work on criminal justice reform, focusing on the presumption of innocence and pre-trial detention, and identifying gaps in the current legal framework.

Methodology

Explaining the qualitative research methods used in the study, including doctrinal legal analysis, comparative legal analysis, and policy review.

Scope and Limitations

Defining the study's scope, including the focus on Zambia's legal context, and acknowledging the limitations due to the Bill's unratified status and the challenges of comparative analysis.

Discussion

A critical analysis of the Bill's provisions on non-bailability and pre-trial detention, drawing on case law from Kenya, South Africa, and the United States to assess the Bill's potential human rights implications.

Conclusion

Summarizing the findings, reiterating concerns about the Bill's implications for the presumption of innocence, and proposing recommendations for balancing crime prevention with individual rights.

Recommendations

Offering concrete suggestions for legislative amendments, including judicial oversight of pre-trial detention, the integration of restorative justice principles, and the inclusion of gender-neutral legal definitions.

Introduction

The *Criminal Procedure Code (Amendment) Bill*¹ (No. 29 of 2025) marks a pivotal development in Zambia's criminal justice reform. This article critically examines the Bill's implications, particularly in relation to the presumption of innocence and pre-trial detention, two fundamental pillars of justice that may be compromised by the proposed non-bailability provisions. By analyzing the Bill through a doctrinal legal lens and comparing it with international

practices, this study explores how these amendments align with Zambia's constitutional principles and international human rights obligations. While the aim of the amendments is to curb serious crimes such as defilement, rape, stock theft, and the theft of critical infrastructure, this article warns against the erosion of individual rights, particularly in terms of unjustified detention and pre-trial procedures.

Background

The *Criminal Procedure Code (Amendment) Bill (No. 29 of 2025)* proposes changes to Zambia's criminal justice system, including non-bailable offenses for crimes like defilement, rape, incest, stock theft, and theft of critical infrastructure. The Bill also introduces forensic procedures, such as fingerprint and blood tests, to modernize criminal investigations. However, the non-bail provisions raise concerns about the presumption of innocence and pre-trial detention, as critics argue they could undermine the right to a fair trial.² The Bill's efforts to align Zambia's legal terminology with other national laws, such as the *Civil Aviation Act (2016)*³ and *Electricity Act (2019)*,⁴ reflect a shift to accommodate evolving criminal activities. Currently, Zambia's *Criminal Procedure Code* limits forensic evidence to chemical or bacterial analyses, which has become outdated with technological advances in forensic science.⁵ While the amendments aim to strengthen deterrence and modernize the legal framework, concerns over privacy and individual rights, especially regarding compulsory bodily sample, highlight the need for a balance between crime control and constitutional rights.⁶

Problem Statement

The Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) introduces non-bailable offenses for serious crimes like stock theft, defilement, rape, and the destruction of critical infrastructure. While aimed at strengthening deterrence and modernizing forensic procedures, the Bill raises significant concerns about the erosion of fundamental rights, particularly the presumption of innocence and the right to a fair trial. The provisions for extended pre-trial detention could undermine constitutional safeguards against arbitrary detention and place Zambia at odds with

²Law Association of Zambia, 'LAZ Urges Government to Thoroughly Scrutinize Criminal Procedure Amendment Bill: The Law Association Calls for a Comprehensive Review' (Facebook, 1 November 2025) <www.facebook.com> accessed 12 December 2025.

³The Civil Aviation Act, 2016 (Zambia)

⁴Electricity Act, 2019 (Zambia)

⁵Zambia Daily Mail, 'Advancements in Forensic Science Challenge Current Law' (1 November 2025) <www.zambiadailymail.com> accessed 12 December 2025.

⁶D McDonald, 'Legal Responses to Police Misconduct: The Case of the Police Service in New South Wales' (2013) 17 University of Western Sydney Law Review 1.

¹Criminal Procedure Code (Amendment) Bill (No. 29 of 2025)

its international human rights obligations. This article explores the potential impact of these amendments on fundamental rights and their broader implications for criminal justice reform in Zambia.

Objectives

General Objective

To critically analyze the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), and assess its implications for the presumption of innocence, pre-trial detention, and criminal justice reform in Zambia.

Specific Objectives

1. To examine the non-bailability provisions in the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), and assess their potential impact on defendants' rights, particularly regarding pre-trial detention.
2. To evaluate how the proposed amendments in the Bill may affect the presumption of innocence and principles of natural justice within Zambia's criminal justice system.
3. To compare Zambia's approach to criminal justice reform with international standards, including those outlined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Significance of the Study

This study examines the potential impact of the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) on fundamental legal principles, particularly the presumption of innocence, pre-trial detention, and natural justice. By evaluating the Bill's provisions, especially those on non-bailable offenses, the study highlights risks to defendants' rights and Zambia's compliance with international human rights obligations. Additionally, it compares Zambia's approach to global standards, such as the Universal Declaration of Human Rights (UDHR)⁷ and the International Covenant on Civil and Political Rights (ICCPR),⁸ providing a critical framework for assessing the Bill's alignment with international norms. Ultimately, this research contributes to criminal justice reform discussions in Zambia, ensuring a balance between legal efficiency and individual rights protection.

⁷Universal Declaration of Human Rights, 1948.

⁸International Covenant on Civil and Political Rights, 1966.

Conceptual Framework

Key Concepts and their Interlinking

Presumption of Innocence

The presumption of innocence is a fundamental principle, ensuring that an accused person is treated as innocent until proven guilty, as enshrined in Zambia's Constitution⁹ and recognized internationally under the United Declaration on Human Rights¹⁰ and ICCPR.¹¹ This principle safeguards fair trial rights by preventing the premature assumption of guilt. However, the introduction of non-bailable offenses in the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) threatens to undermine this presumption. By mandating pre-trial detention for certain crimes, these provisions risk implying guilt before trial, thereby compromising the accused's right to a fair trial and increasing the likelihood of arbitrary detention.¹²

Non-Bailability

Non-bailability refers to provisions that prevent an accused person from being released on bail before trial, typically for serious offenses.¹³ The Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) proposes non-bailability for crimes such as defilement, rape, stock theft, and theft of critical infrastructure (e.g., copper, diamonds). Abebe argues that these provisions aim to ensure that those accused of severe crimes remain in custody, reducing the risk of flight or further harm.¹⁴ However, while non-bail provisions serve to expedite justice, they may violate human rights by infringing on the right to liberty and the presumption of innocence, subjecting individuals to prolonged detention without trial. This raises concerns regarding the potential violation of Zambia's international obligations, particularly under the ICCPR,¹⁵ as such provisions could undermine the right to a fair trial.

Natural Justice

Natural justice refers to fundamental procedural rights that ensure fairness in legal proceedings, guaranteeing that all parties receive a fair hearing.¹⁶ Two core principles of natural justice are:

⁹Constitution of Zambia (2016) art 18(2)(a).

¹⁰Universal Declaration of Human Rights, art 11.

¹¹International Covenant on Civil and Political Rights, art 14.

¹²Akbar A, 'What Does "Guilty Until Proven Innocent" Mean?' (22 January 2025) Tyler Hoffman Solicitors <www.tylerhoffman.co.uk>.

¹³N A Sharpe, 'A Critique on the Operation of the Bail System in Zambia with Regard to Sureties' (LLB dissertation, University of Zambia, 1991).

¹⁴A S Abebe, 'The Effectiveness of Justice Organs in Ensuring the Right to Bail in North Wollo Zone/Amhara National Regional State' (Master's thesis, Bahir Dar University 2020).

¹⁵ICCPR, art 6 & 14

¹⁶D Wallin, J Young and B Levin, *Understanding Canadian Schools: An Introduction to Educational Administration* (6th edn, Saskoer 2021).

Audi Alteram Partem (the right to be heard),

Nemo Judex in Causa Sua (the right to an impartial judge).

These principles are enshrined in both Zambia's constitutional law and international human rights law, ensuring fairness in legal proceedings by allowing accused individuals to present their case, challenge evidence, and have a hearing before an impartial body.¹⁷ The Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), which introduces non-bail provisions and expanded forensic procedures, must align with these principles. Prolonged pre-trial detention, lack of access to bail, and potential bias in forensic evidence could undermine natural justice, particularly in light of Zambia's history of delayed justice, where suspects remain in remand for extended periods before their cases are heard.

Criminal Justice Reform

Criminal justice reform refers to efforts to improve and modernize the criminal justice system in order to enhance its fairness, efficiency, and effectiveness. This includes reforms aimed at addressing issues like trial delays, overcrowded prisons, and ensuring accountability for violations of human rights.¹⁸ The Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), is an example of Zambia's ongoing criminal justice reforms, which aim to streamline the legal process, improve deterrence against serious crimes, and update the legal framework in line with evolving forensic science.

However, these reforms must be balanced with the protection of individual rights. While modernizing the criminal justice system is essential, reforms that undermine basic rights—such as the presumption of innocence, the right to a fair trial, and the right to liberty—can lead to human rights violations and undermine public confidence in the justice system.

Interlinking of Concepts within Zambia's Legal System and International Law

These key concepts are interconnected in significant ways within both Zambia's domestic legal framework and international human rights standards:

Presumption of Innocence and Non-Bailability: The introduction of non-bail provisions, particularly for certain crimes perceived to be serious, has the potential to erode

the presumption of innocence by subjecting individuals to pre-trial detention. This could lead to situations where the accused is treated as guilty before the court has had the opportunity to render a verdict, which directly conflicts with both Zambian law and international human rights law.

Non-Bailability and Natural Justice: The provision of non-bailability has implications for the right to a fair trial and the right to be heard, both core components of natural justice. Prolonged pre-trial detention without the possibility of bail may limit the ability of the accused to mount an effective defense, thus undermining the principle of *audi alteram partem* (the right to be heard).

Criminal Justice Reform and Human Rights: While criminal justice reform aims to improve the justice system's effectiveness, it is critical that these reforms do not come at the expense of human rights. Reforms like the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), must be carefully designed to ensure that changes aimed at deterring crime do not inadvertently infringe on international human rights standards. Non-bailability provisions and forensic changes must balance the need for deterrence with respect for due process and liberty.

International Law and Domestic Law: The relationship between Zambia's constitutional law and international human rights law (such as the ICCPR and UDHR) underscores the need for reforms to respect fundamental rights while modernizing the criminal justice system. This balance is crucial in ensuring that Zambia's criminal justice system adheres to both domestic and international human rights commitments, particularly when reforms like non-bail provisions might conflict with internationally recognized rights.

This Conceptual Framework establishes how these core legal concepts—presumption of innocence, non-bailability, natural justice, and criminal justice reform—interlink with each other and within both Zambia's legal system and the context of international human rights law. This will guide your analysis of the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), in relation to Zambia's broader criminal justice reform efforts.

Literature Review

The Presumption of Innocence and Its Role in International Human Rights Law

The presumption of innocence is a fundamental principle of international human rights law, guaranteed under the International Covenant on Civil and Political Rights (ICCPR),¹⁹ which asserts that everyone is presumed

¹⁹ICCPR, art 14, (n 11).

¹⁷Taxmann, 'Principles of Natural Justice – Meaning | Rules | Evolution' (16 October 2025) <www.taxmann.com> accessed 23 December 2025.

¹⁸R Neily, S Ray and A Clark, 'A Better Path Forward for Criminal Justice: Police Reform' (Brookings, 30 April 2021) <www.brookings.edu> accessed 23 December 2025.

innocent until proven guilty according to law.²⁰ This principle serves as the bedrock of justice systems worldwide, ensuring fairness and protecting individuals from arbitrary detention or wrongful punishment.²¹ In the context of Zambia, however, the practical implementation of this principle faces challenges, particularly with regard to pre-trial detention. Critics argue that provisions in the current legal framework, including those under the Criminal Procedure Code (CPC),²² sometimes contradict the presumption of innocence by allowing prolonged detention without trial.²³

Globally, the presumption of innocence has been central to discussions on criminal justice reform. In the United States, the presumption is often undermined by pre-trial detention, especially with the cash bail system, which disproportionately affects marginalized groups.²⁴ This issue also resonates within the Zambian context, where the introduction of more restrictive non-bail provisions under the CPC Amendment Bill, 2025, may further erode the application of this principle.²⁵

Criminal Justice Reforms in Zambia and Their Implications

Criminal justice reforms in Zambia have been a subject of increasing scholarly attention, particularly in relation to how the legal system interacts with international human rights standards. Historical reforms have largely been influenced by colonial-era legal frameworks, and political biases which have led to persistent challenges in aligning Zambian law with modern human rights principles.²⁶ The Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), proposes significant changes to criminal procedure, particularly concerning bail provisions. While these changes aim to streamline the justice system, scholars have raised concerns that they may inadvertently violate international principles of fairness and the presumption of innocence.²⁷

Research on criminal justice reforms globally shows a trend towards balancing public safety with the protection of defendants' rights. In the United Kingdom, reforms have focused on reducing the use of custodial sentences and increasing the use of community-based sanctions.²⁸ However, in Zambia, as observed by the Law Association of Zambia (LAZ), the proposed amendments to the CPC may lead to an increase in pre-trial detention, thus undermining the rights of accused persons and raising questions about the fairness of the judicial process.²⁹

Non-Bailability Provisions and Their Impact on Defendants' Rights

Non-bailability provisions are a significant area of concern within criminal justice systems, particularly regarding their implications for the right to a fair trial. These provisions allow for individuals to be detained without the possibility of bail.³⁰ In Zambia, the proposed amendments to the Criminal Procedure Code,³¹ expand the scope of non-bailable offenses, raising concerns about their impact on defendants' rights. The effect of such provisions on the presumption of innocence has been a point of contention, as individuals are effectively treated as guilty before trial.³²

International human rights standards, including those outlined in the ICCPR, emphasize that detention before trial should be the exception, not the rule.³³ However, research has shown that non-bailability provisions often lead to prolonged detention without trial, which can have significant social, psychological, and economic impacts on accused individuals.³⁴ In Zambia, these provisions could disproportionately affect the poor and marginalized communities, who are less likely to secure bail and more vulnerable to the negative consequences of prolonged pre-trial.³⁵

²⁰United Nations, 'International Covenant on Civil and Political Rights' (1966) <www.ohchr.org> accessed 23 December 2025.

²¹O Fiss, *The Law as It Should Be: A Critical Perspective on Justice and Fairness* (Harvard University Press 2018).

²²Criminal Procedure Code, Chapter 88 of the Laws of Zambia.

²³S M Kalobwe, 'The Application of the Constitutional Rights of Presumption of Innocence in the Bail Proceedings in Zambia: An Analysis' (LLB dissertation, University of Zambia 2013).

²⁴M Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (rev edn, The New Press 2020).

²⁵Law Association of Zambia, (n 2.).

²⁶A Kafwilo, P Kamenji and R Chinambu, 'The Zambian Criminal Justice System and the Place for Victims of Crime' (2023) *Commonwealth Law Review Journal* 9, 403 <thelawbrigade.com> accessed 24 December 2025.

²⁷Law Association of Zambia, (n 2.).

²⁸Senedd Research, 'Sentencing Reforms: What's Changing and Why It Matters for Wales' (Research, 18 December 2023) <research.senedd.wales> accessed 23 December 2025.

²⁹Law Association of Zambia, (n 2.).

³⁰L Muntingh and L Ehlers, 'Pre-Trial Detention in Zambia' (n.d.) Dullah Omar Institute <dullahomarainstitute.org.za> accessed 23 December 2025.

³¹Criminal Procedure Code Act Chapter 87 of the Laws of Zambia.

³²S Parker, 'Presumption of Innocence in Practice: Global Perspectives on Pre-Trial Detention' (2016) *Criminal Justice Review* 43(2), 199-216 <doi.org> accessed 20 December 2025.

³³United Nations (n 20).

³⁴P López and C García, 'Mental Health and Pre-Trial Detention: The Social and Psychological Effects of Non-Bailable Offenses' (2021) *International Journal of Criminology and Social Science* 45(4), 299-314 <doi.org> accessed 22 December 2025.

³⁵Muntingh and Ehlers, (n 30).

Identifying Gaps in the Literature

Despite the growing body of literature on criminal justice reforms and the presumption of innocence, significant gaps remain in the analysis of non-bailability provisions within Zambia's legal framework. While scholars have examined the presumption of innocence from a theoretical perspective, few studies focus specifically on how non-bail provisions in Zambia's proposed Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), may violate this principle. Furthermore, comparative analyses of how similar provisions in other jurisdictions—such as in Kenya, South Africa, or the United States—affect defendants' rights are limited.

This research aims to fill these gaps by critically analyzing the implications of the proposed non-bail provisions in the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), and assessing how they align with Zambia's obligations under international law. By comparing these provisions to international human rights standards and practices in other jurisdictions, this study will offer critical insights into potential reforms that can ensure a more balanced and just criminal justice system in Zambia.

Methodology

This article adopts a qualitative research approach focused on doctrinal legal analysis and comparative legal analysis to examine the potential implications of the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) on the presumption of innocence and pre-trial detention in Zambia.

Legal Doctrinal Analysis

The study critically reviews the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), alongside relevant statutory provisions such as Zambia's Constitution and international treaties like the International Covenant on Civil and Political Rights (ICCPR).³⁶ It evaluates how the proposed non-bail provisions align with the presumption of innocence and due process.

1.1 Comparative Legal Analysis

A comparative review of similar criminal justice reforms in Kenya, South Africa, and the United States helps assess the potential impact of Zambia's proposed amendments. The analysis focuses on non-bail provisions, pre-trial detention, and how they relate to human rights standards.

Literature Review

The article reviews existing scholarly literature on criminal justice reform, particularly around pre-trial detention and

the presumption of innocence. This review helps identify gaps and informs the critical analysis of Zambia's reform proposals.

Policy and Legislative Analysis

Finally, the study evaluates the policy rationale behind the amendments, focusing on their potential to improve crime deterrence while balancing the protection of individual rights, as outlined in Zambia's constitutional and international human rights commitments.

Scope and Limitations

Scope

This study focuses on the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), and how it might affect the presumption of innocence and pre-trial detention within Zambia's criminal justice system. The research looks closely at the key provisions in the Bill, especially the proposed non-bail provisions for crimes like defilement, rape, stock theft and theft of critical infrastructure. It examines how these changes could impact the presumption of innocence, a fundamental principle in both Zambian law and international human rights law.

The study also compares how similar non-bail rules and pre-trial detention practices have been handled in other countries, such as Kenya, South Africa, and the United States. This comparison helps assess what Zambia can learn from those jurisdictions and whether the proposed changes would be beneficial or harmful. Finally, the article takes a closer look at the forensic procedures outlined in the Bill, analyzing whether they meet international standards and how they might affect the protection against arbitrary detention.

Limitations

While this study provides a comprehensive analysis of the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025), several limitations must be acknowledged:

Lack of Post-Implementation Data

Since the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) has not yet been enacted into law, this study is limited by the absence of real-world data on its implementation and effects. Consequently, the analysis is based on theoretical and comparative legal frameworks rather than empirical evidence from Zambia's legal system post-implementation.

Geographical Constraints

This study primarily focuses on Zambia's legal context, and while comparative legal analysis includes other jurisdictions, the study may not fully capture the

³⁶International Covenant on Civil and Political Rights, (n 8)

complexities of implementing similar provisions in Zambia due to its unique socio-legal environment. The comparative approach may not account for the specific cultural, political, and economic factors that influence the operation of the criminal justice system in Zambia.

Potential Biases in Comparative Legal Analysis

The study's reliance on comparative legal analysis introduces a limitation related to potential biases in comparing legal frameworks. The legal systems of Kenya, South Africa, and the United States differ in significant ways from Zambia's legal system. These differences in legal traditions, judicial structures, and societal contexts may limit the direct applicability of the insights drawn from these jurisdictions to Zambia. Furthermore, the study assumes that legal reforms in these countries provide relevant insights, though such reforms may not be directly transferable to the Zambian context.

Scope of International Human Rights Law

While the study evaluates the alignment of the proposed amendments with international human rights standards, the analysis may not fully encompass the diverse interpretations of these standards across different legal systems. Variations in how international treaties are applied within domestic legal frameworks may affect the conclusions drawn regarding Zambia's adherence to its human rights obligations.

Discussion and Findings

The Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) represents a bold attempt to modernize Zambia's criminal justice system, but it raises significant concerns regarding pre-trial detention, the presumption of innocence, and individual rights. This section delves deeper into these issues, particularly through a comparative analysis of similar provisions in Kenya, South Africa, and the United States, exploring case law, implications, and broader socio-legal dynamics.

Impact on the Presumption of Innocence

As previously discussed, the presumption of innocence is a core principle in both Zambian law and international human rights law.³⁷ The introduction of non-bail provisions for crimes such as defilement, rape, stock theft and economic crimes threatens to infringe upon this principle. While non-bail provisions are meant to safeguard against flight risk or further harm, they may indirectly imply guilt, thus undermining the presumption of innocence especially with the known delays in the delivery of justice in Zambia where accused people stay for long periods in custody.

³⁷Akbar, (n 12).

According to the Kenyan Constitution (2010), every person charged with a criminal offence is presumed innocent until proven guilty.³⁸ Kenyan courts have reiterated the fundamental nature of the presumption of innocence in numerous cases, including *Republic v Nuseiba Mohammed Haji Osman*.³⁹ In this High Court decision, the court emphasized that the strength of evidence supporting a charge should not generally be used to deny bail as it is inconsistent with the principle that an accused person is presumed innocent until proven guilty. This principle was later strongly reaffirmed by the *Court of Appeal in Republic v Nuseiba Mohammed Haji Osman [2018] eKLR*,⁴⁰ where the court held that the right to be presumed innocent is a cornerstone of the criminal justice system that relieves an accused of the burden of proving their own innocence, regardless of the seriousness of the charge. Despite this, Kenya's Judicature Act⁴¹ has provisions that allow for non-bail offenses, specifically for capital offenses and those considered a serious threat to national security. Critics argue that judicial discretion in granting bail has led to disparities in who is granted bail, with vulnerable groups, especially the poor, disproportionately affected.

In South Africa, Section 35(3)(h) of the Constitution guarantees the right to a fair trial, including the presumption of innocence.⁴² The Constitutional Court in *S v. Dlamini (1999)* highlighted that pre-trial detention should be an exception, and Section 60 of the Criminal Procedure Act permits detention without bail for offenses that pose significant risk to public safety.⁴³ However, concerns about pre-trial detention becoming the norm rather than the exception have surfaced, particularly in case law such as *S v. Zuma*,⁴⁴ where the Constitutional Court emphasized that pre-trial detention should be used sparingly and in accordance with individual rights.

Non-Bail Provisions and Pre-Trial Detention

The non-bail provisions in Zambia's proposed amendments are consistent with practices in Kenya and South Africa, where non-bail offenses have been enacted for crimes considered heinous or high-risk. However, these provisions raise significant concerns about pre-trial detention. In Kenya, the introduction of non-bail provisions for certain

³⁸Constitution of Kenya (2010), art 50(2).

³⁹Republic v Nuseiba Mohammed Haji Osman [2016] KEHC 3084 (KLR).

⁴⁰Court of Appeal in Republic v Nuseiba Mohammed Haji Osman [2018] eKLR.

⁴¹Judicature Act, Chapter 8, Laws of Kenya (Act No 19 of 2023).

⁴²Constitution of the Republic of South Africa, 1996, s 35(3)(h).

⁴³Criminal Procedure Act 51 of 1977 (South Africa), s 60.

⁴⁴*The State v Jacob Gedleyihlekisa Zuma* [2006] JPV 2005/0325.

offenses has led to debates regarding due process and the right to liberty. The Kenyan Law Reform Commission (2025) published a report that emphasized alternatives to pre-trial detention, recommending pre-trial diversion programs and community-based sanctions.⁴⁵ Despite this, pre-trial detention remains problematic, particularly for suspects in remand who face delays in trial proceedings.

Similarly, in South Africa, non-bail provisions for serious crimes, such as corruption, human trafficking, and serious violent crimes, have been upheld in the Constitutional Court. *S v. Mogapi* is an unreported case where the Court upheld the principle that non-bail provisions can be justified if there is a genuine risk to public safety or the likelihood of absconding.⁴⁶ Yet, the Court also stressed that such provisions should be coupled with robust judicial oversight to avoid violations of individual human rights, ensuring that pre-trial detention does not become excessively prolonged.

In the United States, the practice of non-bail provisions is most notably seen in the cash bail system, where suspects accused of certain crimes must pay a set amount to be released before trial. This system has been widely criticized for disproportionately affecting low-income individuals, especially in cases involving serious felonies.⁴⁷ Research indicates that while non-bail provisions, such as those upheld in *United States v. Salerno*,⁴⁸ aim to prevent individuals from posing a danger to the community, the implementation of these standards has resulted in systematic inequities that disproportionately affect communities of colour due to subjective risk assessments and socioeconomic disparities. Additionally, pre-trial detention in the U.S. often exceeds international standards, leading to further disparities in access to justice.⁴⁹

In Zambia, while the non-bail provisions in the Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) are framed as a necessary intervention to combat rising crime, they pose a significant threat to constitutional protections⁵⁰. By mandating absolute pre-trial detention for offenses such as the theft of strategic items and stock theft, the Bill risks undermining the presumption of innocence and the right

to personal liberty enshrined in Articles 13 and 18 of the Constitution of Zambia.⁵¹

Historically, the reclassification of offenses as non-bailable in Zambia has been perceived as a strategic tool for political targeting rather than a purely legislative necessity. A prominent example is the amendment making the theft of a motor vehicle non-bailable, a move widely viewed as a targeted strike by the Movement for Multi-Party Democracy (MMD) against opposition leader Michael Sata to ensure his detention.⁵²

In my view, the current push to make stock theft non-bailable appears to reflect a specific agenda of the United Party for National Development (UPND) government; given that their leadership and core support base are largely comprised of livestock farmers, I believe there is a risk that the law is being used to protect narrow sectarian interests at the expense of broader judicial discretion.

Furthermore, the inclusion of offenses like rape and defilement in the non-bailable category is particularly sensitive. While intended to protect vulnerable victims, the removal of bail creates a high risk of “*malicious prosecution*,” where false accusations by bitter and frustrated females can be used to ensure the immediate and prolonged incarceration of an individual without the possibility of a court evaluating the merits of the detention.⁵³ Such provisions disproportionately impact the poor, who lack the legal resources to challenge malicious claims or survive the socio-economic strain of prolonged pre-trial detention.⁵⁴

Customary Law Principles: A Potential Solution to Pre-Trial Detention

The issue of congestion in Zambian prisons and the prolonged delays in the justice system cannot be ignored. A suspect detained without bail may suffer injustice and harms to their constitutional rights if held for long periods before trial, especially given the backlog of cases and inefficiencies in the legal process.⁵⁵ In this context, customary law principles, such as reconciliation,

⁵¹Constitution of Zambia (Amendment) Act No 2 of 2016, arts 13 and 18.

⁵²South African Documentation and Cooperation Centre (SADOCC), ‘Zambian Opposition Leader Arrested and Detained for Theft’ (17 April 2002) <www.sadocc.at> accessed 22 December 2023.

⁵³Open Society Initiative for Southern Africa, ‘Pre-Trial Detention in Zambia: Understanding the Use and Abuse of Detention Before Trial’ (2011) Dullah Omar Institute <acjr.org.za> accessed 23 December 2025.

⁵⁴Amnesty International, ‘Zambia: Rising Impunity and Lack of Accountability’ (AFR 63/6613/2017, 2017) <www.amnesty.org> accessed 22 December 2025.

⁵⁵E Sodala, ‘A Critical Analysis of the Delays in the Dispensation of Justice in Zambia’ (LLB dissertation, University of Zambia 2013).

⁴⁵Kenya Law Reform Commission, ‘Inter-agency Coordination, Oversight of Places of Detention, and Public Awareness’ (2025).

⁴⁶*S v Mogapi* [2017] CA 40/2017.

⁴⁷American Civil Liberties Union of Pennsylvania, ‘Cash Bail Leads to Wealth-Based Detention’ <https://www.aclupa.org> accessed 22 December 2025.

⁴⁸*United States v Salerno* 481 U.S. 739 (1987).

⁴⁹The Bail Project, ‘Freedom Should Be Free’ (The Bail Project, 2026) <https://bailproject.org/> accessed 23 December (stating that “our data, gathered from thousands of bailouts across the country, tells an indisputable and positive story...”).

⁵⁰Criminal Procedure Code (Amendment) Bill (No. 29 of 2025) (n 1).

reintegration, and restorative justice, offer a potential alternative to pre-trial detention, particularly for less serious offenses.

Customary law in Zambia emphasizes community-based approaches to justice, focusing on restorative justice rather than punitive measures. According to Mubanga,⁵⁶ in some offenses especially those where both the victim and offender are willing to participate, these principles can serve as a powerful means of addressing harm while decongesting prisons. By promoting reconciliation, offenders can make amends, and victims can receive restitution without the need for lengthy pre-trial detention.

These customary justice mechanisms, which prioritize dialogue and restoration over imprisonment, could significantly alleviate the strain on the justice system. They could also prevent unnecessary incarceration, where suspects are detained for extended periods without trial, potentially suffering in innocence.⁵⁷ Moreover, such measures could be integrated with formal judicial processes, especially in cases where the accused poses no significant risk to public safety or flight risk.

By drawing on these principles, Zambia could ensure that its criminal justice system remains humane, effective, and balanced—allowing for more serious non-bailable crimes to be handled with the necessary custodial attention, while simultaneously creating space for restorative justice practices that promote community healing and reduce the pressures on detention facilities.

Forensic Procedures and Privacy Rights

The proposed Bill's introduction of forensic procedures—specifically the use of fingerprint and blood test evidence—aligns Zambia with modern investigative practices seen in other jurisdictions. However, such measures pose privacy risks that need careful balancing with individual rights.

Section 55 of the National Police Service Act,⁵⁸ provides for the use of forensic evidence, including DNA testing, to strengthen the criminal justice system. In the *Republic v Samwel Kariuki Mwago*,⁵⁹ Kenya's High Court affirmed that while forensic science—specifically DNA analysis—is vital for modernizing criminal investigations, its application must strictly comply with human rights standards. The court held that the extraction of bodily samples, such as blood,

is an intimate procedure that triggers a suspect's right to privacy and human dignity under Articles 31 and 28 of the Constitution.⁶⁰

While the court ruled that physical sampling does not violate the right against self-incrimination (as it is non-testimonial), it maintained that such procedures require either informed consent or a valid court order to be admissible. Under Sections 122A–D of the Penal Code,⁶¹ the court noted that even though senior police officers may order sampling, it remains a “*justifiable infringement*” of bodily integrity only when it serves a clear interest of justice and follows rigorous legal safeguards.

In South Africa, Section 37 of the Criminal Procedure Act 51 of 1977 (and the subsequent Criminal Law (Forensic Procedures) Amendment Act 37 of 2013)⁶² governs the collection of biometric data, including fingerprints and bodily samples. While the use of these procedures is recognized as a vital tool for the administration of justice, their application is balanced against constitutional rights to privacy and bodily integrity. The High Court in *S v Orrie*⁶³ affirmed that while taking blood samples for DNA profiling infringes on a suspect's right to privacy and bodily integrity, such an intrusion is a justifiable limitation under Section 36 of the Constitution when it is reasonable and necessary for investigating serious crimes. Furthermore, current regulations require that individuals be adequately informed about the process, with specific safeguards such as judicial oversight (e.g., a warrant) required if a suspect refuses to provide a non-intimate sample like a buccal swab.

In the United States, the Fourth Amendment protects individuals from unreasonable searches and seizures. In the landmark case of *Skinner v. Railway Labor Executives' Association*,⁶⁴ the U.S. Supreme Court upheld federal regulations requiring drug and alcohol testing for railroad employees involved in major accidents. The Court reasoned that while such testing is a “*search*,” the government's “*special need*” for public safety in a pervasively regulated industry outweighs the employees' diminished expectation of privacy.

⁵⁶C Mubanga, ‘Can Restorative Justice Be an Alternative Form of Justice to Retributive Justice in the Criminal Justice System in Zambia?’ (Master's thesis, University of Zimbabwe 2016).

⁵⁷T S Metekia, ‘Customary Courts in East Africa: More Than a Means to Lighten Caseloads’ (ISS Africa, 24 October 2024) <www.issafrica.org> accessed 22 December 2025.

⁵⁸National Police Service Act 2011 (Kenya) s 55.

⁵⁹Republic v Samwel Kariuki Mwago [2019] KEHC 4461.

⁶⁰Constitution of Kenya 2010, arts 31 and 28.

⁶¹Penal Code (Kenya), ch XV, ss 122A–122D.

⁶²Criminal Procedure Act 51 of 1977 (South Africa) s 37, as amended by the Criminal Law (Forensic Procedures) Amendment Act 37 of 2013.

⁶³S v Orrie and Another 2005 (1) SACR 63 (C).

⁶⁴Skinner v Railway Labor Executives' Association 489 U.S. 602 (1989).

In criminal investigations, the Court has established specific standards for forensic evidence:

Warrantless Bodily Samples: In *Schmerber v. California*,⁶⁵ the Court held that a warrantless, nonconsensual blood draw from a suspected drunk driver was constitutional under the “*exigent circumstances*” exception, as alcohol would otherwise dissipate from the bloodstream during the delay of obtaining a warrant.

DNA Collection: In *Maryland v. King*,⁶⁶ the Court ruled that taking a DNA sample via a cheek swab from individuals arrested for serious offenses is a reasonable “*booking procedure*,” similar to fingerprinting and photographing.

Self-Incrimination: These physical samples are generally not protected by the Fifth Amendment because they are considered “*real or physical evidence*” rather than “*testimonial*” communication

For Zambia, the proposed forensic procedures need to be carefully aligned with international human rights standards. While they may enhance investigative effectiveness, safeguards to protect individual freedoms and ensure that procedures are voluntary and non-invasive are essential to avoid violations of privacy.⁶⁷

Balancing Crime Prevention and Human Rights

The core of the issue lies in balancing crime prevention with the protection of individual rights. While the Criminal Procedure Code (Amendment) Bill No. 29 of 2025 seeks to deter serious crime, its provisions—particularly the clauses rendering certain offenses non-bailable—have the potential to infringe on the right to a fair trial and due process. In a 2025 memorandum to the National Assembly, the Zambia Law Development Commission cautioned that such absolute denials of bail for offenses like rape, defilement, and the theft of critical assets risk undermining Articles 13 and 18 of the Constitution, which safeguard personal liberty and the presumption of innocence. Furthermore, the Law Association of Zambia has argued that removing judicial discretion to grant bail violates international human rights standards by effectively punishing accused persons before they are convicted, thereby compromising the constitutional mandate of a fair and speedy trial.⁶⁸

As discussed in Kenya, South Africa, and the United States, non-bail provisions have been implemented with varying degrees of success, but all have raised questions about human rights abuses and discriminatory practices.

⁶⁵*Schmerber v California* 384 U.S. 757 (1966).

⁶⁶*Maryland v King* 569 U.S. 435 (2013).

⁶⁷*Law Association of Zambia*, 2025, (n 2).

⁶⁸*Zambia Law Development Commission, ‘Memorandum on the Review of the Criminal Procedure Code (Amendment) Bill, 2025 (N.A.B. No. 29 of 2025)’ (National Assembly of Zambia, 17 November 2025).*

Therefore, Zambia’s proposed amendments must be viewed with caution, particularly regarding the potential for over-incarceration, disproportionate detention of marginalized individuals, and the erosion of the presumption of innocence.

As countries like South Africa have learned from their own criminal justice reforms, Zambia must implement robust judicial oversight and proportionality assessments for pre-trial detention to ensure that the constitutional rights of accused persons are not unduly compromised in the pursuit of crime control. Moreover, customary law principles focused on restorative justice and community reconciliation could serve as a complementary approach to reduce prison congestion, while reserving custodial detention for serious non-bailable offenses.

Conclusion

The Criminal Procedure Code (Amendment) Bill No. 29 of 2025 represents a pivotal, yet controversial, shift in Zambia’s criminal justice landscape. While the Bill aims to deter serious offenses—such as defilement and theft of critical infrastructure—through stringent non-bail provisions and modernized forensic protocols, it risks undermining the presumption of innocence guaranteed under Article 18(2)(a) of the Constitution of Zambia.⁶⁹ As noted by the Zambia Law Development Commission, the removal of judicial discretion in bail applications may result in arbitrary deprivation of liberty, effectively transitioning pre-trial detention from a secondary measure to a punitive tool.⁷⁰

Comparative analyses of Kenya, South Africa, and the United States reveal that such restrictive bail regimes often yield disproportionate impacts on marginalized socio-economic groups. In Kenya, the High Court in *Republic v Samwel Kariuki Mwago*⁷¹ cautioned that while forensic advancements are vital, they must not supersede the right to bodily integrity and informed consent. Similarly, South African jurisprudence, specifically *S v Orrie*,⁷² reinforces that while DNA collection is a justifiable limitation on privacy, it requires rigorous judicial oversight to prevent constitutional overreach. In the United States, the “*special needs*” exception established in *Skinner v. Railway Labor Executives’ Association*⁷³ highlights the delicate balance between public interest and individual privacy, a balance that the current Zambian Bill risks upsetting by mandating non-consensual forensic sampling without robust safeguards.

⁶⁹Constitution of Zambia (Amendment) Act No 2 of 2016, art 18(2)(a).

⁷⁰Zambia Law Development Commission, (n 68).

⁷¹Republic v Samwel Kariuki Mwago, (n 59)

⁷²*S v Orrie and Another*, (n 63).

⁷³*Skinner v Railway Labor Executives’ Association*, (n 64).

Eventually, while the Bill's objectives of deterrence and modernization are commendable, it currently lacks the procedural equilibrium necessary to satisfy Zambia's international human rights obligations. To avoid systemic over-incarceration and the erosion of due process, the legislature must reintroduce judicial oversight and clear consent frameworks for forensic procedures. Only by balancing investigative efficiency with the protection of fundamental freedoms can Zambia achieve a criminal justice system that is both modern and constitutionally sound.

Recommendations

To strengthen the Criminal Procedure Code (Amendment) Bill No. 29 of 2025 while preserving constitutional integrity, the following recommendations are proposed to balance public safety with the fundamental rights enshrined in the Zambian Constitution.

Executive Summary of Recommendations

Preserving Judicial Oversight and Individualized Justice

The Bill should be amended to replace *ipso facto* (automatic) bail denial with a mandatory, expedited judicial review process. This ensures that pre-trial detention is based on a judge's assessment of proportionality, flight risk, and witness interference—consistent with Article 18—rather than rigid legislative categories that lead to arbitrary incarceration.

Establishment of Specialized Fast-Track Courts for Non-Bailable Offenses

To mitigate the risk of “*punishment before conviction*” inherent in the Criminal Procedure Code (Amendment) Bill No. 29 of 2025, the State should establish specialized Fast-Track Courts mandated to adjudicate non-bailable offenses within strict, constitutionally-aligned timelines. These courts would require that trials for offenses such as rape, stock theft, and theft of strategic materials commence within 30 days and conclude within 120 days, ensuring that the deprivation of liberty is not indefinite. Should the prosecution fail to meet these accelerated deadlines, the “non-bailable” status should automatically lapse, restoring judicial discretion to grant bail and thereby upholding the right to a trial within a reasonable time as guaranteed under Article 18(1) of the Constitution of Zambia.⁷⁴

Decentring Incarceration through Restorative Justice

Zambia should formalize the harmonization of customary law and restorative justice principles with the formal criminal system. By utilizing community-based dispute

resolution for less severe offenses, the State can alleviate prison congestion and ensure carceral space is reserved strictly for high-risk offenders, thereby promoting social and economic equity.

Expanding the Legal Definition of Rape to Ensure Universal Protection

The current legal definition of rape must be amended to be gender-neutral. In light of evolving social dynamics and the rise in reported sexual violence against men, the law should recognize that all individuals—regardless of gender or sexual orientation—are entitled to equal protection. A gender-neutral definition ensures that male victims of sexual violence have the same recourse to justice as female victims, upholding the constitutional principle of equality before the law.

Rejecting “Penal Populism” in Favor of Evidence-Based Policy

The Legislature should exercise restraint against “*penal populism*,” where punitive laws are enacted in response to public outcry rather than empirical data.⁷⁵ Legislation that restricts fundamental liberties must meet a high threshold of rationality. To preserve judicial independence, the power to deprive a citizen of liberty must remain a result of objective judicial deliberation rather than a byproduct of reactive political optics.

Postponing Ratification for Inclusive Stakeholder Consultation

Given the profound impact on constitutional rights, immediate ratification of the Bill should be postponed. A transparent national consultation involving legal practitioners, human rights advocates, and marginalized communities is essential to build consensus and ensure the amendments reflect both a commitment to crime deterrence and a respect for international human rights standards.

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