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**RE-EVALUTING SENTENCING IN ABDUCTION LAWS IN ZAMBIA. A
COMPARATIVE STUDY WITH NIGERIA AND SOUTH AFRICA**

BY

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**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN
PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE
BACHELOR OF LAWS (LLB) DEGREE.**

2025

DECLARATION

I declare that this dissertation entitles RE-EVALUTING SENTENCING IN ABDUCTION LAWS IN ZAMBIA. A COMPARATIVE STUDY WITH NIGERIA AND SOUTH AFRICA which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution. I understand what plagiarism entails and I am aware of the university's policy in this regard. Thus, where other people's work is cited, I have duly acknowledged. The errors or omissions in this work are solely mine.



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2025

RECOMMENDATION

I HON MWAMFULI recommend that this dissertation prepared under my supervision by QUEEN DAKA, entitled RE-EVALUATING SENTENCING IN ABDUCTION LAWS IN ZAMBIA. A COMPARATIVE STUDY WITH NIGERIA AND SOUTH AFRICA be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirement pertaining to the format laid down in the regulations directed research.

A handwritten signature in dark ink, appearing to read 'HON MWAMFULI', is written over a horizontal dashed line. The signature is stylized with a large loop at the beginning and a long, sweeping underline that extends to the right.

HON MWAMFULI

ACKNOWLEDGEMENT

First and foremost, I wish to express my heartfelt gratitude to the Lord Almighty, my savior, for his unwavering guidance and strength throughout this entire journey. It is by his grace and favor that I have been able to navigate that challenges of this process, and it is through his strength that I have come this far.

I am deeply indebted to my supervisor, Hon Mwamfuli, whose expertise and unwavering support have been indispensable throughout the process of completing this dissertation. Her profound knowledge in this legal field, coupled with her patience and dedication, has been invaluable. To you, madam, I offer my deepest gratitude and appreciation.

I would also like to extend my sincere thanks to Ms Mwanamwambwa, Ms Chileshe and Ms Mutemwa, who were a constant source of encouragement and assistance during this process. Your support has been crucial, and I am truly grateful for your help.

I am grateful to my parents Mr and Mrs Daka, for their unwavering support, love, and encouragement through the highs and the lows of my academic journey. Your belief in me has been a source of strength and my siblings for their support. Your presence has been a true definition of blessing from God.

My beautiful grandmother Fatness Phiri thank you for always believing me, thank you for the encouragement to complete my education, for the love, prayers and the unwavering support.

To my beloved friends, Oxyilia Ngoma, Bwalya Banda and Sibalwa Mulala I extend my deepest gratitude. Your encouragement, support have played an instrumental role in this achievement, I will forever be grateful.

I would like to thank all my friends and colleagues whose names may not be mentioned here but who in one way or another, have contributed to the successful completion of this dissertation. Your support and kindness be indebted to you.

Lastly, I would like to thank my best friend Mwewa Kasongo for always encouraging me to do my very best in this journey, for your support and kindness I have managed to overcome this beautiful journey. My heartfelt appreciation best friend, your presence has been a true definition of blessing.

Thank you all for your invaluable contribution to my academic journey.

DEDICATION

This dissertation is dedicated to the Lord Almighty, whose guidance, favor and grace have been a constant source of the strength, understanding through out my academic journey. I also dedicate this dissertation to my Lovely, parents, MR Innocent Daka and Mrs. Mary Lukanga Daka and my siblings, Jeremiah Daka, Yvonne Daka, Innocent Daka Junior and Jitha Daka. Their support, love and sacrifices, they made it possible for me to successfully complete my program of study. I am so grateful for each one of you.

TABLE OF CONTENTS

DECLARATION.....	ii
RECOMMENDATION	Error! Bookmark not defined.
ACKNOWLEDGEMENT.....	iv
DEDICATION	vi
TABLE OF CONTENTS.....	vii
ABSTRACT	xii
1.0 INTRODUCTION	1
1.1 BACKGROUND OF THE PROBLEM.....	1
2.0 STATEMENT OF THE PROBLEM.....	2
3.0 OBJECTIVE OF THE STUDY.....	3
4.0 RESEARCH QUESTIONS	3
5.0 SIGNIFICANCE OF THE STUDY	4
6.0 SCOPE OF STUDY.....	4
8.0 LITERATURE REVIEW	4
9.0 RESEARCH METHODOLOGY	8
10.0 OUTLINE OF THE CHAPTERS.....	8
11.0 CONCLUSION.....	9
CHAPTER TWO.....	10
THE LAW ON KIDNAPPING AND ABDUCTION IN ZAMBIA	10
2.1 Introduction	10

2.2 Constitutional Provisions Related to Abduction	10
2.2.1 Article 13 of the Constitution- Protection of right to personal Liberty	11
2.2.2 Article 15 and 16- Protection from inhuman treatment and freedom of movement	11
2.3 Conceptual and Legal Definition of Abduction and Kidnapping in Zambia	12
2.3.1 Abduction from Zambia.....	13
2.3.2 Abduction from Lawful Guardianship	13
2.3.3 Abducting in Order to Murder	14
2.3.4 Kidnapping or Abducting with Intent to Confine	14
2.3.5 Kidnapping or Abducting to Cause Grievous Harm, Slavery, or Sexual Exploitation.....	15
2.3.6 Concealing or Confiding a Kidnapped or Abducted Person.....	15
2.3.7 Kidnapping or Abducting a Child for Theft	16
2.3.8 Related Offences under Chapter XXV	16
2.4. Case law on Abduction	17
2.5. Conclusion	18
CHAPTER THREE.....	20
THE ADEQUACY OF ZAMBIA’S SENTENCING FRAMEWORK FOR ABDUCTION	20
3.1 INTRODUCTION.....	20
3.2 Zambia’s Sentencing Framework.....	21
3.2.1 The Statutory Ceiling and Undifferentiated Severity	21
3.2.2 Internal Sentencing Disparities and the Devaluation of Liberty	22
3.3 Judicial Interpretation and Sentencing Limitations	22
3.3.1 The People v James Bwalya Mulenga and Matthews Sikaonga	22
3.3.2 A Longstanding Structural Feature	23

3.4 The Case for Harsher Penalties	24
3.4.1 Retributive Justice and the Gravity of Harm	24
3.4.2 Internal Sentencing Coherence and Normative Consistency	24
3.4.3 The Legitimacy of the Justice System	25
3.5 Proportionality, Efficacy, and Prudent Discretion	25
3.5.1 The Constitutional Doctrine of Proportionality and Contextual Scarcity.....	26
3.5.2 The Criminological Primacy of Certainty over Severity	26
3.5.3 The Perils of Symbolic Legislation and Erosion of Judicial Discretion	27
3.7 Synthesis.....	27
3.8 Proposed legal and policy reforms.....	27
3.8.1 Arguments for harsher penalties	28
3.8.2 Arguments against Harsher Penalties.....	29
3.8.3 Synthesis.....	30
3.9 Conclusion	30
CHAPTER FOUR.....	31
ZAMBIA’S LEGAL PROVISION AND SENTENCING FRAMEWORK FOR ABDUCTION.....	31
WITH THOSE OF NIGERIA AND SOUTH AFRICA.....	31
4.1 Introduction	31
4.2 Contrasting Legal Frameworks	31
4.2.1 ZAMBIA	32
4.2.2 NIGERIA	32
4.2.3 South Africa	33
4.3 Comparative Sentencing Framework.	33

4.4 Empirical Context of deterrence	35
4.4.1 Nigeria: Crisis Level Prevalence.....	35
4.4.2 South Africa: Endemic Syndicated Crime	35
4.4.3 Zambia: Isolated High Harm Cases	36
4.5 Institutional Capacity and Justice Delivery.....	36
4.5.1 Investigative and Prosecutorial Capacity	36
4.5.2 Victim Support and Witness Protection.....	37
4.6 Jurisprudential Application.....	38
4.6.1 Zambia’s Pathology of Judicial Constraint.....	38
4.6.2 Nigeria’s Severe Statutes and Variable Enforcement.....	38
4.6.3 South Africa’s Structured Escalation for Aggravation	39
4.7 Assessing Effectiveness: The Primacy of Certainty over Severity	39
4.7.2 Justice Delivery and the Victim’s Experience	39
4.7.3 The Perverse Consequences of Draconian Measures	40
4.8 Analytic Lessons for Zambian Legal Reform	40
4.9 Conclusion	41
CHAPTER FIVE.....	43
CONCLUSIONS AND RECOMMENDATIONS.....	43
5.1 INTRODUCTION.....	43
5.2 GENERAL CONCLUSION	43
5.3 SUMMARY OF CHAPTERS	43
CHAPTER ONE.....	43
CHAPTER TWO.....	44

CHAPTER THREE.....	45
CHAPTER FOUR.....	45
5.4 THEORETICAL JUSTIFICATION FOR LAW REFORMS IN ABDUCTION CASES	46
5.5 RECOMMENDATIONS.....	47
BIBLIOGRAPHY	49

ABSTRACT

This dissertation critically analysed Zambia's legal framework on abduction under the Penal Code Cap 87, evaluating its adequacy in deterring offenders and securing justice for victims. It compared Zambia's sentencing framework with those of Nigeria and South Africa to identify lessons for reform. Using a qualitative, comparative legal approach, it examined statutory provisions, case law, and policy reports to determine how punishment scales and judicial discretion affect deterrence and proportionality.

Findings revealed that Zambia's maximum sentence of ten years' imprisonment for aggravated abduction is disproportionately lenient given the seriousness and human rights implications of the offence. Judicial discretion is restricted, leading to sentences that do not reflect the gravity of harm caused. In contrast, Nigeria and South Africa recommend life imprisonment and structured sentencing guidelines that better balance deterrence with justice. While Zambia records fewer abductions, the trend is rising, highlighting the need for reform and update the laws to match modern day crime realities.

The study concluded that Zambia's framework is outdated and insufficiently deterrent. Drawing from comparative insights, it calls for comprehensive legislative reform, enhanced judicial discretion, and stronger institutional capacity to ensure that the criminal justice system effectively protects the constitutional right to liberty and human dignity.

CHAPTER ONE

1.0 INTRODUCTION

The Constitution of Zambia, Chapter 1 of the Laws of Zambia under part III, guarantees various fundamental human rights and freedoms to all individuals. Among these are the protection of personal liberty,¹ protection from slavery² and forced labor and protection against inhuman treatment.³ However, the enjoyment of these rights is seriously threatened and prejudiced by the offences of abduction and kidnapping. The victims of this crime are typically women and children for exploitative and other purposes. Despite it not being a widespread offence in Zambia, it is a crime that has the potential of disrupting not only the lives of the victims but also seriously undermines public safety and impairs the enjoyment of the fundamental liberties enshrined in our Constitution.

Abduction and kidnapping are offences under **Chapter 25 of the Penal Code Act, Chapter 87 of the Laws of Zambia**⁴. However, the legal framework has never been revisited since the enactment of the Penal Code in the colonial era.

It is against the foregoing background that this paper seeks to explore whether the laws on abduction and kidnapping that have not been revisited in the recent past are deficient. If this question is answered in the negative, the research will explore how Zambia can enhance the laws on abduction drawing insights from Nigeria and South Africa. The reason for these two countries is simply that they have undertaken notable legal reforms in this area perhaps on account of the prevalence and gravity of the offence.

1.1 BACKGROUND OF THE PROBLEM

In or around 2022, the nation was shaken by chilling reports of the disappearance of 13 young women and girls under suspicious circumstances. The victims were subsequently rescued, and the perpetrators were apprehended, tried and convicted. The prosecution

¹ Article 13 of Chapter 1 of the Laws of Zambia

² Ibid, Article 14

³ Ibid, Article 15

⁴ Chapter 87 of the laws of Zambia

managed to secure convictions for the perpetrators and life sentences imposed on them. However, the reason why the life sentences were secured was because they were various counts of not only abduction but also rape, aggravated assault with intent to steal, assault, assault occasioning actual bodily harm among others. Had the prosecution elected to only rely on the offence of abduction, it is unlikely that that a sentence of similar severity would have been achieved.

The case has brought to the fore the impacts of abduction and has recast the light on some of the limitations and inefficiencies of our laws. Against this background, the research will consider whether there is need to revisit the laws on abduction in Zambia.

The paper strongly advances the thesis that constant examination of the inefficiencies in the law is a necessary element in the creation of a robust legal system that adequately responds to emerging challenges. Crime is inherently dynamic and therefore, laws must be revisited to ensure that emerging challenges are addressed. This is key for public safety and more so, for the protection of fundamental rights and liberties without which the value of life is compromised.

2.0 STATEMENT OF THE PROBLEM

Abduction has become a growing concern in Zambia, with cases increasingly reported in recent years. **The Penal Code of Zambia chapter 87 of the laws of Zambia** ⁵ prescribes legal provisions and sentencing guidelines for kidnapping and abduction offenses, but questions remain regarding their effectiveness in deterring such crimes. The increasing frequency and evolving nature of these offenses raise concerns about whether the current legal framework is sufficiently responsive to modern criminal trends.

Comparatively, jurisdictions like Nigeria and South Africa have established legal frameworks that prescribe varying and enhanced degrees of punishment based on the severity of the offense, including life imprisonment and the death penalty in some cases. These legal regimes not only impose stricter penalties but also incorporate broader

⁵ Chapter 87 of the laws of Zambia

institutional frameworks, including coordinated law enforcement strategies, victim support systems, and public engagement aimed at prevention and rehabilitation.

In contrast, Zambia's legal approach to abduction appears outdated, with little legislative reform undertaken in recent decades. There is limited clarity in distinguishing between the various types of abduction and kidnapping, for instance, parental, custodial, politically motivated, or economically driven offenses. As a result, both the administration of justice and the deterrence of the crime may be compromised by legislative gaps and lenient sentencing provisions.

This study examines whether Zambia's sentencing framework is sufficiently stringent, whether it aligns with best practices in other jurisdictions, and whether there is a need for legal reform to enhance deterrence and justice for victims. It also considers whether the absence of detailed classifications and proportional sentencing structures within the Zambian Penal Code limits the effectiveness of the legal framework in responding to the complex realities of modern kidnapping and abduction.

3.0 OBJECTIVE OF THE STUDY

1. To examine the legal framework governing abduction in Zambia, including sentencing guidelines, enforcement challenges, and victim protection measures.
2. To evaluate whether Zambia's abduction laws require harsher penalties.
3. To compare Zambia's legal provisions and sentencing framework for abduction with those of Nigeria and South Africa, assessing their effectiveness in deterrence and justice delivery

4.0 RESEARCH QUESTIONS

1. What is the current legal framework governing abduction in Zambia, and what challenges exist in its enforcement and in protecting victims?
2. Do Zambia's abduction laws require harsher penalties?

3. How do Zambia's legal provisions and sentencing guidelines for abduction compare with those in Nigeria and South Africa, and what lessons can be drawn to improve their effectiveness?

5.0 SIGNIFICANCE OF THE STUDY

The significance of this study lies in identifying the shortcomings of the law on kidnapping and abductions as enshrined under **Chapter 25 of the Penal Code**⁶. The study fills a notable gap in the existing literature that examines the efficacy and adequacy of the current laws on kidnapping and abduction in Zambia. The findings and conclusions are particularly relevant for legal reform and will provide a valuable resource to policy and lawmakers. The study will also assist practitioners and organizations that work with victims of these offences and will be a necessary tool in protecting women and children against this heinous crime. The study will also highlight how other jurisdictions are handling the offence and draw on these best practices to advocate for reform in the Zambian laws.

6.0 SCOPE OF STUDY

This study will primarily examine and focus on **Chapter 25 of the Penal Code**⁷ which is the law on kidnapping and abduction in Zambia. It will further analyze case law, reports and other scholarly writings. The study will also draw lessons from Nigerian and South African to identify international best practice and areas for possible reform.

8.0 LITERATURE REVIEW

Abduction and kidnapping, incontrovertibly, are serious offences with potentially grave consequence on the victims and wider society. However, despite the severity of the crime, there is a notable gap in the literature on abduction in Zambia. This gap is so evident insofar that even in the leading textbook on Criminal Law in Zambia by Simon E Kulusika,⁸ the author does not even consider the offences of abduction and kidnapping. The lack of literature in Zambia severely handicaps this study insofar as an analysis of existing

⁶ Chapter 87 of the laws of Zambia

⁷ Chapter 87 of the laws of Zambia

⁸ Simon Kulusika, *'Criminal Law in Zambia: Doctrine Theory and Practice'* (Chirwa Publishers, 2020)

Zambian literature on the subject is concerned. However, at the same time, it offers a justification for this study in that this paper will hopefully, contribute or even be a building block on the literature on abduction in Zambia.

The foregoing limitation notwithstanding, given that the paper draws insight from Nigeria and South Africa, there is a corpus of writing on the subject that will inform this literature review.

According to *Olujobi*⁹he argued that the offence of abduction is a serious scourge that engenders urgent attention. In his view, the offence is perpetrated by weak implementation of laws and inefficiencies in the laws. He also highlighted that poverty and corruption among other factors are some of the causes of the offence. In his work, he concluded that there is need for constant reform of the anti-kidnaping and abduction laws and need for stricter punishments for the perpetrators.

This study will consider the arguments with the writing of *Olujobi* and draws heavily on his conclusions albeit from a Zambian perspective. Although his study focused on the issue of kidnapping in the Nigerian context, his arguments apply to the Zambian context, nonetheless. The paper adopts the argument that abduction and kidnaping are a serious scourge that must be addressed. Part of addressing this problem is reforms in the laws to identify the weak points and areas for reform in a bid to prevent the offence and deterring prospective offenders. Another aspect of *Olujobi*'s work that heavily informs this research is the need for political will as a precursor for combating this crime. Without this indispensable ingredient, efforts at addressing this scourge risk yielding very little. The conclusion of this paper, by no means the panacea to the problem, will however, be an important building block.

Other writers such as *Okorie-Ajah, Nwokeoma and Okpan*¹⁰ share *Olujobi*'s sentiments. However, interestingly, they argue that the underlying socioeconomic and political factors

⁹ *Olujobi, O. (2019). Kidnapping in Nigeria: Causes, consequences and solutions. In S. Akindele & R. B. Balogun (Eds.), Security and insecurity in Nigeria: Challenges and prospects (pp. 129-144). Ibadan: John Archers Publishers.*

¹⁰ *Okorie-Ajah, N., Nwokeoma, C., & Okpan, U. (2019). Kidnapping in Nigeria: Trends, patterns and policy implications. Journal of African Security, 8(2), 112-130.*

also need to be considered. They argue that the failure of political leaders coupled with poverty, unemployment and corruption may be some of the reasons why the offence may be perpetrated. In essence, they argue that once these underlying problems are addressed, the offence or rather its prevalence may be reduced.

On the South African front, Geldenhuys¹¹ seemingly shares similar views when he argues that kidnapping and abduction have become “*a lucrative crime*.” He advances the argument that ordinary people are using it to free themselves from the manacles of poverty caused by deep-seated socioeconomic factors. To this end, the work of both sets of writers vouch for stricter penalties for kidnapping especially for purposes of ransom payments. They, however, also speak to the broader need to arrest the real issue, that is, poverty which drives people to commit the offence.

This study will build on with the authors above on the need for stricter punishment for kidnapping and abduction for purposes of ransom payment. However, as will be shown below, the Penal Code does not expressly provide a specified penalty for kidnaping for ransom payments. To this extent, the writings of these authors are critical in addressing an important aspect of the offence. The study will, therefore, show that there is need for reforms in Zambia.

Another key consideration is the need to address the underlying economic factors that may contribute to this offence. However, it is beyond the scope of this study to examine the offence of abduction and kidnaping from an economic standpoint. It is hoped that other writers will identify this challenge and build up on this.

Mlambo and Niyitunga¹² argue that there is confusion between the offence of kidnaping and abduction. They are of the view that the former typically involves taking someone and holding them without their consent often for financial gain through ransom or extortion.

¹¹ Kotie Geldenhuys, 'Kidnapping Has Become a Lucrative Crime' (2023) 116(4) HomeServe Community-based Safety and Security Magazine https://journals.co.za/doi/abs/10.10520/ejc-servamus_v116_n4_a4 accessed 13 April 2025.

¹² Victor H. Mlambo and Eric Blanco Niyitunga, 'The Rise of Kidnappings in South Africa: Challenges for Law Enforcement' (2024) 8(1) Alinteri Journal of Social Sciences 15-32 <https://doi.org/10.30913/alinterisosbil.1445683> accessed 13 April 2025.

On the other hand, abduction does not typically involve financial gain. They, however, conclude that these, offence go hand in hand and are just as serious and have become a threat to public safety and law enforcement. They further state that the inefficiencies in the law and limited capacity on the part of the police service may aggravate the prevalence of the offence. They conclude that there is need for government to develop efficient legislation and to capacitate the law enforcement agencies to enable them crack complex cases.

Similarly, Bolhus¹³ states that abduction and kidnaping raises concerns about public safety and protection of human rights. In his own words, *“addressing this issue requires a comprehensive approach involving law enforcement agencies, government institutions, community organizations, and international cooperation to prevent kidnappings, prosecute perpetrators, and support victims. Additionally, efforts to address the root causes of kidnapping, such as poverty, inequality, and social instability, are essential for long-term solutions.”*¹⁴

The study aligns with Bolhus’ sentiments and advances the argument that the offence can only be effectively arrested through a multifaceted approach. Therefore, while this study contributes from a law reform perspective, there are factors that need to be addressed beyond this that will assist in curbing the offence.

Another interesting aspect of Bolhus’ writing is that he states that abductions and kidnapping broadly fall in the following categories: express abductions, ransom kidnappings, kidnappings for human trafficking, custodial kidnapping (abduction by non-parents) and politically motivated abductions. He concludes that all these different forms must be adequately addressed and suitable punishments be attached to them in order to curb the offence. To this extent, Bolhuis’ perspective offers an important framework that this study will engage with.

¹³ Mike Bolhuis, 'Kidnappings in South Africa' (2023) <https://mikebolhuis.co.za/popi-act-4-of-2013-section-6-mike-bolhuis/> accessed 13 April 2025.

¹⁴ Ibid, page 1.

Finally, as with the case with the other writers above, Abimbola, Kayode and Olajide¹⁵ are of the view that kidnaping and abduction have serious negative consequence in every society. These offences often result in the commission of further offences that lead to loss of lives, property, and psychological trauma on the victims and other serious impacts on the victims. If left unchecked, the impact can negatively affect the economy and threaten national security. Therefore, countries should strive to make it '*a thing of the past.*' The study echoes their sentiments and views legal reform as a *sine qua non* step in reversing this trend or preventing it.

In conclusion, literature on abduction and kidnapping in Zambia is limited. However, the corpus of literature on the subject from other jurisdictions offers valuable insight into the complexities of the offences. The literature examined above makes a compelling case for investigating whether reform is necessary, stronger frameworks and a holistic approach that addresses the drivers of the offence. The study will build on the above by examining the law on abduction and kidnapping in Zambia and assessing whether there are areas that may require reform.

9.0 RESEARCH METHODOLOGY

The methodology in this research is qualitative. It will adopt a desk research method, involving the analysis of primary data in the form of local and foreign legislation and case law and secondary sources such as journals, textbooks, legal commentaries and reports and various electronic resources.

10.0 OUTLINE OF THE CHAPTERS

Chapter two will provide a comprehensive understanding of the law on abduction and kidnapping in Zambia. Chapter three will identify some of the inefficiencies in the law and examine international best practice. Chapter four will proceed to draw lessons from Nigeria and South Africa. Finally, Chapter five will conclude the study and present the finding, including recommendations based on the analysis.

¹⁵ Rasaq Abimbola Fadipe, John Chukwuewene Uwadia and Olajide Charles Kayode, 'Causes and the Remedies for Curbing the Menace of Kidnapping in Nigeria' (2021) 9 International Journal of Multidisciplinary and Current Research <http://ijmcr.com/wp-content/uploads/2021/04/Paper1200-206.pdf> accessed 13 April 2025.

11.0 CONCLUSION

This chapter has provided a contextual understanding of the research. It has provided the backdrop of the research and has given the problem it addresses. The chapter has also reviewed existing literature on the subject and has thus set a premise and foundation for subsequent chapters.

CHAPTER TWO

THE LAW ON KIDNAPPING AND ABDUCTION IN ZAMBIA

2.1 Introduction

The offence of abduction constitutes a grave violation of fundamental human rights particularly the rights to liberty, dignity, and security of the person. In Zambia, abduction is recognized not only as a serious criminal offence under the **Penal code Act chapter 87 of the Laws of Zambia**¹⁶ but also as a direct affront to the Constitutional guarantees protecting personal liberty and human dignity. This dual recognition underscores the state's obligation to safeguard individuals from unlawful deprivation of freedom. On one hand, the penal code provides a clear structure for prosecuting abductions, ensuring legal certainty and consistency in enforcement. On the other hand, the Maximum penalties are low, and the provisions do not fully capture aggravated forms of the offence or adequately empowers courts to impose proportionate sentences. This chapter therefore examines the constitutional and statutory foundations of the law on abduction in Zambia, analyses judicial interpretations.

This chapter examines the constitutional and statutory framework governing abduction in Zambia and evaluates whether existing penalties adequately deter offenders and protect victims.

2.2 Constitutional Provisions Related to Abduction¹⁷

Prior to examining the provisions in the **Penal Code chapter 87 of the laws of Zambia** establishing the offences of abduction in Zambia, it is important to analyze the constitutional provisions that are related to or form the basis of the offence. This is because, abduction beyond being a criminal offence, constitutes a serious violation of a person's rights as guaranteed in the Constitution. To this extent and perhaps to show the gravity of the offence, it is appropriate to start with an analysis of the rights that are violated by virtue of commission of this offence. As will be seen below, the constitutional rights provide the overarching legal framework for the protection of individuals against

¹⁶ Chapter 87 of the laws of Zambia

¹⁷ Chapter 1 of the Laws of Zambia (amendment) Act No.2 of 2016

unlawful deprivation of liberty and personal security. **The Penal Code chapter 87 of the laws of Zambia** operationalizes these protections by defining the specific conduct that constitutes abduction, prescribing its elements and forms, and setting out the penalties for offenders. In this way, constitutional provisions serve as the normative foundation for criminalizing abduction, while statutory provisions give practical effect to these rights by setting out actionable offences and enforcement mechanisms. Although the constitution guarantees fundamental rights the statutory framework does not provide proportionate punishment for violations arising from abduction.

2.2.1 Article 13 of the Constitution- Protection of right to personal Liberty

Under **Article 13 of the Constitution of Zambia (Amendment) Act No.2 2016**¹⁸, the law protects and guarantees a person's liberty. Derogation from this right is only permissible in very limited circumstances such as execution of a sentence imposed on a person, containing of a contagious disease or to secure an obligation imposed on a person by law. Abduction, by its nature falls outside these permissible grounds and therefore constitutes an unlawful deprivation of liberty. The constitution strongly protects personal liberty justifying the criminalization of abduction. However, the **Zambian Penal code Act chapter 87 of the laws of Zambia**¹⁹ undermines this by imposing relatively light penalties such as maximum of ten years even in serious cases. This creates a tension between constitutional ideals and practical enforcement. Even though **Article 13 of the penal code chapter 87 of the laws of Zambia**²⁰ strongly safeguards liberty, it prescribes a maximum of ten years imprisonment even for aggravated abduction, undermining the constitutional promise of protection.

2.2.2 Article 15 and 16- Protection from inhuman treatment and freedom of movement

Abduction, as will be seen below, has the tendency of subjecting the victims to inhuman and unfavorable treatment. However, under **Article 15 of the Constitution of Zambia**

¹⁸Chapter 1 of the laws of Zambia (amendment) Act No.2 of 2016

¹⁹ Chapter 87 of the laws of Zambia

²⁰ ibid

(Amendment) Act No.2 of 2016²¹, *“no person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment.* “Therefore, abduction, often, will result in the violation of this right, Similarly, the **Constitution of Zambia (Amendments) Act No.2 of 2016**²² protects an individual’s right to freedom of movement except as may be limited by a written law. Therefore, a person must be free to move freely throughout Zambia. Given that abduction involves unlawfully constraining a person as will be examined below, this violates a person’s right to freedom of movement.

2.3 Conceptual and Legal Definition of Abduction and Kidnapping in Zambia

In Zambia, the offence of abduction is contained under **Chapter XXV of the Penal Code chapter 87 of the laws of Zambia**²³. The Chapter sets out different forms of abduction, including abduction of women and girls for sexual purposes, abduction of children, and abduction committed with intent to commit another offence.

Abduction is an offence against a person’s liberty. Under **section 253 of the Penal Code chapter 87 of the laws of Zambia**²⁴, the offence of abduction is committed where *“any person who by force compels, or by any deceitful means, induces, any person to go from any place...”*. Means induces, any person to go from any place is said to abduct that person, this definition was adopted by the Court of Appeal in the case of ***The People v Emma Kainga***.²⁵ The case further shows that the offence of abduction two primary elements:

1. Use of force – compelling the victim to move from one location to another against their will; and
2. Use of deceitful means – inducing the victim to move under false pretenses or misrepresentation.

²¹ Constitution of Zambia (amendment) Act No.2 of 2016

²² Ibid

²³ Ibid

²⁴ Chapter 87 of the laws of Zambia

²⁵ 2018 ZMCA 12

This definition offers a broad framework that captures both physical coercion and psychological manipulation, ensuring comprehensive protection of individual freedom yet it is outdated and overly general as it does not differentiate between minors and aggravated forms of abduction. Never less, **Section 253 of the penal code chapter 87 of the laws of Zambia** ²⁶provides the foundation upon which other more specific abduction offences are built. The lack of distinction between minors and aggravated forms of abduction results in uniform sentencing even where harm differs significantly.

2.3.1 Abduction from Zambia

Section 251 of the Penal code chapter 87 of the laws of Zambia²⁷ criminalizes the Act of conveying a person beyond Zambia's territorial limits without their consent or the consent of a lawful guardian or representative. Although the section itself does not specify a penalty, **section 254 of the penal code chapter 87 of the laws of Zambia**²⁸ applies a general maximum of seven years imprisonment. The law criminalizing taking a person outside Zambia without consent is important for protecting national borders and maintaining jurisdictions over such offences, however the seven years maximum sentences is too low given that cross-border abduction often involves serious crimes.

2.3.2 Abduction from Lawful Guardianship

The second form is provided for under **section 252 of the Penal Code chapter 87 of the law of Zambia**²⁹. Under this section, it is an offence to take or entice a male under the age of fourteen years, a female under the age of sixteen years, or any person of unsound mind, from the lawful custody of their guardian without consent. The law reflects Zambia's recognition of the need to protect vulnerable individuals from manipulation or removal from lawful guardianship. It offers an important safeguard for parental authority and family stability. However, this section maybe viewed as narrow and outdated, as it does not adequately address modern forms of child exploitation, including trafficking,

²⁶ Ibid

²⁷ Ibid

²⁸ ibid

²⁹ Chapter 87 of the laws of Zambia

online grooming or forced labor. The provision's age and gender distinction are obsolete and fail to reflect contemporary child protection standards.

2.3.3 Abducting in Order to Murder

Section 255 of the penal code chapter 87 of the laws of Zambia³⁰ provides that where abduction is carried out with the intent to cause death or to expose the victims to the danger of being murdered, the offender is liable to imprisonment for a term of not exceeding ten years. This provision demonstrates the legislature's intention to treat abduction accompanied by intent to kill as an aggravated offence, distinct from ordinary abduction. It reflects a recognition that intent to murder constitutes a heightened threat to human life and security. The ten-year maximum sentence has attracted significant criticism for being disproportionately low considering the gravity of the offence. The law treats the intent to murder when coupled with abduction far more leniently than the completed act of murder itself, which attracts life imprisonment or even death penalty. This disparity has been described by legal commentators as a sentencing anomaly that undermines the deterrent purpose of criminal punishment and weakens public confidence in the justice system. It is illogical that an attempt to murder combined with abduction attracts only ten years, while murder alone warrants life imprisonment.

2.3.4 Kidnapping or Abducting with Intent to Confine

Section 256 of the penal code chapter 87 of the laws of Zambia³¹ criminalizes abduction where the intent is to secretly and wrongfully confine the victims. The offence carries a maximum sentence of seven years imprisonment. This provision demonstrates the law's recognition that abduction aimed at confinement constitutes a serious violation of personal liberty, it protects individuals from being unlawfully detained or hidden away against their will and it reflects the state's duty to uphold freedom of movement and security of the person. While some legal scholars have criticized the section for being narrow in scope as it focuses solely on the act of confinement without expressly addressing accompanying harms such as prolonged psychological trauma, deprivation of liberty, or associated acts of violence. The maximum sentence of seven years may

³⁰ ibid

³¹ Chapter 87 of the laws of Zambia

also appear inadequate incases involving severe or prolonged confinement potentially weakening the deterrent effect of the provision. Nonetheless, others argue that the offence's structure ensures proportionality within Zambia's sentencing hierarchy, preventing overlap with more serious crimes like abduction or murder.

2.3.5 Kidnapping or Abducting to Cause Grievous Harm, Slavery, or Sexual Exploitation

Section 257 of the penal code chapter 87 of the laws of Zambia 14³² criminalizes abduction where the intention is to subject the victim to grievous harm, slavery, or unnatural sexual acts, or where the perpetrator knows that such harm is likely to occur. This offence attracts a penalty of up to ten years' imprisonment. On one hand, this section reflects the legislature's acknowledgment that abduction accompanied by an intention to cause physical injury, enslavement, or sexual violation constitutes a particularly aggravated offence. It demonstrates a commitment to protecting personal safety, dignity and bodily integrity. And on the other hand, some wording is outdated especially the phrase "unnatural sexual acts" which is unclear and inconsistent with modern legal language. The Maximum of ten years may be too low given the serious and lasting harm caused to victims of slavery or sexual exploitation. However, others believe the set penalty promotes fairness and consistency in Zambia's sentencing system.

2.3.6 Concealing or Confiding a Kidnapped or Abducted Person

Section 258 of the penal code Act chapter 87 of the laws of Zambia³³ provides that any person who knowingly conceals, confines, or assists in harboring an abducted individual is liable to the same punishment as the principal offender. This provision extends criminal liability beyond those who directly commit the act of abduction to those who aid or conceal offenders, thereby addressing the broader network that sustains such crimes.

³² Ibid

³³ Chapter 87 of the laws of Zambia

This approach reflects a deliberate legislative choice to discourage complicity and strengthens deterrence by holding all participants equally accountable. It recognizes that abduction often involves multiple actors who contribute to the continued deprivation of liberty. On the other hand, it's observed that in practice, proving *knowledge* and *intent* in such cases can be difficult, which limits the effectiveness of prosecution. Additionally, because the provision does not distinguish between major and minor participants, it maybe viewed as overly rigid, potentially resulting in disproportionate punishment for individuals with lesser involvement.

2.3.7 Kidnapping or Abducting a Child for Theft

Section 259 of the penal code chapter 87 of the laws of Zambia³⁴ criminalizes abducting a child under fourteen years of age with the intention of dishonestly taking movable property from the child. The maximum penalty is seven years' imprisonment. This provision demonstrates the historical link between offences against the person and the offences against property within Zambia's penal code. It shows that the law seeks to protect children not only from harm to their liberty but also from deceptions or exploitation leading to loss of property, however the framing of the offence reflects an outdated legislative focus on property rather than the protection of children as rights-holders. The emphasis on theft overlooks the inherent harm to a child's dignity, liberty and safety caused by the abduction itself. The seven years maximum penalty may therefore appear inadequate when measured against the vulnerability of child victims and Zambia's constitutional commitment to the protection of minors.

2.3.8 Related Offences under Chapter XXV

In addition to the above, **Chapter XXV of the penal code of the laws of Zambia**³⁵ also addresses related offences which, while not strictly falling under the narrow definition of abduction, similarly protect personal liberty. These include:

1. Wrongful confinement which is punishable by one year's imprisonment or a fine not exceeding six thousand penalty units.

³⁴ *ibid*

³⁵ Chapter 87 of the laws of Zambia

2. Dealing in slaves which is punishable by up to ten years' imprisonment for habitual offenders.

3. Forced labor which is classified as a misdemeanor.

2.4. Case law on Abduction

In the case of *The People v James Bwalya and Matthew Sikaonga*³⁶, the accused were charged with, among other things, the offences of abduction contract to section 256 of the Penal Code. The accused person abducted several women for varying periods with the longest being 200 days. During this period of confinement, the victims were subjected to physical and mental abuse, violent and degrading sexual exploitation, poor nutrition, forced alcohol abuse and sleep deprivation among other heinous acts. The accused persons were charged with over 54 counts of several offences with one of them being abduction. The accused persons pleaded guilty to the offence. When it came to sentencing and specifically, for the offence of abduction, the accused persons were sentenced to imprisonment for a period of 5 years for each count of abduction. In spite of the seriousness of the crime they had committed, the Court could only sentence them to imprisonment for a period of 5 years as the same is the sentence prescribed by law. The Court, however, imposed a longer sentence because of the other counts for the offences of rape, aggravated assault, causing grievous harm and others. Without these other offences, it is probable the Court could only have been able to sentence to a period of ten years as the same is the longest provided under **Chapter XXV of the Penal Code Chapter 87 of the laws of Zambia**³⁷.

What emerges from the foregoing analysis is that, under Zambian law, the offence of abduction is classified as a felony and simultaneously constitutes a direct violation of an individual's fundamental rights and freedoms as guaranteed under the Constitution. As demonstrated, the law recognizes multiple forms in which the offence may be committed, each defined with reference to the specific circumstances. Accordingly, the Penal Code prescribes varying penalties, which generally range from fines to terms of imprisonment

³⁶ HP/87/2023

³⁷ Chapter 87 of the laws of Zambia

of between five and seven years, with the most severe punishment being a maximum of ten years' imprisonment. This maximum penalty applies in aggravated cases, such as where abduction or kidnapping is committed with the intent to murder, to cause grievous harm, or to subject the victim to slavery or sexual exploitation. It is salient that, despite the seriousness of abduction as a criminal offence and as a violation of a person's rights as guaranteed under the Constitution, the law does not permit the imposition of a penalty more than ten years' imprisonment for the offence. It does not leave room for the imposition of a more several prison term where the circumstances of the case warrant this being the case. In this sense, the "hands of the court" are tied where the facts of a case may suggest the need for a harsher punishment, particularly in instances of extreme violence or prolonged victim suffering. For example, assuming that in the ***the People v James Bwalya***³⁸ case cited above, the victims were only abducted and kept for the period in excess of 200 days as was the case and no other offences were committed, it can be argued that the court would have only been able to impose a sentence for a period of 10 years even though the offence is heinous. From a sentencing perspective, it may therefore be argued that for a more severe penalty to be lawfully imposed, the act of abduction must be prosecuted in conjunction with other offences, such as murder, aggravated assault, rape, or trafficking in persons, which carry higher maximum sentences, including life imprisonment. The law, therefore, treats abduction primarily as an offence against liberty, escalating the punishment only when the conduct merges with other serious crimes that cause additional and irreparable harm.

2.5. Conclusion

This chapter has examined the Zambia's constitutional and statutory framework governing the offence of abduction in Zambia, showing that the law is firmly grounded in the protection of personal liberty, dignity and security. While the penal code clearly defines various forms of abduction, its penalties remain relatively low and, in some cases, outdated in language and scope. Nevertheless, the framework provides an important legal foundation for addressing violations of personal freedom. The overall

³⁸ HP/87/2023

effectiveness of these provisions, however, depends largely on how they are interpreted and enforced in practice.

CHAPTER THREE

THE ADEQUACY OF ZAMBIA'S SENTENCING FRAMEWORK FOR ABDUCTION

3.1 INTRODUCTION

The right that someone should have to personal freedom, inscribed in **Article 13 of the Constitution of Zambia**³⁹, is not just a legal provision but a cornerstone upon which the structure of a democratic society is built. It represents the unbreakable space of individual autonomy and security from arbitrary state or private power. The offence of abduction constitutes one of the most direct and outrageous assaults on this right, constituting the complete suppression of an individual's will and the infliction of imaginable and often lasting physical and psychological trauma. While **Chapter 87 of the Zambian Penal Code Act**⁴⁰ explicitly criminalizes these acts, this chapter undertakes a critical evaluation of whether the existing sentencing framework, characterized by a maximum penalty of ten years' imprisonment even for aggravated offences is fundamentally adequate to deliver justice for victims and effectively deter potential offenders in the modern-day Zambian set up.

The major proposition of this chapter is that Zambia's sentencing framework for abduction is caught in a fundamental and unresolved tension. On one hand, it can be robustly defended as a proportionate, prudent, and constitutionally sound response to the offences empirically demonstrated low prevalence, in so doing upholding the cherished principle of judicial discretion and avoiding the pitfalls of punitive overreach. On the other hand, it stands accused of being systemically inadequate and rigid, failing catastrophically to reflect the gravity of the harm in exceptionally aggravated cases and creating illogical, unsustainable disparities within the framework of the Zambian penal system itself. This chapter will discuss this tension by clearly examining the domestic legal provisions, analyzing pivotal Zambian jurisprudence, and weighing competing philosophical and criminological principles. The aim is to provide a detailed, evidence-

³⁹ Constitution of Zambia (Amendment) Act NO.2 of 2016

⁴⁰ Chapter 87 of the laws of Zambia

based analysis to the question: Do Zambia's kidnapping laws require harsher penalties to enhance deterrence and justice for victims?

This chapter critically assesses whether Zambia's sentencing regime provides adequate deterrence, proportionality and judicial discretion in cases of abduction.

3.2 Zambia's Sentencing Framework

The legal foundation for addressing offences of abduction in Zambia is established under **Section 251 to Section 259 of the Penal Code Act, Cap 87**.⁴¹ These provisions cover a wide range of acts, including abduction from Zambia, abduction from lawful guardianship, and abduction with specific intents, such as to confine, murder, enslave, or cause grievous harm. A critical examination of this structure reveals several inherent limitations that form the basis of the critique against its adequacy.

3.2.1 The Statutory Ceiling and Undifferentiated Severity

One of the most significant limitations is the uniform statutory ceiling of ten years' imprisonment, which applies across a wide spectrum of criminal conduct. This undifferentiated approach constitutes a profound legislative flaw. The framework fails to legally distinguish between, for instance, a non-custodial parent who, in a moment of misguided desperation, takes a child contrary to a court order, and a criminal syndicate that abducts an individual for ransom, subjecting them to weeks of torture and threats. The law treats these vastly different moral occurrences, with their divergent levels of culpability, motivation, and societal harm as jurisprudential equivalents for sentencing purposes.

This one size fits all model ignores the fundamental sentencing principle that the punishment must be proportionate not only to the crime category but to the specific circumstances of its commission.⁴² As leading Zambian legal scholar L. Mwansa argues, a rational sentencing regime must account for the gravity of the offence, the manner of its commission, and the motivation of the offender.⁴³ **The Penal Code chapter**

⁴¹ Chapter 87 of the laws of Zambia

⁴² Andrew von Hirsch, *Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals*.

⁴³ L. Mwansa, *Criminal Law in Zambia: Cases and Material* (UNZA Press 2015).

87 of the laws of Zambia, section 294 approach to abduction ignores this fundamental principle, resulting in a system that is, by design, incapable of delivering finely tuned justice.

3.2.2 Internal Sentencing Disparities and the Devaluation of Liberty

The framework's inadequacy is further highlighted by comparing it to penalties for other serious offences within the same Zambian Penal Code. A blunt and illogical disparity emerges. The offence of aggravated robbery, under section 294, carries a mandatory minimum sentence of fifteen years and a maximum of life imprisonment.⁴⁴ Similarly, the Anti-Human Trafficking Act No. 11 of 2008 prescribes life imprisonment for trafficking offences.⁴⁵

This creates a perverse legal hierarchy. The initial act of rendering a person utterly defenseless, of destroying their autonomy and liberty, which is a supreme constitutional value is systematically punished less severely than the subsequent theft of their property or the subsequent exploitation of their person. The law, in effect, communicates that the complete suppression of an individual's will is a lesser wrong than the violation of their property rights. This is a philosophical and normative contradiction that is difficult to reconcile with the constitutional primacy of personal liberty under Article 13. It suggests a legislative blind spot where the foundational violation of abduction is systematically undervalued.

3.3 Judicial Interpretation and Sentencing Limitations

The theoretical limitations of the sentencing framework are given concrete, human form in the jurisprudence of Zambian courts. Reported cases consistently illustrate a judiciary operating within, and often visibly straining against, the rigid statutory ceiling, particularly in cases of extreme aggravation.

3.3.1 The People v James Bwalya Mulenga and Matthews Sikaonga

⁴⁴ Chapter 87 of the laws of Zambia

⁴⁵ Anti-Human Trafficking Act No 11 of 2008 (Zambia), s 13.

The case of **The People v James Bwalya Mulenga and Matthews Sikaonga (HP/87/2023)**⁴⁶ serves as the definitive exemplar of statutory constraint. The facts, as meticulously detailed in the sentencing judgment, are disturbing, the convicts abducted 13 women and subjected them to a prolonged nightmare of up to 200 days of captivity, during which they endured regular physical assault, violent sexual exploitation, torture, and imaginable psychological torment.

In his judgment, Justice Kafunda meticulously outlined the “high levels of cruelty and callousness,” the “severe trauma inflicted on the victims,” and the clear aggravating circumstances. He concluded that “public interest requires that a commensurate sentence must be handed to the person who commits an offence with aggravating circumstances, which entails the imposition of stiff punishment. Yet, despite this unequivocal recognition of the heinous nature of the overall criminal enterprise, the sentences for the foundational counts of abduction themselves were limited to five years each, as prescribed by law. This outcome creates a jarring jurisprudential dissonance; the legal system recognizes the extreme depravity of the conduct but is statutorily prohibited from imposing a punishment for the abduction that mirrors its true gravity. The offence of abduction was treated not as a grave harm, but as a mere preliminary step, its punitive value artificially capped. This case proves conclusively that Zambia’s framework lacks a necessary “safety valve” for exceptional depravity.

3.3.2 A Longstanding Structural Feature

The judicial constraint evident in modern day cases is not a recent anomaly but a longstanding structural feature of Zambian criminal law. This rigidity is demonstrated through a jurisprudential heredity spanning through decades. The case **of Kamene v The People (1966)**,⁴⁷ from the Court of Appeal, established early principles for interpreting the intent required for abduction. Similarly, in Judgment **Silomba (2008)**,⁴⁸ the Supreme Court dealt with the abduction of a child and acknowledged the vulnerability of such victims. While these judgments refined the elements of the offence, the

⁴⁶ HP/87/2023.

⁴⁷ [1966] ZR 154 (CA).

⁴⁸ (SCZ, 2008).

sentencing outcomes in both were ultimately dictated by the same legislative boundaries that existed in the 1960s. This unbroken chain of constrained judgments reveals a penal code anachronistically disconnected from modern understandings of trauma, the lived experiences of victims, and the constitutional valuation of liberty.

3.4 The Case for Harsher Penalties

Proponents of a more rigorous sentencing system contend that the current framework is philosophically inconsistent, constitutionally underwhelming, and practically ineffective. Their argument rests on several interconnected pillars.

3.4.1 Retributive Justice and the Gravity of Harm

Beyond utilitarian deterrence theory, the principle of retributive justice, or “just deserts,” demands that punishment must be proportionate to the moral blameworthiness of the offence.⁴⁹ Legal philosophers like Andrew von Hirsch argue that a cardinal purpose of sentencing is to censure criminal conduct, and the severity of this censure must be corresponding with the harm caused.⁵⁰

Abduction inflicts an imaginable and multifaceted harm that extends beyond the immediate physical confinement the victim experiences. It constitutes the complete destruction of personal autonomy, the infliction of severe and often permanent psychological trauma in this regard including Post Traumatic Stress Disorder, and the negation of the victim’s fundamental dignity. From this perspective, a maximum of ten years’ imprisonment, even for prolonged, violent, and torturous abductions like that in the Mulenga and Sikaonga case, fails to provide the necessary moral accounting. It systematically undervalues the wrongfulness of utterly subjugating another human being, sending a message that the violation of personal liberty is a secondary concern in the Zambian hierarchy of legal values.

3.4.2 Internal Sentencing Coherence and Normative Consistency

⁴⁹ Andrew von Hirsch, *Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals*.

⁵⁰ Ibid

A morally defensible and coherent penal system requires a logical and consistent hierarchy of offences where punishments reflect the relative seriousness of crimes, as perceived by both the constitution and society. The current framework, as previously illustrated, creates an unsustainable sentencing disparity with aggravated robbery and human trafficking. This is not merely an academic observation; it undermines the normative consistency of the entire legal system.

Reforming abduction sentences is therefore necessary to restore logical coherence and proportionality within the Zambian penal code. It would align the punishment for violating personal liberty with the constitutional stature of that right, ensuring that the law's internal logic reflects its supreme law's values.

3.4.3 The Legitimacy of the Justice System

The law serves a crucial expressive function as it communicates society's values and its collective condemnation of wrongdoing.⁵¹ High profile, heinous cases like Mulenga and Sikaonga generate legitimate public outrage and erode the social fabric. When the legal system's response is perceived as disproportionately weak due to statutory "handcuffs," it risks significantly eroding public confidence in the judiciary's ability to deliver true justice.

This is not about yielding to mob sentiment but about ensuring that the law's expressive function aligns with the community's legitimate sense of justice in the most outrageous cases. For victims and their families, a sentence that is perceived as lenient can constitute a form of secondary victimization, compounding their trauma by suggesting that their ordeal is not taken with the utmost seriousness by the state. A sentencing framework that allows for life imprisonment in such extreme circumstances is, therefore, essential to maintain the moral authority, social legitimacy, and therapeutic function of the criminal justice system.

3.5 Proportionality, Efficacy, and Prudent Discretion

⁵¹ Joel Feinberg, *The Expressive Function of Punishment* (1965) 49 *the Monist* 397.

Opponents of punitive escalation contend that such a move would be a misguided, constitutionally suspect, and empirically unsupported overreaction. Their position is not a defense of abduction, but a defense of rational, evidence based penal policy rooted in core legal principles.

3.5.1 The Constitutional Doctrine of Proportionality and Contextual Scarcity

To begin with, the principle of proportionality is a cornerstone of constitutional criminal law, requiring that a punishment must not be excessive in relation to the gravity of the offence and the culpability of the offender. Most importantly, proportionality must also be informed by context. Imposing sentences calibrated for a national crisis, like Nigeria's death penalty onto Zambia's demographic reality of isolated, primarily domestic incidents would likely violate this principle.

The South African Constitutional Court, in the landmark case of *S v Dodo*⁵², explicitly held that a punishment that is "grossly disproportionate" to the offence constitutes cruel, inhuman, or degrading punishment. The argument here is that while abduction is always a serious offence, automatically applying the state's most severe sanctions in a low prevalence context, especially for a broad and undifferentiated range of conduct, risks becoming grossly disproportionate and therefore constitutionally untenable. The Zambia Law Development Commission has similarly emphasized that sentencing must be context sensitive to suit the demographic it is meant to guide.

3.5.2 The Criminological Primacy of Certainty over Severity

A wealth of criminal justice research consistently demonstrates that the certainty of apprehension and conviction is a far more powerful deterrent to crime than the severity of the punishment.⁵³ Foundational work by scholar Daniel S. Nagin confirms that while severity has a marginal effect, it is the perceived certainty of being caught and punished that most significantly influences criminal decision making.

Zambia's primary challenge, therefore, may not be overly lenient sentences for the few abductors who are convicted, but the likelihood that many perpetrators are never

⁵² 2001 (3) SA 382 (CC)

⁵³ Daniel S. Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 Crime and Justice 199.

identified, arrested, or successfully prosecuted. Investing vast political and financial capital into increasing already substantial prison terms, while investigative and forensic capacities remain under resourced, is a potential misallocation of effort. Enhancing police forensic capabilities, witness protection programs, and prosecutorial effectiveness would yield a greater public safety return by increasing the certainty of punishment, thereby providing a more effective and rational deterrent.

3.5.3 The Perils of Symbolic Legislation and Erosion of Judicial Discretion

Legislating in reaction to isolated, high profile horrors, rather than to systematic crime trends, time and again produces what legal scholars' term "symbolic legislation" laws designed to express moral outrage rather than to solve a practical problem. Adopting draconian sentencing models from high prevalence jurisdictions would be a form of "copy paste legislation" that ignores Zambia's fundamental contextual differences.

Furthermore, extremely high mandatory minimums strip judges of the discretion needed to deliver individualized justice. They prevent the judiciary from distinguishing between the kingpin of a kidnapping syndicate and a coerced accomplice, or between a protracted ransom abduction and a short-lived domestic dispute. This erosion of discretion can lead to unjust outcomes, increase trial backlogs as accused persons are less likely to plead guilty, and potentially even escalate violence, as perpetrators facing a life sentence regardless may reason they have nothing to lose by killing their victim to eliminate a witness.

3.7 Synthesis

This critical analysis reveals that the question of the adequacy of Zambia's sentencing framework for abduction is not a simple binary but a complex interplay of competing, and often equally valid, principles. The debate suggests proportionality to prevalence and offender culpability against proportionality to harm and constitutional value. There is structural tension in its sentencing framework, while proportionate to prevalence, it is occasionally misaligned with the gravity of exceptional cases.

3.8 Proposed legal and policy reforms

The discussion in the previous section has shown that Zambia's current sentencing framework for abduction has both moral and practical weakness, whether the law should impose harsher penalties or maintain the existing approach is not an easy question. It raises constitutional, social and criminological concerns that need careful thoughts. This section looks at both sides of debate the arguments for and against increasing penalties under the Penal code.

3.8.1 Arguments for harsher penalties

1. Proportionality to the Gravity of Harm

Abduction is one of the most serious attacks on the constitutional right to liberty under **article 13 of the constitution of the laws of Zambia**⁵⁴. In aggravated cases, victims experience long periods of captivity, sexual assault and serious emotional trauma. Limiting the punishment does not reflect the seriousness of such harm, increasing the sentence especially for aggravated abduction would make the punishment better match the offence and affirm the constitutional importance.

2. Restoring Sentencing Consistency

Compared to other serious crimes, the sentence for abduction is clearly out of line. For instance, aggravated robbery as discussed earlier carries a minimum of fifteen years and human trafficking can attract life imprisonment. By contrast, abduction which also destroys a person's autonomy only carries ten years raising the sentence would therefore make the legal system more logical and intentionally consistent.

3. Recognizing Victims' Suffering

Stronger penalties can also play a symbolic and restorative role, they acknowledge the depth suffering of victims, and the law system takes their pain and suffering seriously. Measures like allowing victims impact statements could make sentencing more victims centered and that can make victims feel heard.

4. Improving Deterrence and Public Confidence

⁵⁴ Constitution of Zambia (Amendment) Act No.2 of 2016

Harsher penalties could send a very clear and strong public message the Law treats abduction as a serious violation of human dignity; it would also help rebuild public trust in the justice system especially after high profile cases like ***the people Vs Mulenga and Sikaonga***⁵⁵ where many people felt the sentencing were too lenient given the cruelty involved.

3.8.2 Arguments against Harsher Penalties

1. The Principle of Proportionality

According to the doctrine of proportionality punishment should not be more severe than what is fair in relation to the offence or the offender's blameworthiness, making all abduction offences carry heavier penalties could result in unfair sentencing, especially in cases that involve family disputes or emotional motives rather than organized crimes. As the South African Case of **S v Dodo**⁵⁶ remind us a punishment that "shocks the sense of humanity" is unconstitutional.

2. Risk of Limited Judicial Discretion

If Parliament sets very high or mandatory sentences, judges will have less room to consider each case's circumstances, this will reduce their ability to give fair judgment which is one of the strengths of Zambia's justice system. Lesser offenders might end up receiving the same punishment as hardened criminals.

3. Questionable Deterrent Effect

Studies in criminology such as those by Daniel Nagin⁵⁷, show that it is not the severity of punishment that deters people most but the certainty of being caught. Zambia's main challenge is not necessarily that sentences are too low but that many offenders are never identified or prosecuted. Without improving law enforcement and prosecution, increasing penalties may not actually reduce crime.

4. Danger of Symbolic Legislation

⁵⁵ (HP/87/2023, High court of Zambia ,2023)

⁵⁶ 2001 (3) SA 382(CC)

⁵⁷ Daniel Nagin

Sometimes laws are changed mainly to respond to public outrage than to solve real problems. This kind of symbolic legislation can make it look like something is being solved when the root cause remains unaddressed, unless Zambia also improves police capacity, forensic investigations and victim support system, simply increasing sentences may have little effect in practice.

3.8.3 Synthesis

The question of whether Zambia should introduce harsher penalties for abduction is therefore not straightforward it requires balancing justice with fairness and deterrence with proportionality. The arguments in favor of reforms stress moral accountability and the need to reflect the seriousness of harm while those against highlight constitutional limits and practical challenges.

3.9 Conclusion

In conclusion, Zambia's current sentencing framework is contextually rational but structurally inadequate. It is contextually rational because it aligns with the offence's demonstrably low prevalence, protects against punitive and disproportionate overreach, and preserves vital judicial discretion for many cases. Therefore, this a constitutionally cautious and pragmatically justified approach.

However, it is structurally inadequate because its inherent rigidity prevents the judiciary from delivering truly proportionate justice in the rare but devastating cases that represent the most severe violations of the constitutional right to liberty. The Mulenga and Sikaonga case is not an outlier to be dismissed, but a critical stress test that the current law fails catastrophically. It demonstrates that the framework's core deficiency is its inability to scale its response to the highest levels of criminal depravity, as a result undermining both retributive justice and societal confidence. Therefore, while the need for harsher penalties is not universal, the capacity of the legal system to impose them in the most aggravated cases is essential. The identified rigidity creates a compelling need to explore more complicated, detailed legislative models that can reconcile these competing demands.

CHAPTER FOUR

ZAMBIA'S LEGAL PROVISION AND SENTENCING FRAMEWORK FOR ABDUCTION WITH THOSE OF NIGERIA AND SOUTH AFRICA.

4.1 Introduction

Building on the critical finding from Chapter Three that Zambia's approach to punishing abductors is sensible in theory but broken in practice. It works well enough for the average case but falls bitterly short when faced with true depravity. This is not just an academic concern; it's a failure that echoes in the voices of the victims who feel the law has not truly seen their suffering. This chapter dives deep into a systematic comparative analysis to explore how other jurisdictions have designed their laws to confront this grave offence. By placing our domestic sentencing framework side by side with those of Nigeria and South Africa, by comparing Zambia's legal provisions and sentencing framework with those of Nigeria and South Africa, assessing their relative effectiveness in delivering deterrence and justice for victims, we go on a journey that is as much about philosophy as it is about punishment and this approach is both analytic and empirical rather than prescriptive. The aim is not just about comparing statutes; it is about contrasting national traumas and the radical legal surgeries they provoked.

This comparison focuses on legislative structure, penalties ranges, child specific protections and sentencing discretion to draw reforms lessons for Zambia.

The selection of Nigeria and South Africa is deliberate and instructive. Both nations have enacted robust, recent legislative and jurisprudential responses driven by significant surges in abduction incidences, offering practical models of legal adaptation to a severe threat. Nigeria exemplifies a crisis driven model of draconian severity, while South Africa represents a sophisticated, aggravation-based approach. Contrasting these with Zambia's historically lower incidence and moderate statutory ceiling allows for a critical assessment of whether sentencing severity, statutory design, or institutional capacity is the primary determinant of effectiveness in deterrence and justice delivery.

4.2 Contrasting Legal Frameworks

4.2.1 ZAMBIA

Zambia's substantive law on abduction is embedded in **Chapter 25 of the Penal Code Act, Cap 87 Section 251 to Section 259**.⁵⁸ These provisions in the penal code criminalize a wide array of acts, including from Zambia, abduction from lawful guardianship, and abduction with intent to confine, murder, or sexually exploit or abuse. A fundamental feature of this framework is its uniform statutory ceiling, the maximum penalty for even the most aggravated forms of these offences is generally ten years imprisonment.⁵⁹ This indistinguishable approach has remained largely unchanged for a number of decades, establishing a framework that prioritizes broad judicial discretion and proportionality to the country's low crime prevalence, but which lacks the tools to respond to exceptionally heinous cases.

4.2.2 NIGERIA

To understand Nigeria's legal response to abduction is to witness a nation legislating with its back against the wall. The framework is diverse and fragmented, a natural consequence of a federal system grappling with a crisis that varies in intensity from state to state. While the **federal Criminal Code** contains abduction offences with already heavy penalties, the most telling and drastic responses have been adopted at the state level, particularly in the regions most ravaged by kidnap epidemics.⁶⁰

Here, the law has shed any pretense of proportionality. In Rivers State, the **Kidnapping Prohibition Law No. 6 of 2015** presents a blunt ultimatum, the death penalty for convicted abductors. Neighboring Lagos State, a commercial hub also in the crosshairs of criminal syndicates, mandates life imprisonment.⁶¹ This isn't merely a difference in sentencing, it's a fundamental philosophical shift. These laws are not designed for detailed graduated justice but for societal survival, reflecting a policy of severe, crisis driven deterrence born of desperation to curb the offense.

⁵⁸ Penal Code Act, Cap 87 of the Laws of Zambia, ss 251-259

⁵⁹ Ibid

⁶⁰ Criminal Code Act (Nigeria), s 364.

⁶¹ Rivers State Kidnapping (Prohibition) Law No 6 of 2015; Lagos State Anti-Kidnapping Law

This legislative trend, further reinforced by recent amendments that criminalize ransom payments to strangle the financial lifeblood of these criminal syndicates, reveals a state deploying its ultimate punitive power as a weapon of first resort. The very diversity of these draconian responses across Nigeria's federating units, from death sentences to life behind bars is itself the clearest possible testimony to the scale of a national emergency that conventional penalties have failed to contain.

4.2.3 South Africa

South Africa's legal response is a comprehensive hybrid, blending its common law foundations with a modern, structured statutory framework. While the offence of abduction itself is rooted in common law, the **Criminal Law Amendment Act 105 of 1997**⁶² dictates a precise framework of mandatory minimum sentences that activate in the presence of specified aggravating circumstances. These laws classify abduction related conduct into specific categories such as trafficking, child abduction and sexual exploitation each carrying distinct penalties. This model is not a blunt instrument; it is a calibrated one. It mandates a sentence of life imprisonment when the abduction involves factors that exponentially increase its harm and societal terror, such as the victim being a woman, child, or elderly person, the use of a firearm, organized criminal activity, or the intent to inflict grievous bodily harm.⁶³ Unlike Zambia, South Africa law links punishment to both motive and harm allowing courts to impose proportionate sentencing.

The result is a deliberately differentiated, aggravation sensitive system. This is its core mastermind; it does not uniformly raise all sentences but strategically reserves the state's most severe sanctions for the most severe manifestations of the crime. In doing so, it forges a careful balance between the demands of retribution and the constitutional imperative of proportionality, ensuring that the punishment is not only severe but also precisely scaled to the wrong.

4.3 Comparative Sentencing Framework.

⁶² Criminal law amendment act 105 of 1997(south Africa)

⁶³ Ibid

A critical evaluation of these jurisdictions reveals three distinct design philosophies in sentencing policy.

- **Zambia’s Flat Ceiling:** This model imposes a uniform maximum sentence across a wide range of abduction contexts. Its primary virtue lies in safeguarding against disproportionate punishment in a low prevalence environment, upholding a principle of restrained state power. However, its corresponding vice is a fatal rigidity that prevents the judiciary from aligning sentences with the deep moral gravity of extreme cases, a flaw plainly illustrated in the **Mulenga and Sikaonga case**.⁶⁴ The law, in essence, is principled but powerless in the face of exceptional depravity.
- **Nigeria’s Draconian Penalties:** In direct contrast, this model employs the death penalty or mandatory life imprisonment as a blunt instrument of state policy in response to a perceived national security crisis. Its philosophy is unapologetically rooted in retribution and societal denunciation, prioritizing a plain deterrent message above all else, often at the expense of judicial discretion. Yet, its effectiveness is critically mediated by weak enforcement capacity and can produce perverse consequences, including the increased risk of witness intimidation and the escalation of violence against victims.
- **South Africa’s Aggravation Sensitive Minimums:** This model represents a more sophisticated calibration of justice. It preserves proportionality in ordinary cases but triggers dramatically heightened penalties through a structured framework of enumerated aggravating factors. This approach strategically empowers prosecutors and provides guided discretion to judges, ensuring that the ultimate punishment is precisely scaled to the harm inflicted, the offender’s culpability, and the specific threat posed to society.

The fundamental policy judgment underlying each model is laid bare by this comparison. Zambia chooses moderation due to its crime profile, Nigeria chooses severity driven by

⁶⁴ The People v James Bwalya Mulenga and Matthews Sikaonga HP/87/2023

crisis, and South Africa chooses proportionality as a necessary response to a complex, syndicated criminal landscape.

4.4 Empirical Context of deterrence

Sentencing frameworks are not drafted in abstract legal theory, they are forged in the fire of real-world crime. The dramatic differences in how Zambia, Nigeria, and South Africa punish abductors make perfect sense once you look at the crime sheets of each nation. Their laws are a direct, and almost inevitable, reaction to the threats they actually face.

4.4.1 Nigeria: Crisis Level Prevalence

The numbers emerging from Nigeria are not just statistics, they are evidence of a national emergency. Independent security reports paint a picture of a country under siege. According to **SBM Intelligence**⁶⁵, Nigeria witnessed a staggering 735 mass abductions⁶⁶ incidents involving five or more victims in the past 4 years, with over 15,398 people directly affected. This isn't sporadic crime; it's a systematic industry. When annual totals consistently run into the thousands and include brazen mass abductions of school children, the political and public pressure for a drastic response becomes overwhelming.⁶⁷ The harsh reality of pervasive, organized abduct for ransom rings doesn't just contextually explain the turn to draconian penalties, it practically demands it from a government seen as needing to reclaim control.

4.4.2 South Africa: Endemic Syndicated Crime

In South Africa, the abduction situation is a different kind of challenge, not a single crisis, but an entrenched epidemic of syndicated crime. Official South African Police Service data shows cases exponentially surging upward, with abductions soaring by 264% over a ten-year period.⁶⁸ The numbers being looked at are thousands of reported cases each year, a volume driven by sophisticated criminal networks for whom abduction is just another revenue stream, intertwined with hijackings and armed robbery. This environment of professional, profit driven criminality makes a one size fits all sentencing

⁶⁵ SBM intelligence(NIGERIA)

⁶⁶ 735 mass abduction

⁶⁷ ibid

⁶⁸ South African Police Service (SAPS), Annual Crime Report 2022/2023.

law useless. It forces a legal system to evolve, to develop a more intelligent model that can tell the difference between a domestic dispute that turns into a brief unlawful confinement and a planned, violent abduction by an organized gang. The aggravation-based model is, therefore, a practical necessity, a tool for targeting resources and maximum punishment where the threat to society is greatest.

4.4.3 Zambia: Isolated High Harm Cases

Zambia's reality stands in sharp contrast to the other two. Here, the official picture is one of a low incidence crime. Police reports and ministerial statements consistently point to fewer than 40 recorded incidents per year, most of which are rooted in domestic or interpersonal conflicts, not the operations of criminal syndicates.⁶⁹ The **Mulenga and Sikaonga** case was, from a statistical standpoint, a shocking anomaly. This low crime rate provides a solid, evidence-based foundation for maintaining a moderate sentencing ceiling, and it is a rationally defensible policy. However, this very statistical comfort exposes a deep vulnerability in the legal framework. The system is designed for the norm, leaving it dangerously unprepared for the exception. It demonstrates that a sentencing framework can be perfectly adequate for 99% of cases yet be fundamentally unjust and ill equipped for the 1% of cases that inflict the most severe trauma.

4.5 Institutional Capacity and Justice Delivery

A severe sentence in the law books is a hollow threat without a capable system to deliver it to the offender. The most sophisticated sentencing framework can be rendered completely ineffective by weak police work, overwhelmed prosecutors, and a failure to protect those who come forward. This is the critical, and often overlooked, link between legal theory and real-world justice.

4.5.1 Investigative and Prosecutorial Capacity

In Nigeria, the gulf between the draconian laws and on the ground reality is massive. The threat of the death penalty means very little in regions where corruption is rife, the state has little presence, and abduction syndicates operate with more power and resources

⁶⁹ Parliamentary Debates, National Assembly of Zambia, 15 March 2022.

than local authorities. Perpetrators often enjoy de facto impunity, not because the laws are lenient, but because the system is too weak to catch and convict them. The deterrent power of the law is fundamentally broken when the chance of being held accountable is perceived as low.⁷⁰

South Africa presents a more complex picture. Its police force, with specialized units like the Hawks, is institutionally stronger. However, it is in a constant battle of attrition against highly organized criminal syndicates. The sheer volume of cases, combined with the sophisticated, profit driven nature of these gangs, often overwhelms investigators and prosecutors. The capacity exists, but it is stretched to its limits, creating bottlenecks that can delay justice and allow perpetrators to exploit procedural gaps.⁷¹

Zambia's challenge is different but just as significant. Facing a much smaller number of cases, the Zambia Police Service has not had the same pressure to develop dedicated, specialized anti-abduction units. While this may be a rational allocation of resources given the low prevalence, it has a direct consequence where investigative quality suffers in the end. Without specialized training and focused resources, complex abduction cases like those involving potential ransom motives or organized elements, may not be investigated as effectively. This creates a dangerous perception of impunity, subtly signaling to would be offenders that even if they commit a serious crime, the system may not be equipped to competently handle it.⁷²

4.5.2 Victim Support and Witness Protection

True justice is not done until the victim's experience is central to the process. A prosecution depends entirely on evidence, and that evidence often depends on the cooperation of traumatized victims and intimidated witnesses.

South Africa has learned this lesson and has accordingly built more robust, state anchored victim support systems, especially for violent crimes. By providing shelters, counseling, and legal aid, they do more than just offer compassion, they actively build

⁷⁰ Administration of Criminal Justice Act (ACJA) 2015

⁷¹ Institute for Security Studies (ISS), 'Crime Hub' (2010).

⁷² ZLDC, 2018

stronger cases. A supported victim is more likely to report the crime, give a clear statement, and testify in court. This turns victim support from a social service into a critical component of effective law enforcement.⁷³

In both Nigeria and Zambia, this link is often broken. Victim support is frequently left to under resourced NGOs, leading to a patchy and unreliable safety net. A victim who faces re-traumatization, financial ruin, or direct threats with little to no state protection is far less likely to see the process through. When victims withdraw or witnesses are too afraid to testify, cases collapse regardless of how strong the law appears on paper. This failure to protect the most vulnerable participants does not just undermine a single case, it weakens the very foundation of the criminal justice system's legitimacy and effectiveness.

4.6 Jurisprudential Application

The translation of statutory law into judicial outcomes is revealed through leading cases, which highlight the practical operation of each framework.

4.6.1 Zambia's Pathology of Judicial Constraint

The case of **The People v James Bwalya Mulenga and Matthews Sikaonga (HP/87/2023)** is the definitive example.⁷⁴ The court's detailed recitation of the "prolonged captivity," "systematic abuse," and "severe trauma" highlighted its recognition of the offences' heinous nature. Yet, for the foundational counts of abduction, the sentence was artificially capped at five years per victim. This creates a jarring jurisprudential dissonance, forcing the court to deliver a judgment that is legally correct but substantively unsatisfactory, proving the system lacks a safety valve for depravity.

4.6.2 Nigeria's Severe Statutes and Variable Enforcement

In cases like **Uduak Akpan v State (2022)**, Nigerian courts have demonstrated a willingness to impose the ultimate penalty for abduction that results in murder, reflecting the operationalization of crisis driven jurisprudence.⁷⁵ However, the deterrent value of

⁷³ South African Police Service, Victim Support Services Policy (2021).

⁷⁴ The People v James Bwalya Mulenga and Matthews Sikaonga

⁷⁵ Uduak Akpan v State (2022)

these isolated severe sentences is diluted by the widespread inconsistency in enforcement and the resilience of the ransom economy, revealing a stark gap between the law on the books and the law in action.

4.6.3 South Africa's Structured Escalation for Aggravation

South African appellate decisions, such as **S v Mnyandu (2015)** and **S v Mhlongo (2021)**, illustrate the consistent application of the aggravation-based model.⁷⁶ In these cases, the courts meticulously examined the presence of factors like organized criminal involvement and extreme violence, imposing life imprisonment as a structured, justified escalation rather than an arbitrary one. This jurisprudential trend demonstrates a system capable of delivering graduated, principled severity.

4.7 Assessing Effectiveness: The Primacy of Certainty over Severity

Synthesizing the empirical and legal evidence leads to a central, critical conclusion about deterrence and justice.

4.7.1 The Criminological Primacy of Certainty

A wealth of criminological evidence, including foundational work by scholars like Daniel S. Nagin, consistently demonstrates that the certainty of apprehension and conviction is a far more powerful deterrent than the severity of the punishment.⁷⁷ Nigeria's experience is a case in point: the combination of high incidence and occasional harsh sentences has not curtailed the crime, because the perceived risk of being caught remains low for many perpetrators. Conversely, Zambia's limited incidence suggests that pre-emptively increasing penalties without first improving detection and prosecution would be a merely symbolic gesture, offering the illusion of action without enhancing practical deterrence.

4.7.2 Justice Delivery and the Victim's Experience

Justice for victims encompasses prompt rescue, respectful treatment, effective prosecution, and a punishment that reflects the harm they endured. South Africa's integrated victim support and robust prosecutorial responses in aggravated cases often

⁷⁶ S v Mnyandu [2015] ZASCA 107; S v Mhlongo (2021) ZAGPPHC 337.

⁷⁷ Daniel S. Nagin (2013).

provide a more comprehensive, though imperfect, form of redress.⁷⁸ In Zambia, the smaller caseload presents an opportunity for close attention to victims, but this is often undermined by limited support services and the profound sense of injustice created by a sentencing ceiling that fails to acknowledge extreme suffering.

4.7.3 The Perverse Consequences of Draconian Measures

Highly punitive laws can generate unintended and counterproductive effects. In Nigeria, the threat of the death penalty has, in some instances, been alleged to incentivize abductors to kill their victims to eliminate witnesses.⁷⁹ Furthermore, laws criminalizing ransom payments, while aimed at starving syndicates of funds, can drive negotiations underground and increase the peril for victims, demonstrating how well-intentioned severity can paradoxically heighten lethality.

4.8 Analytic Lessons for Zambian Legal Reform

Drawing diagnostically from this comparative analysis, several high-level lessons emerge to guide future reform.

1. Integrate an Aggravation Based Sentencing Structure

The most salient lesson from South Africa is the need to replace Zambia's uniform ceiling with a framework that allows for escalated punishment where specific, serious aggravating factors are present, for example, ransom, torture, organized crime, abduction of a minor. This would resolve the rigidity identified in Chapter 3 without resorting to Nigeria's blanket severity.⁸⁰

2. Harmonize Sentencing Reform with Institutional Capacity

The experiences of both Nigeria and South Africa emphasize that penalties are ineffective without enforcement. Any consideration of sentencing changes in Zambia

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Criminal Law Amendment Act 105 of 1997

must be coupled with parallel investments in specialized police units, forensic capabilities, and prosecutorial training.⁸¹

3. Prioritize Comprehensive Victim and Witness Support

Comparative practice highlights that victim support and witness protection are not ancillary to justice but central to its delivery. They increase reporting rates, secure crucial testimony, and contribute to restorative outcomes, thereby making effective prosecution and true deterrence possible.⁸²

4. Avoid Symbolic Legislation and Perverse Incentives

Nigeria's challenges advice caution against reactive, overly punitive laws that may look tough but fail in practice or create unintended risks. Zambian reforms should be evidence based, carefully calibrated, and avoid measures that could inadvertently increase danger to victims.⁸³

4.9 Conclusion

This comparative chapter has demonstrated that the framework of sentencing law reflects national context, but its effectiveness is ultimately determined by the ecosystem of enforcement in which it operates. Nigeria and South Africa illustrate two divergent paths of punitive escalation: one a blunt instrument of crisis governance, the other a precision tool for calibrated justice. Both models confirm that statutory severity, in isolation, is a poor predictor of success.

For Zambia, the comparative lesson is unequivocal: should penalties be adjusted, the goal must be strategic sophistication, not simply numerical increase. Reforms must be harmonized with institutional reforms that enhance detection, prosecution, and victim care. To do otherwise, to raise maximum sentences without strengthening the justice pipeline would be an empty formalism, failing to translate into functional justice or

⁸¹ Ibid

⁸² Ibid

⁸³ Ibid

meaningful public safety. The final chapter will now transform these diagnostic lessons into concrete, contextually tailored reform proposals for the Zambian legal system.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter summarizes all contents discussed and analysis of the entire research, iterating how each chapter has contributed to addressing the study's objectives and research questions. It demonstrates how the findings support the central argument that Zambia's current legal framework on abduction is inadequate in both punishing and deterrent capacity and would benefit from reform guided by comparative lessons from Nigeria and South Africa. At the end of it all, conclusion and recommendations will be given that are in line with the findings of the study.

5.2 GENERAL CONCLUSION

The study concludes that Zambia's legal framework on abduction, though functional in form, is deficient in substance and enforcement capacity. Its penalties are lenient, its classifications underdeveloped, and its institutional response fragmented. This has led to an imbalance between the constitutional guarantee of personal liberty and the practical protection afforded to citizens. The comparative experiences of Nigeria and South Africa show that legislative reform, judicial guidance and inter agency coordination are crucial to effective deterrence and justice delivery. Ultimately, the research confirms that enhancing Zambia's legal framework is both a legal necessity and human rights imperative. The states obligation to safeguard liberty and dignity demands that laws evolve to match contemporary criminal dynamics.

5.3 SUMMARY OF CHAPTERS

CHAPTER ONE

Chapter One established the foundation of the study by contextualizing abduction within Zambia's constitutional and statutory framework. It observed that while the Zambian Constitution guarantees personal liberty, protection against inhuman treatment, and security of the person under **Articles 11, 13 and 15 of the constitution of Zambia**

(amendment) Act No.2 of 2016 of the laws of Zambia⁸⁴ these rights are continually endangered by acts of abduction. The chapter noted that, although not highly prevalent, incidents such as the 2022 case involving the abduction of thirteen girls exposed serious deficiencies in the **Penal Code chapter 87 of the laws of zambia**⁸⁵ and its ability to deliver justice commensurate with the severity of such offenses.

The chapter's analysis showed that the existing statutory provisions mainly inherited from colonial legislation do not reflect the changing realities of organized crime, human trafficking, and gender-based violence. It therefore justified the research problem that Zambia's legal framework requires reevaluation to ensure its adequacy in deterrence and victim protection.

CHAPTER TWO

Chapter Two critically examined the relevant Zambian legal instruments, primarily the **Penal Code Act, Cap 87 of the laws of Zambia**⁸⁶, and the **Anti-Human Trafficking Act No. 11 of 2008**⁸⁷. It revealed that the **Penal Code provisions under Chapter 25, Sections 251-259**⁸⁸ provide a fragmented and outdated approach to the offences of abduction. The maximum penalty of ten years' imprisonment was found to be disproportionately low, particularly when compared with penalties for related crimes such as aggravated robbery or human trafficking, which attract sentences of up to life imprisonment.

Furthermore, the chapter identified the absence of specific classifications or aggravating circumstances within Zambia's law such as abduction for ransom, political motives, or parental abduction resulting in a one size fits all penalty regime. The absence of mandatory minimum sentences and specialized prosecutorial guidelines further weakens deterrence. The analysis therefore established that while Zambia possesses a

⁸⁴ Constitution of Zambia (amendment) act no.2 of 2016

⁸⁵ Chapter 87 of the laws of Zambia

⁸⁶ Chapter 87 of the laws of Zambia

⁸⁷ Anti human trafficking act no.11 of 2008

⁸⁸ ibid

formal legal framework, it lacks the depth, precision, and severity necessary to respond effectively to the complexity of modern abduction related crimes.

CHAPTER THREE

Chapter Three presented a critical analysis of whether Zambia's existing abduction laws require harsher penalties. Drawing from case law such as *The People v James Bwalya Mulenga and Matthews Sikaonga (HP-87-2023)*,⁸⁹ *Judgment Silomba (2008)*⁹⁰, and *Kamene v The People (1966)*⁹¹, the chapter demonstrated the inadequacy of Zambia's sentencing structure in addressing the gravity of the offence. In *Bwalya and Sikaonga*⁹², for example, while the accused were sentenced to life imprisonment for accompanying offences like rape, the abduction counts themselves carried only five years illustrating statutory limitations that fail to reflect the true harm of the crime.

However, the analysis also presented a balanced view: while harsher penalties may enhance deterrence, they must coexist with proportionality and judicial discretion to ensure justice. The chapter therefore concluded that Zambia's sentencing framework requires reform not only in terms of penalty enhancement but also in the creation of categories and guidelines that balance deterrence, fairness, and rehabilitation.

CHAPTER FOUR

Chapter four explored comparative lessons from Nigeria and South Africa, demonstrating that both countries have implemented sever and evolving responses to abduction. **Nigeria's Criminal Code (Amendment) Act, 2022**⁹³ and various state laws, such as the Rivers State Kidnapping (Prohibition) Law 2015, introduced life imprisonment or the death penalty for aggravated abduction, while some states criminalize the payment of ransom to deter economic motives. South Africa, through the **Criminal code Amendment Act 105 of 1997**⁹⁴, prescribes minimum sentences for abduction with

⁸⁹ HP-87-2023

⁹⁰ 2008 ZMSC 150

⁹¹ (1966) ZMCA 8

⁹² IBID

⁹³ Criminal code (amendment) act 2022(Nigeria)

⁹⁴ Criminal code (amendment)105 of 1997

aggravating circumstances, such as when the victim is a child or when the act is tied to organized crime.

These reforms show a clear policy acknowledgment of abduction as a grave social and security threat. By comparison, Zambia's stagnant legislative framework has lagged regional peers in adapting to contemporary realities. The chapter therefore concluded that Zambia could draw valuable insights from these jurisdictions, particularly in establishing differentiated sentencing categories, mandatory minimums, and enhanced institutional coordination.

5.4 THEORETICAL JUSTIFICATION FOR LAW REFORMS IN ABDUCTION CASES

The need for law reforms in Zambia's abduction framework is not only practical but also deeply theoretical, rooted in the four major pillars of criminal law jurisprudence retribution, deterrence, incapacitation and rehabilitation. Each of these theories when applied to Zambia's current legal model reveal systemic gaps that compromise both justice delivery and public confidence.

From a retributive perspective, punishment much reflect the moral gravity of the offence. The doctrine of just deserts insists that offenders should suffer penalties proportionate to the harm inflicted. In aggravated abduction cases such as the **People v James Mulenga and Matthews Sikaonga**⁹⁵, victims endured, prolonged, confinement and sexual violence. Yet the maximum punishment available for the abduction component was only ten years, a sentence that fails to symbolically or substantive match the magnitude of suffering inflicted. This gap between injury and punishment dilutes the moral condemnation that the legal system ought to communicate.

The deterrence theory further highlights deficiencies, classical criminological scholarship by **Jeremy Bentham**⁹⁶ emphasizes that punishment much be swift, certain and proportionate to deter rational offenders. Despite Zambia maintains penalties for abduction they are neither sufficiently intimidating for organized or financially motivated offenders, nor reinforced by high conviction rates. Evidence from comparative jurisdiction

⁹⁵ HP/87/2023

⁹⁶ Jeremy Bentham

shows that crime reduction correlates stronger with certainty of punishment than severity alone. However, when low sentencing ceiling combines with inconsistent investigations, minimal specialized police capacity and limited prosecutorial coordination, the result is a weak deterrence chain unable to dissuade potential offenders.

From the standpoint of incapacitation, the current framework inadequately neutralizes high risk offenders. In cases involving repeat offenders ransom driven abduction or organized criminal participation, a ten-year cap means that dangerous perpetrators could re-enter society within a short period often without rehabilitation, psychological evaluation or structured reintegration. This contradicts the protection obligation of the state to safeguard the public.

Finally, the principle of restorative justice and rehabilitation, while essential in criminal policy, cannot operate meaningfully where victims feel erased by the sentencing process. Restorative justice presupposes that offenders acknowledge the severity of harm and that victims feel justice has been served. When sentencing ceiling send the opposite message, victims are left disenfranchised, deepening trauma and eroding trust in the justice system.

5.5 RECOMMENDATIONS

1. Legislative Reform: **Amend Chapter 25 of the Penal Code⁹⁷** to introduce differentiated categories such as “basic”, “aggravated”, and “economic” abduction, each with corresponding penalties.
2. Enhanced Sentencing Framework: Introduce mandatory minimum sentences of 10-15 years for aggravated abduction and retain judicial discretion for mitigating cases.
3. Institutional Strengthening: Establish specialized anti-abduction units within the Zambia Police Service and enhance prosecutorial coordination with the National Prosecution Authority.

⁹⁷ Chapter 87 of the laws of Zambia

4. Victim Support Approach: Develop a legal mechanism for victim protection and post rescue support, modelled after South Africa's Victim Empowerment Program.
5. Comparative Policy Learning: Convene regional conferences or ministerial forums involving Nigeria, South Africa, and other SADC states to share best practices on abduction prevention and sentencing.
6. Public Awareness and Preventive Education: Introduce nationwide campaigns highlighting the criminal consequences of abduction and encourage community participation in prevention and reporting.
7. Periodic Law Review: Mandate the Zambia Law Development Commission to conduct periodic evaluations of the Penal Code and related legislation to ensure continued relevance and responsiveness.

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RESEARCH CLEARANCE FORM

NAME: Queen Daka STUDENT NUMBER: BIP20120281

SUPERVISOR: K. Mwampuli TOPIC: Re-evaluating Sentencing in Abduction Cases in Zambia: A Comparative Study of Nigeria & South Africa

Stage	Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Do not pre-empt conclusion.	<u>K. Mwampuli</u> 12/08/25	<u>Queen Daka</u> 12/02/25
Chapter 1 - Introduction	Consider all sides of argument	<u>K. Mwampuli</u> 12/09/25	<u>Queen Daka</u> 12/09/25
Chapter 2 -	Use Oxford reference system	<u>K. Mwampuli</u> 26/09/25	<u>Queen Daka</u> 26/09/25
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Chapter 4 -	No proposals for reform in this chapter.	<u>K. Mwampuli</u> 30/09/25	<u>Queen Daka</u> 30/09/25
Chapter 5 - Conclusions & Recommendations	Have separate conclusion for each chapter.	<u>K. Mwampuli</u> 20/10/25	<u>Queen Daka</u> 20/10/25
Table of Contents, Bibliography and Appendices	All work to be referred in Bibliography.	<u>K. Mwampuli</u> 10/11/25	<u>Queen Daka</u> 10/11/25
First Draft	Chapter 1 to be 10 pages long.	<u>K. Mwampuli</u> 12/11/25	<u>Queen Daka</u> 12/11/25

Second Draft	Amend spelling 3 grammatical errors.	Amend 13/11/25	Amend 13/11/25
Final Draft	Good.	Amend 17/11/25	Amend 17/11/25

Please return this form to the School Office.