



Human Rights Commission

CHILDREN'S CODE ACT NO. 12 OF 2022

At A Glance

Children in Conflict with the Law

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TABLE OF CONTENTS

04 BACKGROUND

05 OBJECTIVE OF THE CHILDREN'S CODE
ACT NO. 12 OF 2022

06 BEST INTEREST OF CHILD

07 PARENTAL RESPONSIBILITIES

08 RIGHTS AND RESPONSIBILITIES
OF THE CHILD

09 DIVERSION

10 JUVENILE COURT AND CHILDREN'S COURT

11 ARREST, BAIL AND DEPRIVATION
OF CHILD'S LIBERTY

12 CONVEYANCE OF ORDERED CHILD TO
APPROVED CENTRE OR REFORMATORY CENTRE

13 TIME FRAME FOR HEARING A JUVENILE CASE

BACKGROUND

The Children's Code Act No. 12 of 2022 was enacted as a stand-alone legislation that protects children. Until the enactment of the Children's Code Act, various pieces of legislation governed the welfare of children.

A child was defined differently under different laws that were applicable to the child. As a result, different standards were being applied as to how children were treated under the law. There was also lack of conformity with international standards to which Zambia has subscribed. Against this background, the Children's Code was enacted to strengthen and consolidate the legislation dealing with children in Zambia. A child is any person below the age of 18 years.



OBJECTIVE OF THE CHILDREN'S CODE ACT NO. 12 OF 2022

An Act to reform and consolidate the law relating to children; provide for parental responsibility, custody, maintenance, guardianship, foster care, adoption, care and protection of children; provide for the grant of legal aid to, and establish procedures for the treatment of, children in conflict with the law; provide for the making of social welfare reports in respect of a child in conflict with the law; establish diversion and alternative correctional programmes and promote the rehabilitation of a child in conflict with the law through programmes to facilitate restorative justice and compliance with laws; provide for the protection of a child victim and child witness in investigative and judicial processes; provide for the probation of a child in conflict with the law and provision of probation services; provide for the development of treatment programmes, early intervention services and programmes to combat crime and prevent further offending; limit the negative effects of confinement by minimising the impact of a finding of guilty on the family of a child in conflict with the law and facilitate the reintegration of the child in conflict with the law into society; provide for the establishment of child approved centres and child reformatory centres; provide for the regulation of child care facilities; provide for child safeguarding; domesticate the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and the Convention on the Civil Aspects of International Child Abduction; repeal the Legitimacy Act, 1929, the Adoption Act, 1956, the Juveniles Act, 1956 and the Affiliation and Maintenance of Children Act, 1995 and provide for matters connected with, or incidental to, the foregoing.

[Date of Assent: 9th August, 2022]



BEST INTEREST OF CHILD

Section 4 brings out the General Principles in the United Nations Convention on the Rights of the Child as the principles which shall apply in all matters relating to children. These are;

- a) The best interest of the child;
- b) Right to life, survival and development;
- c) Child participation and the respect of the views of the child in all matters affecting them; and
- d) Non-discrimination.

The principle of best interest of the child in section 3 is the primary consideration in matters affecting children whether undertaken by a public or private body. All decisions, plans policies, programs must always take into account the interest of the child.





PARENTAL RESPONSIBILITIES

Section 38 provides for parental responsibility, which includes duties, rights, powers, responsibilities and authority that a person has by law or otherwise in relation to the child. Parents and guardians are entrusted with parental responsibilities. In accordance with Section 44, a person who fails to exercise parental responsibilities commits an offence and is liable upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

These responsibilities include providing the child with food, shelter, clothing, medical care, education and guidance, general care and assurance of child's survival and development guidance in religious, moral, social, cultural and other values and to protect the child from neglect, discrimination, violence and abuse.



RIGHTS **AND** RESPONSIBILITIES OF THE CHILD

The Children's Code provides for the rights and responsibilities of the child under part II in Sections 5 to 26. These are name and nationality, parental care survival and development, self-expression, health education, social protection as well as protection from child labour, armed conflict, maltreatment and other forms of exploitation, trafficking and in particular against child marriage.

When there is infringement on the rights of a child, one can petition the Children's Court for redress.

The perpetrators may be liable to a fine not exceeding one million penalty units or imprisonment for a term not exceeding ten years, or both. Depending on the facts of the case, the perpetrator may be sentenced to community service.

DIVERSION

Section 58 of the Children's Code Act provides, that diversion shall be applied as a measure of first resort where a child is in conflict the law. Diversion is defined as "referral of cases of children alleged to have committed offences away from the criminal justice system, with or without conditions". This means law

enforcement officers may apply various diversion options in dealing with a child offender such as mediation, holding family group conferring, promoting reconciliation, and restitution. The conditions for applying diversion option are outlined under Section 59 and 60.



The factors to consider before applying diversion include;

1. Nature and circumstances of the offence
2. The likelihood of the case being established against the child
3. The child must acknowledge responsibility for the offence
4. The child or guardian must consent to the nature and type of the diversion option

JUVENILE COURT AND CHILDREN'S COURT



Section 65 of the Children's Code Act provides for the constitution of a Juvenile Court as a Subordinate Court sitting for purpose of hearing a charge against child other than a charge of murder or treason, or a class of offences specified under the CPC to be tried by the High Court and where a child is charged together with an adult. According to Section 66 (3), an appeal against the decision of a juvenile court shall lie with the Children's Court.

The Jurisdiction of the Children's Court is defined under Section 67 (1), which provides that a Children's Court shall—

- (a) hear a charge where a child is charged with:
 - (i) of murder or treason;
 - (ii) of a class of offences specified under the Criminal Procedure Code to be tried by the High Court;
 - (iii) in which the child is charged together with an adult;
- (b) hear an appeal against a decision of a juvenile court;

Article 120(3) of the Constitution creates the Children's Court as a division of the High Court of Zambia (Article 133(2)).

As provided for under Section 67 (3), an appeal against the decisions of the Children's Court shall lie with the Court of Appeals.

LEGAL REPRESENTATION

A child offender who is brought before the court is entitled to legal representation in accordance with Section 72 (2). The Legal Aid Board is obligated to provide legal aid services where a child cannot afford to find their own lawyer to represent them.

Section 78, the Children's Code provides guidelines about how a child witnesses will give evidence in Court. For example, both the Juvenile and Children Court shall receive unsworn evidence from the Child. Evidence may also be given to the Court through a child welfare inspector (78 (2)(b)).

The court could also receive recorded pre-trial interviews of the child in the place of live testimony.

ARREST, BAIL AND DEPRIVATION OF CHILD'S LIBERTY

AGE OF CRIMINAL RESPONSIBILITY

Section 45 of the Children's Code Act provides for age of criminal responsibility of a child, which is 12 years old. This means that a child under the age of twelve years cannot be arrested, detained or charged with a criminal offence.

RIGHT TO PRIVACY

According to Section 46 A child has right to privacy and protection of his/her identity from exposure by the media during apprehension, arrest, investigation or court proceedings or while serving an order of court and whilst in custody.

ARREST OF CHILD OFFENDER

Under Sections 47 to 55, the Children's Code Act provides the steps that law enforcement officers and ordinary individuals must follow and gives clear guidelines on what they ought to do when arresting a child who is suspected of having broken the law. For example, a law enforcement officer shall not be in uniform or carry a firearm when going to apprehend a child offender except in special circumstances that may warrant law enforcement officer to do so.

POLICE BOND

Section 56 of the Children's Code provides that a child offender who is detained in custody is entitled to be released on police bond in own recognizance. The child's parents, guardian, close relative of the child or a person having parental responsibility can sign as surety for that child's release. No money shall be paid for police bond at the Police Station according to the Zambia Police Act Chapter 107 of the Laws of Zambia.

DETENTION OF A CHILD

Under section 57, the Children's Code Act provides that a child offender shall not be taken into custody except as a measure of last resort or for a period not more than 48 hours. According to 56 (3), a Court shall, upon application by the law enforcement, make an order to place a child in a place of safety within 48 hours after the arrest of the child. Where a child is not released within 48 hours of arrest, the child shall be placed in custody in a Police Station, but separate from the area where adults are detained.

CONVEYANCE OF ORDERED CHILD TO APPROVED CENTRE OR REFORMATORY CENTRE



Under Section 102, the Children's Code Provides that a person responsible for conveying the child to a child approved centre or a child reformatory centre shall deliver the following documents to the person in-charge of such a facility:

- (a) Juvenile court or Children's Court order;
- (b) Social Welfare Report; and
- (c) any other additional information on the child.

It should be noted that before the Children's Code Act was enacted, orders had to be confirmed by the High Court for a child to be taken to an approved or reformatory centre, and the process usually took long while children remained detained in adult Correctional Facilities.

While awaiting conveyance to child centre, a child may be kept by his or her parents/guardians or in a place of safety or transit centre

TIME FRAME FOR HEARING A JUVENILE CASE

According to Section 79(7) of the Children's Code, a juvenile court or Children's Court shall expeditiously deal with the case of a child and if the case is not completed within six months of the child's first appearance before the court, the Juvenile Court or Children's Court may discharge the child immediately.



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Report any violations or abuses of child rights to the Human Rights Commission

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Mansa: 0958 122 370

6 Muchinga Province

Chinsali: 0958 122 368

7 Northern Province

Kasama: 0958 122 369

8 Northwestern Province

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