

Child Rights Legislative Reform in Zambia

THE CHILDREN'S CODE BILL: A SUMMARY

Introduction:

The Children's Code Bill represents a landmark in advancing the system of child protection in Zambia. The law prescribes the system of protection of vulnerable children, provides for prevention and reporting violence and abuse, regulates child offending, introduces a child-centred justice system and outlines the functioning of alternative care (prevention of placement into care, foster-care and institutional care) and adoption. The Children's Code Bill has been aligned to international and regional standards, especially the Convention on the Rights of the Child, the Africa Union Charter on the Rights and Welfare of the Child. It also domesticates the Hague Conventions on inter-country adoption and civil cases of inter-country child abduction.

The Children's Code Bill also re-asserts all basic rights of children that are already incorporated into sectoral legislation (e.g. right to health, education) as well as the right of the child to be heard and the child's opinion to be taken into account in decision-making as well as the right to participation. This section of the law also prohibits all corporal punishment of children.

The Children's Code was adopted in September 2022.

Actors that are key for implementation of this legislation: The full enforcement of this Bill has implications for the way a range of public sector practitioners operate especially social welfare, child development, law enforcement, prosecution and judiciary – and how they secure the full protection of extremely vulnerable children, children that have experienced violence/exploitation/abuse/neglect and child offenders. Access to health services for child offenders and children in need of care are also elaborated on. The Bill also requires that all organizations/institutions directly providing services to children secure their full safety through mandatory application of child safeguarding and as such the Bill also has implications for the education system, sports clubs, churches, health facilities and other entities interacting with children without the presence of their parents. The Bill applies to non-government service providers working with children (in family strengthening and with child offenders) and prescribes that they need to be accredited/registered and follow minimum set standards in order to provide services.

Areas of the Children's Code Bill that are of particular importance to securing the protection and wellbeing of children:

Preventing Violence, Exploitation, Abuse and Neglect:

The Children's Code Bill is a very progressive piece of legislation as it has managed to introduce measures to prevent and enable early responses to any form of violence against children. This is an area that has only started to be legislated as traditionally regulations focus on responding to violence and other crimes against children rather than preventing them. This is secured through the following:

- **the Children's Code Bill mandates all organizations directly interacting with children without parental presence to implement child safeguarding policies. All these actors (including schools,**

churches, health facilities, sport clubs etc) will need to educate children they provide services to/interact with on different forms of violence (physical/emotional/sexual/self-inflicting) and provide them with safe, visible and easily accessible channels to report violence. Each organizational entity must have an appointed focal point. The law envisages the development of subsidiary legislation (statutory instrument) to define roll-out and oversight.

According to the Violence against Children Study (2014) children experience high levels of physical, emotional and sexual abuse in Zambia. The most concerning aspects of the study pointed to high levels of sexual abuse (20% girls and 10% boys) and very low level of access to services (0% girls and 7% boys). The findings also pointed to the fact that 28% of girls said their first sexual encounter was unwanted and out of these, just under 20% ended in pregnancies. Advocacy efforts to legislate child safeguarding and other aspects of the law pertaining to violence prevention relied heavily on the findings of this Study. The implementation of the above safeguarding measures is intended to shift norms and permeate into communities through the organizational structures within which children grow, develop, learn and are cared for. This is believed to be a) more sustainable and b) much more effective way of working towards a zero tolerance culture against children than ad hoc national campaigns and intermittent community dialogues held in selected communities. **Making sure that child safeguarding is legislated by law is a huge advancement in Zambia's legislation and can enable cooperating partners to join hands in supporting roll-out at-scale, throughout the country. When the application of child safeguarding procedures does take place it is anticipated that we will see a drop in violence children experience as well as a rise to access to services. These are indicators that come from the next Violence against Children Study and on of our key indicators in our new CPD. We anticipate that Centre for Disease Control will repeat the Study and will advocate for that.**

The legislation also prescribes child marriage as illegal and introduces a prohibition on subjecting a child to child marriage. Cyber-bullying, exposure of a child to online pornography are also recognized as offenses as well as the trafficking of children, sexual exploitation, coercing of children into sexual encounters. There is a ban on corporal punishment of children by any person.

Prohibition of violence in the Children's Code:

Under Part II – Rights and Responsibilities of the Child, it is prohibited to subject a child to a child marriage or to cultural practices that impact negatively on a child's health and development. It is also prohibited to coerce a child into sexual activity or expose a child to pornographic material (in addition to prohibiting the use of a child in sexual exploitation and prostitution – which is already prohibited under the Penal Code). Children at risk of child marriage as well as children in marriage are recognized as “children in need of care and protection” with social services required to facilitate their access to education and care decision-making/access to alternative care/family reunification.

Responding to children experiencing violence, exploitation, abuse and neglect:

Child abuse especially sexual abuse is massively under-reported in Zambia. Anecdotal evidence shows that even when cases of reporting occur the child refuses to testify to law enforcement due to fear of reprisal. The Children's Code Bill legislates the areas to make sure that children are fully protected and supported when being interviewed by police or giving a statement in court. **The continual presence and engagement of social welfare authorities is key in making sure the provisions of the Bill designed to**

protect the child from secondary victimization are observed. These include adapting the questioning to the age/maturity of the child, banning any direct interaction with the perpetrator, preparing the child for testimony, enabling use of video and camera, limiting court questioning to a maximum of two instances and timely care decision making (if child needs to be removed from community). The previous provisions of the law that have required corroboration of any child testimony with that of an adult (thus undermining a child witness) have been removed. Where children's age or cognitive capacity make it complicated for them to swear under oath, the court can take as evidence a video of an interview conducted by social welfare or a social welfare report of an interview held with the child. This is key to enabling evidence from younger children and children with disability. Children who have experienced violence and are interviewed by the police may be not be able to return home. This is the case when a family member has committed the abuse or the abuser is from the community and can threaten the child. So care decisions need to be made at the same time whereby the child needs to re-located to a kin family or a safe space. Provisions of the law guide this process.

Observing the Right of the Child to a Family and alternative care:

The Children's Code Bill explicitly prioritizes efforts to enable family support for children in need of care and protection. The return of the child to the family is recognized as a first option response followed by opportunities for kinship care. This is facilitated by the statutory social services (social welfare) and possibilities to refer cases to family support service providers (family outreach social work service) that will be registered/accredited by social welfare. The Bill fully regulates the foster care system and procedures. Placement of children in institutional care, such as childcare facility is recognized as a measure of last resort and ample emphasis is put on family re-unification as well as registration and standards for facilities. The law regulates adoption and inter-country adoption and provisions here represent the domestication of the Hague Convention on Inter-country Adoption.

Maintenance, guardianship, adoption and inter-country abduction:

The Children's Code Bill regulates foster-care and child-care facilities and stipulates the procedures and responsibilities of social welfare and the judiciary in placing children in such alternative care settings and outlines the responsibilities of social welfare in oversight of the wellbeing of these children and social welfare/child development in oversight/inspection of child-care facilities so as to be aligned to standards. The Bill outlines the procedures for appointing a guardian after the death of a parent/parents and their roles responsibilities. Adoption procedures introduce measures to ensure processes reflect a child's best interests. The Bill domesticates the Hague Convention on Intercountry Adoption and introduces provisions that are aimed at safeguarding children and preventing the sale or trafficking of children. The Bill also domesticates the Hague Convention on International Child Abduction which is aimed at protecting children from international abduction by a parent, enabling the prompt return of abducted children and organizing effective rights of access to visitation.

Protection of child offenders and application of restorative justice principles:

The law introduces a series of measures to secure protection and access to justice for child offenders. Multiple options are available for keeping children out of entering into criminal procedures through providing informal warnings, formal warnings as well as the application of diversions (to divert children away from the justice system and back into the social welfare system where support for reintegration and restorative justice is provided). Police cannot wear uniforms or carry firearms when arresting

children and a parent/guardian and child welfare office is to be present at arrest, through questioning and in court proceedings. Bail is prioritized and limitations are placed on police child custody (placement of a child transit centre).

Privacy of an alleged child offender is secured at all stages and unveiling the identity of the child by media is punishable by the law. A social welfare report on the circumstances of the child's home/community situation is key in decision-making so that mitigating circumstances can be taken into account by the judge. Diverting a child to a restorative programme is also possible at prosecution stage as well as court stage of the proceedings, thereby terminating a criminal procedure and referring a child back into social welfare. The law also puts ample emphasis on the regulation of probation which is another form of enabling community-based responses to juvenile offending and focusing on improving the child's conduct and behavior. Custodial sentencing is a measure of last resort and child offenders can be placed in child approved centres (managed by social welfare) and child reformatory centres (managed by home affairs) with placement in the latter only for children over 16 and for a maximum of 3 years. Children can transition back into the community if overseen by a probation officer as early as 6 months after the issuance of a court order and the decision is made by social welfare and law enforcement (depending on whether child is in social welfare or law enforcement institution).

The age of criminal responsibility is referenced in the law through referral to the Penal Code. An accompanying Penal Code Amendment has been submitted to Parliament with the Children's Code Bill and this raises the age of criminal responsibility to 12. Although initially the age of criminal responsibility was aligned to international standards (14), the home affairs authorities believed this to be inappropriately high and this stalled movement of the Bill in terms of being adopted by Cabinet. The issue of the age of criminal responsibility may become a topic of discussion at the first and second readings of the Bill in Parliament taking place mid/end July. Although UNICEF supports alignment of the law fully to international standards, there is a concern that services for working with juvenile offenders below the age of criminal responsibility are chronically unavailable, with no government and miniscule non-government funding.

Children on the Move:

Part II of the Code (Child Rights and Responsibilities) recognizes the rights of children on the move to protection and humanitarian assistance. These children are also explicitly recognized under Part VII of the Code on "children in need of care and protection" whereby all the provisions assisting these children apply to unaccompanied children on the move, irrespective of their country of origin. Currently children on the move transitioning through Zambia are at risk of being detained, sometimes for prolonged periods of time and efforts to make sure such cases are treated as urgent, detention is minimized, and alternative care is provided and reintegration prioritized are underway. This legislation will facilitate the implementation of these efforts which are integrated into the Government's anti-trafficking action plans.

A Child-centred Justice System:

The Children's Code Bill outlines the child friendly judiciary system. All children in contact with the law, as offenders, victims or in civil proceedings are addressed by the juvenile court which is an integral part of the subordinate court. This is in exception to offenses that are dealt with by High Courts in which case these offences are addressed by the Children's Court which is an integral part of the High Court

system. In addition, if offences are committed jointly with adults, the cases are addressed by the Children’s Court. **The ring-fencing of children’s cases within separate departments of the court system will enable for specialization of magistrates and judges working within them to apply child friendly practices and observe child rights at all times. The Law does not stipulate mandatory training/judicial certification for working with children, but this can incorporated into subsidiary legislation and policies.**

RESPONSES TO THE GUIDELINES PROVIDED:

2. Good practices to look for:

1. Content: Examples of substantive provisions (in all types of laws including in Constitutions):

1.1 Explicitly referencing to the CRC and other international standards (please share the references)

Children Children’s Code Act, NO. 12 of 2022:

Dated 9th August 2022 is an Act to reform and consolidate the law relating to children; provides 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 in line with **Arts 37 and 40 of the CRC**; establishes 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. The Act domesticates the [Convention on the Rights of the Child \(CRC\)](#), the [African Charter on the Rights and Welfare of the Child \(ACRWC\)](#), the [Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption \(Hague Convention on International Adoption\)](#) and the [Convention on the Civil Aspects of International Parental Child Abduction \(Preamble of the Act/Art 4 of the CRC\)](#).

1.2 Recognizing children as subjects of rights

PART II: THE RIGHTS AND RESPONSIBILITIES OF THE CHILD: This part of the law from **Section 5- 28** provides for rights of children, details the child rights principles, Best Interest Determination, non-discrimination, participation against the child the right of children to grow up with their families (**Par 5 of the CRC Preamble**)

1.3 Identifying duty bearers

Part v of the law, Sections 29- 36 provide for the state actors with particular obligations towards the implementation of the Children’s Code Act

Section 38 provides for parental responsibility- “parental responsibility” means the duties, rights, powers, responsibilities and authority which, by law or otherwise, a person has in relation to the child.

Section 217, 243, 244 identify duty bearers in terms of adoption

Section 276 under part 12 of the law places statutory duty on all organizations/institutions directly providing services to children to secure their full safety through **mandatory application of child safeguarding,**

The Code has placed more statutory duty on social welfare as child welfare inspectors or probation officers (**Section 279, 280**), child development officers, law enforcement agencies, prosecutors, and judiciary – and how they care can secure the full protection of extremely vulnerable children, children that have experienced violence/exploitation/abuse/neglect and child offenders.

1.4 Providing for the full scope of rights (civil, political, economic, social and cultural); examples of political rights provisions (such as right to vote or participation in public affairs) would be particular useful.

Section 6-Right to expression

Section 7(1) A person shall not discriminate against or punish a child on the basis of race, colour, sex, gender, age, language, **political or other opinion, conscience, belief,** tribe, pregnancy, health, ethnic or social origin, disability, property, birth, economic or other status.

Section 21. A child is entitled to rest, leisure, play and participation in **cultural and artistic** activities appropriate to the age of that child.

Section 26(e) the duty and responsibility to preserve and strengthen the positive **cultural values** of the community in the child's relations with other members of that community.

Section 38(1)(c)(i) give parental guidance in religious, moral, **social, cultural and other values;**

1.5 Promoting equality/anti-discrimination (including specific recognitions of children's right not to be discriminated against)

Section 4 provides for the following principles in matters relating to children:

(a) devotion to the best interests of a child.

(b) the observance of the right to life, survival and development of a child.

(c) the observance of children's rights as an integral part of attaining equity and equality among

children in all spheres of life.

(d) non-discrimination of children; and

(e) child participation and respect for the views of a child in all spheres of life.

1.6 Articulating the best interests of the child (most pronounced principle in the Act)

Section 3(1) 'A child's best interest is the primary consideration in a matter or action concerning the child, whether undertaken by a public or private body.

Section 4(a) devotion to the best interests of a child.

Custody issues (S104), (S144(2)(a)

Adoption procedures introduce measures to ensure processes reflect a child's best interests.

1.7 Articulating the child's right to be heard and/or promoting meaningful child participation

Section 4(e) child participation and respect for the views of a child in all spheres of life.

1.8 Ensuring access to justice/right to remedy

The law introduces a series of measures to secure protection and access to justice for child offenders.

Section 25(2) The Children's Code Act outlines **the child friendly judiciary system**. All children in contact with the law, **as offenders, victims or in civil proceedings are addressed by the juvenile court** which is an integral part of the subordinate court. This is in exception to offenses that are dealt with by High Courts in which case these offences are addressed by the Children's Court which is an integral part of the High Court system. In addition, if offences are committed jointly with adults, the cases are addressed by the Children's Court-**Section 60**.

The ring-fencing of children's cases within separate departments of the court system will enable for specialization of magistrates and judges working within them to apply child friendly practices and observe child rights at all times.

Parts V, VI, VIII and IX provide for the multiple options available for keeping children out of entering into criminal procedures through providing informal warnings, formal warnings as well as the application of diversions (**to divert children away from the justice system** and back into the social welfare system where support for reintegration and restorative justice is provided).

Section 58 (1) provides for **Diversion as a measure of first resort** where a child is in conflict with the law and factors for determination of diversion, and Requirements for diversion programme (S61).

Police cannot wear uniforms or carry firearms when arresting children and a parent/guardian and child welfare office is to be present at arrest, through questioning and in court proceedings. Bail is prioritized and limitations are placed on police child custody (placement of a child transit centre).

Section 57 provides for recognizance to Police Bondand application for court order if the child has to be put in custody -within 48 hours. **Section 57(1)(a)** provides for **detention has a measure of last resort**.

Privacy of an alleged child offender is secured at all stages and unveiling the identity of the child by media is punishable by the law. A social welfare report on the circumstances of the child's home/community situation is key in decision-making so that mitigating circumstances can be taken into account by the judge.

Section 99(4) **Custodial sentencing is a measure of last resort** and child offenders can be placed in child approved centres (managed by social welfare) and child reformatory centres (managed by home affairs) with placement in the latter only for children over 16 and for a maximum of 3 years.

The age of criminal responsibility is referenced in the law through referral to the Penal Code (**Section 45**). An accompanying Penal Code Amendment has been enacted by Parliament with the Children’s Code Act and this raises **the age of criminal responsibility to 12 years**. *(Although initially the age of criminal responsibility was aligned to international standards (14), the home affairs authorities believed this to be inappropriately high and this stalled movement of the Bill in terms of being adopted by Cabinet).*

(Although UNICEF supported alignment of the law fully to international standards, there is a concern that services for working with juvenile offenders below the age of criminal responsibility are chronically unavailable, with no government and miniscule non-government funding).

2. Process: Examples of processes that:

2.1 Adequately applied a Human Rights Based Approach, including child rights principles

The process relied guidance of the conventions and treaties, including the optional protocols to the CRC, the recommendations provided by UN Committee on the Rights of the Child and the UN Committees General Comments.

2.2 Followed a systemic approach (linking for example with other streams of work such as child rights education, awareness raising campaigns, etc.)

Legislation generally does not provide for regulating prevention work such as awareness raising. A big landmark of this Code is that it has managed to weave in this area indirectly and that is through prescribing mandatory child safeguarding procedures for any state and non-state actor working with children. The implementation of such procedures will require educating children on different types of violence and where they can report violence committed against them or someone they know.

2.3 Used the CRC reporting process, including the recommendations, as a trigger or basis; when the CRC reporting process was not a trigger, we would be interested in knowing what was.

The GRZ State Party reporting process to the UNCRC presented a key “push” for the finalization of the Children’s Code for the Government. This came at different stages, but in particular: a) in the process of compiling the GRZ State Party CRC Report – and recognition on the importance of finalization of Children’s Code and b) the physical dialogue of the GRZ with the UNCRC: the head of the Zambia delegation was the newly appointed Minister of Justice. Upon his return to Zambia, requests from UNICEF and civil society to finalize the Children’s Code resonated well and the finalization of this Bill was then prioritized.

The CRC reporting process, especially the concluding observations and recommendations of the CRC Committee on the rights of the child kept the fire burning as they provided points of reference. The enactment of the Children’s Act and developing a separate juvenile justice system has been coming in all recommendations for Zambia.

2.4 Were used to make child rights visible

The core principles in the CRC relating to the best interest of the child, non-discrimination, survival and development and the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child were not expressly stated in the text of the majority pieces of the legislation in Zambia, but all these have been domesticated in the Children’s Code Act, n0. 12 of 2022.

3. Were used to revisit reservations made to the CRC (No Reservations were made)

Zambia did not enter any reservations.

4. Ensured broad participation of stakeholders, including successful involvement of NHRI and civil society

The process attracted a broader participation of stakeholders comprising the relevant government institutions, NGO, CBO and FBO. The process was co-hosted by the Ministry of Community development and social Services and the Zambia Law Development Commission. The National Human Rights Commission-office of the Commissioner for children participated and helped guide the process. Furthering this, UNICEF supported the participation of social welfare and justice practitioners (separately) in reviewing drafts of the Children’s Code and providing input. UNICEF also reverted to a range of international standards and provided advice on aligning the content of the Children’s Code in these. This was particularly related to: age of criminal responsibility (this was resolved through an amendment to the Penal Code accompanying the Children’s Code; the proposal of lifting the age of criminal responsibility from 8 to 14 was not fully endorsed with the age now lifted to 12;), use of detention as measure of last resort, regulation of diversionary schemes, recognition of child offenders as children in “need of care and protection”, aligning provisions with UN Guidelines on Alternative care and the Hague child protection conventions, protection of child victims/witnesses in justice proceedings. Further, all relevant stakeholders, including a range of non-government organizations were invited to the Ministry of Justice Internal Judicial Review which scrutinized each segment of the law and took upon inputs and recommendations. The Ministry of Justice also facilitated and incorporated inputs from different ministries and bodies, such as for example the submission from the Gender Division on protection of child victims/witnesses. Following the endorsement of the Bill by the Ministry of Justice, it was submitted to Cabinet for approval and forwarding to Parliament.

5. Ensured meaningful child participation

Children were highly engaged from the beginning; Government through the Zambia Law Development Commission’s research process included children from various parts of the country during the research to develop an issue paper on child law review. In 2015, Ministry of Justice went flat out to consult children on various issues that affected them to have their voice in the CRC State Party Report. Children’s recommendations to the CRC Committee on the rights of the child were taken into consideration during the child law review process. Further, children through the school child rights clubs engaged the Parliamentary Caucus on Children to view their concerns. Additional spaces were used through the National Child Rights Forum, a consortium of local NGOs advocating for children’s rights.

6. Included a successful costing/budgeting exercise- NO

7. Included a successful child rights impact assessment

A child rights impact assessment was not carried out as such. However, various tools were used to pre-test and ascertain the effects that the new law will have on children and the enjoyment of their rights; the 2016 national child policy review was a significant and systematic process which informed the development of the Children Code Bill. Further, the approach was validated by the situational analyses commissioned by UNICEF which presented comprehensive assessments and analyses of the situation of children and women in Zambia. These tools were used to present evidence-based information that informed decision-making across sectors relevant to children and women. These reports contributed greatly to the development of strategic models on protection, respect, and fulfilment of the rights of children at all levels of the government and informed the child law reform process.

8. Established successful coordination mechanisms/bodies to lead/coordinate/monitor the review and reform process

Zambia had put in place an effective coordination mechanism at the national level by establishing a National Steering Committee, with a Secretariat hosted under the Ministry of Community Development and Social Services, headed by a staff from the Zambia Law Development Commission. The purpose was Committee was to provide coordination oversight, to carry out a successful legislative audit of all the 29 pieces of legislation that had effect of children and to codify the proposed law and to monitor the review process. The Zambia Law Development Commission and the Ministry of Justice also led internal coordination mechanism, the Internal Legal drafting Committee. The role of UNICEF, as it has always been, was to provide financial and technical assistance to both Zambia Law Development Commission, MCDSS and Ministry of Justice to facilitate dialogue and review, with special attention to making sure that practitioners (esp. judges and social welfare officers) have an input into the context of the Bill. UNICEF also provided input on international child protection related child rights standards.

9. Involved successful institutional reform/capacity building in the context of the legislative reform

The Children's Code outlines the court structure for addressing child related issues (as per explained above). A child-friendly court structure (mirroring magistrate and high court levels) is stipulated in the Code and applies to both criminal and civil matters (hence applies to child offenders, child victims/witnesses and children in civil proceedings). Such a structure lends itself well to specialization of judges and use of standardized training programmes.

10. Established efficient oversight mechanisms, including by Parliaments

Oversight for the wellbeing of children of institutions where children reside is defined by the Children's Code. The system of oversight for child safeguarding is also defined by the law. For the operationalization of both of these mechanisms – more child development and social welfare officers are needed. The challenge ahead is to expand the social service workforce so that these oversight roles be realized.

The relevant parliamentary standing committees have an oversight role and do organize public hearings on key topics. They also provide recommendations to the executive government, but the follow up of such recommendations (and budgeting for their implementation) is unclear. The Parliamentary Caucus on Children played a key role in sensitizing parliamentarians on the importance of this Act and may also play a key role in “soft” oversight.

11. Ensured efficient monitoring of the reform and making it an ongoing process

A challenge moving forward