



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON YOUTH, SPORT AND CHILD MATTERS ON THE CHILDREN'S
CODE BILL, N.A.B. NO. 12 OF 2022**

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

Published by the National Assembly of Zambia

REPORT

OF THE

**COMMITTEE ON YOUTH, SPORT AND CHILD MATTERS ON THE CHILDREN'S
CODE BILL, N.A.B. NO. 12 OF 2022**

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

TABLE OF CONTENT

PAGE

1.0	Membership of the Committee	1
2.0	Functions of the Committee.....	1
3.0	Meetings of the Committee.....	1
4.0	Procedure Adopted by the Committee.....	1
5.0	Background.....	1
6.0	Objects of the Bill	2
7.0	Salient Provisions of the Bill	3
8.0	Concerns Raised by Stakeholders.....	11
9.0	Other Concerns Raised	24
11.0	CONCLUSION.....	29
	Appendix I	30
	Appendix II.....	31

REPORT OF THE COMMITTEE ON YOUTH, SPORT AND CHILD MATTERS ON THE CHILDREN'S CODE BILL, N.A.B. NO. 12 OF 2022, FOR FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1.0 Membership of the Committee

The Committee consisted of Mr Edgar Sing'ombe, MP (Chairperson); Mrs Chrizoster Phiri Halwindi, MP (Vice Chairperson); Mr Misheck Mutelo, MP; Mr Pavyuma Kalobo, MP; Mr Chinga Miyutu, MP; Mr George Kasabila Kandafula, MP; Mr Sydney Mushanga, MP; Mr Golden Mwila, MP; Mr Micheal Zondani Jay Katambo, MP; and Mr Allen Banda, MP.

The Honourable Madam Speaker
National Assembly
Parliament Buildings
LUSAKA

Madam,

The Committee has the honor to present its Report on the Children's Code Bill, N.A.B. No. 12 of 2022, for First Session of the Thirteenth National Assembly, referred to it by the House on Thursday, 7th July, 2022.

2.0 Functions of the Committee

The functions of the Committee are as set out in Standing Order Nos. 197 (o) and 198 (j) of the National Assembly Standing Orders, 2021.

3.0 Meetings of the Committee

The Committee held nine meetings to consider the Children's Code Bill, N.A.B. No. 12 of 2022.

4.0 Procedure Adopted by the Committee

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from stakeholders, as listed at Appendix II.

5.0 Background

The current law relating to children was fragmented and set out in different pieces of legislation. For instance, matters relating to children in conflict with the law were contained in the *Juveniles Act*; the adoption of children was contained in the *Adoption Act*; and the affiliation and maintenance of children was contained in the *Affiliation and Maintenance of Children Act*.

These laws had become archaic and did not address the current and changing needs of children. Additionally, the laws had varying definitions as to who could be considered to be a child. Therefore, it had become necessary to repeal the existing laws, and reform and consolidate the law relating to children in order to provide a definition of a child, applicable in all spheres of life in which a child was interacting and to respond to the current needs of children.

It was against this background that the Government introduced the Children's Code Bill, No. 12 of 2022, to inter alia reform and consolidate the law relating to children, the provision of legal aid and the regulation of child care facilities.

6.0 Objects of the Bill

The objects of the Bill were to:

- a) reform and consolidate the law relating to children;
- b) provide for the parental responsibility, custody, maintenance, guardianship, foster care, adoption, care and protection of children;
- c) provide for the grant of legal aid to, and establish procedures for the treatment of children in conflict with the law;
- d) provide for the making of social welfare reports in respect of a child in conflict with the law;
- e) 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;
- f) provide for the protection of a child victim and child witness in investigative and judicial processes;
- g) provide for the probation of a child in conflict with the law and the provision of probation services;
- h) provide for the development of treatment programmes, early intervention services and programmes to combat crime and prevent further offending;
- i) 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 re-integration of the child in conflict with the law into society;
- j) provide for the establishment of child approved centres and child reformatory centres;
- k) provide for the regulation of child care facilities;
- l) provide for child safeguarding;
- m) domesticate the Convention on the Rights of the Child; the African Charter on the Rights and Welfare of the Child; the Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption; and the Convention on the Civil Aspects of International Child Abduction;
- n) repeal *the Legitimacy Act of 1929*; *the Adoption Act of 1956*; *the Juveniles Act of 1956*; and *the Affiliation and Maintenance of Children Act of 1995*; and

- o) provide for matters connected with, or incidental to, the foregoing.

7.0 Salient Provisions of the Bill

The Committee noted the salient features of the Bill as set out below.

Part I

Preliminary Provisions

Clauses 1 and 2 set out the citation of the Act once enacted and the definitions of key words and phrases used in the Bill, in order to make the law easier to understand by citizens and those tasked to implement the law.

Clauses 3 and 4 provided for the best interests of a child as the primary consideration in a matter or action concerning a child, the factors that a court, an administrative institution or an authorised officer should take into consideration when determining the best interests of a child and the principles that should be applied in matters relating to children.

Part II

The Rights and Responsibilities of a Child

Clauses 5 to 25 set out the rights and responsibilities of a child, which included the right to survival and development; name and nationality; education; health care; social protection and social services, among others. The clauses further set out prohibited acts against or relating to a child's rights and offered protection from those acts such as, the protection from female genital mutilation and child marriage and the protection from corporal punishment.

Clause 26 set out the duties and responsibilities of a child which included the duty and responsibility to serve the community through the child's physical and intellectual abilities and the duty and responsibility to preserve and strengthen social and national solidarity.

Clause 27 provided a sanction for any person that infringed the rights of a Child.

Clause 28 provided for the enforcement mechanism for the rights of a child.

Part III

Administration

Clauses 29 to 35 provided for the Child Development Department, responsible for the promotion and advancement of the rights and development of a child and the Social Welfare Department, responsible for the administration of the Act, once enacted, and to supervise and exercise control over the planning, financing and coordination of welfare activities relating to children. The clauses provided that the aforementioned Departments would be in the ministry responsible for child development and welfare, and would operate under the general direction of the Permanent Secretary of the ministry responsible for child development and welfare.

Additionally, the aforementioned clauses provided for the appointment of the Director of Child Development; the Director of Social Welfare; child development officers; child welfare inspectors; probation officers; and other staff that were necessary to carry out the functions of the departments and other functions under the Act.

Clause 36 established the National Coordinating Committee for Children that would be responsible for the coordination of child development and welfare matters in the ministry responsible for child development and welfare. The clause further permitted the National Coordinating Committee to establish sub-committees in the provinces and districts in a manner as would be prescribed.

Clause 37 provided immunity to the Director of Child Development; the Director of Social Welfare; a child development officer; child welfare inspector; probation officer; and other staff of the Child Development Department and Social Welfare Department, in respect of an act done in good faith and without negligence in the execution of powers vested in them under the Act.

Part IV

Parental Responsibility

Clauses 38 to 44 provided for the parental responsibility which included, the duty to maintain the child, the duty to protect the child from neglect, discrimination, violence and abuse and the right to give parental guidance in religious, moral, social, cultural and other values and to determine the name of the child. The clauses also set out which persons had the parental responsibility over a child and the manner in which a father acquired parental responsibility under certain circumstances such as, where a child's father and mother were not married at the time of birth.

Additionally, the clauses set out the manner in which a parental responsibility agreement would be made, the transmission of parental responsibility under certain circumstances and the extension of parental responsibility beyond a child's nineteenth birthday. Lastly, clause 44 provided for a sanction to a person who wilfully failed or refused to exercise parental responsibility.

Part V

Arrest, Bail and Deprivation of a Child's Liberty

Clause 45 set out the age of criminal liability of a child which would be in accordance with the *Penal Code, Chapter 87 of the Laws of Zambia*.

Clauses 46 to 49 set out the rights of a child during apprehension, the manner in which an apprehension of a child could take place by a law enforcement officer or any other person, and the rules that applied when the apprehension of a child was being made by a law enforcement officer or any other person.

Clause 49 also set out the manner in which the arrest of a child by a law enforcement officer would be made.

Clause 50 set out the procedure to be carried out with respect to the information of an arrest of a child.

Clause 51 required a warrant for the arrest of a child to be issued in accordance with the *Criminal Procedure Code, Chapter 88 of the Laws of Zambia*.

Clause 52 mandated a law enforcement officer that was effecting an arrest to inform the child, having regard to the age and maturity of the child, the reasons of the arrest, notify the child of the contents of the warrant and exhibit a copy of the warrant to the child.

Clause 53 permitted the search of an arrested child and provided the manner in which such a search was to be conducted and by whom the search would be made, taking into consideration the sex of the child.

Clauses 54 to 55 set out the procedure for a caution of a child by a law enforcement officer and the manner in which questioning or an interview of a child would be carried out by a law enforcement officer.

Clauses 56 to 57 set out the procedure for the release of a child on recognizance, who could make such recognizance, the procedure for taking a child into custody and prohibitions relating to the custody of a child.

Part VI

Diversion

Clause 58 set out the diversion options which included mediation, family group conferencing and restitution.

Clauses 59 to 60 set out the conditions on which the diversion may be applied and the procedure that was to be applied where a child failed to comply with a diversion option.

Clauses 61 to 64 related to the diversion programmes and provided for the purposes of diversion programmes; the prohibition of a diversion service provider providing a diversion programme without accreditation; the manner in which a diversion service provider could apply for such accreditation; and the circumstances in which the Director of Social Welfare could suspend or revoke the accreditation of a diversion service provider.

Part VII

Court Proceedings

Clauses 65 to 83 set out the courts that could deal with child related matters, namely; the juvenile court and the children's court; the jurisdiction of the juvenile court and the children's court and the procedure that was to be adopted by the courts in relation to the remission of a child to the courts; the sittings of the court; and the manner of taking evidence in the courts, among other things.

Part VIII

Probation of Children

Division 1-Administration

Clause 84 permitted the Minister to establish or to cause to be established a programme or service aimed at combating crime and rendering probation services.

Clauses 85 to 86 set out the functions and powers of probation officers, which included, investigating the circumstances of a child and preparing a report to the juvenile court or children's court on the treatment and committal of the probationer to an institution, monitoring a child subject to home-based supervision and conducting family tracing.

Division 2-Probations Orders

Clauses 87 to 95 set out the manner in which a probation order would be made; the contents of a probation order, the procedure to be applied where a probationer did not comply with a condition of a probation order or where a probationer committed an offence during the probation period; and the amendment and discharge of probation orders.

Clause 96 granted powers to a juvenile court or the children's court over a child whose parent or guardian was unable to control that child, which included the power to order the child to be sent to a child approved centre or to be committed to the care of a fit person.

Clause 97 permitted the Minister to establish a Probation Committee to advise the Minister on matters of policy relating to the probation of children in conflict with the law and the development of the probation system in Zambia.

Part IX

Child Approved Centre Order and Child Reformatory Centre Order

Clause 98 permitted the Minister to establish child approved centres for the reception; maintenance; and training of a child sent to a child approved centre under the Act or any other written law; and placed a child approved centre under the supervision of the Director of Social Welfare.

Clause 99 permitted the Minister responsible for correctional centres to establish child reformatory centres where children may be placed in custody and child transit centres where children may be temporarily kept. The clause further prohibited a child below the age of sixteen years from being sent to a child reformatory centre.

Clauses 100 to 104 set out the manner in which a child approved centre order and child reformatory centre order would be made; the contents of a child approved centre order and child reformatory centre order; the conveyance of a child to a child approved centre or child reformatory centre; the duration of custody in a child approved centre or child reformatory centre; and the circumstances on which a child would be kept in custody at a child approved centre or child reformatory centre.

Clause 105 sanctioned a person who harboured or concealed a child who had been ordered to be sent to a child approved centre or child reformatory centre, or who knowingly prevented a child from returning to a child approved centre or child reformatory centre.

Clause 106 provided the procedure to be applied where a child escaped from a child approved centre or child reformatory centre or failed to return to the child approved centre or child reformatory centre.

Clauses 108 to 109 permitted the Director of Social Welfare and the Chief Inspector, to discharge a child from a child approved centre or child reformatory centre, respectively, on condition that the child was placed under the supervision of a probation officer, and also set out the circumstances upon which a permit for the release of a child from a child approved centre or child reformatory centre may be revoked or forfeited.

Clauses 111 to 112 provided for the making of contributions for the maintenance of a child in a child approved centre or child reformatory centre, and the production of a child in relation to the custody of a child in a child approved centre or child reformatory centre.

Clause 113 set out the circumstances upon which a finding of guilty and an order made in respect of a child would be expunged and after what period of time the finding of guilty and an order made in respect of a child would be expunged.

Clauses 114 and 115 provided for international reciprocity with respect to a child approved centre order or child reformatory centre order and the procedure for appeals against a child approved centre order or child reformatory centre order.

Part X

Affiliation, Status of Child, Maintenance and Custody

Division 1-Affiliation Orders

Clauses 116 to 120 set out the manner in which an application for the affiliation of a child could be made by a child, a child's mother and a child's mother who was a party to a void marriage. The clauses further required the evidence of the mother or any other party to be corroborated in some material particular by other evidence where an affiliation order was to be made, and permit the court to make an order as to the unfitness of custody of a party when making an affiliation order.

Division 2-Family Status of a Child

Clauses 121 to 128 prescribed provisions relating to the family status of a child born in a marriage and outside of a marriage.

Division 3-Maintenance of Affiliated Child

Clauses 129 to 136 prescribed provisions relating to the presumptions that applied with respect to the maintenance of a child and provisions relating to the maintenance of an affiliated child; the types of maintenance orders that could be made; the matters that ought to be taken into consideration when making a maintenance order; the duration of the maintenance order and the variation or discharge of a maintenance order.

Division 4-Maintenance of Child of Family

Clauses 137 to 140 permitted the court to make a maintenance order in respect of a child of the family on granting a decree of divorce; nullity of marriage or judicial separation; or at any other time thereafter; provided for the application of a maintenance order by a guardian or custodial parent and granted powers, among others, to the court to make an order other than maintenance such as, education, medical care or housing.

Division 5-Custody of Children

Clauses 141 to 149 set out provisions relating to the custody of a child such as, who could be granted a custody order; restrictions on removal of a child where an application for a custody order in respect of a child was made the rights granted under a custody order, the factors taken into consideration when making a custody order and the making of a maintenance order where a custody order was made.

Division 6-Registration and Enforcement of Maintenance Order

Clauses 150 to 157 set out the manner in which the registration of a maintenance order could be made in another court, and the manner in which maintenance orders could be enforced and other matters connected with the registration and enforcement of maintenance orders such as the variation and cancellation of registration.

Part XI

Guardianship

Clauses 158 to 166 provided for the rights of a surviving parent to guardianship; the criteria for the appointment of a guardian; the manner in which a guardian of a child may be appointed by will or deed or by the court; the manner in which an appointment of a guardian may be revoked; and the duration of appointment of a guardian. The clauses further prescribed the manner in which a dispute between guardians may be resolved; the powers of a guardian; and offences relating to guardianship such as, wilfully or recklessly producing an account which was false in any material particular.

Part XII

Child in Need of Care and Protection

Clause 167 set out the conditions upon which a child would be considered to be in need of care and protection such as, if the child had no parent or guardian, was found destitute, begging or receiving alms or if a child was subjected to child marriage or to customs and practices prejudicial to the child's life, education and health.

Clauses 168 to 180 prescribed matters connected with, or incidental to, children in need of care and protection such as court proceedings relating to a child in need of care and protection; powers of the court; medical care; and orders that could be made by a court for the protection of a child in need of care and protection.

Clause 181 mandated the ministry responsible for child development and welfare to provide intensive family support and other welfare support where a child in need of care and protection was reintegrated into the child's birth family or was placed in kinship care or emergency foster care, and on condition that the intensive family support or other welfare support contributed to the wellbeing of the child and prevented the child from being placed under institutional care.

Clause 182 mandated a social service provider that intended to provide intensive family support to apply for accreditation to the Director of Social Welfare and provided that the conditions for accreditation; the validity of the accreditation; the renewal of the accreditation; the variation and transfer of the accreditation; and the suspension or revocation of the accreditation would be prescribed.

Part XIII

Foster Care

Clauses 183 to 191 set out who was eligible to apply to be a foster parent; the manner in which an application to foster a child could be made; the duration of foster care; the procedure that was to be applied prior to placing a child in foster care; the factors that should be taken into consideration when placing a child in foster care; and the requirement for visits during placement.

Clause 192 prohibited the removal of a child from Zambia by a foster parent without the leave of the children's court and provided that such leave shall only be granted in exceptional circumstances being shown by the foster parent.

Clause 193 mandated a foster parent to ensure a foster child received medical attention where a foster child was ill and to notify the Director of Social Welfare of that illness.

Clause 194 placed obligations on a foster parent and the Director of Social Welfare where a foster child died, and required a foster child to be returned to the Director of Social Welfare or to the child care facility where the child was taken from prior to being placed in foster care, if the foster parent died and that foster parent was a single foster parent.

Clause 195 set out the circumstances upon which the placement of a foster child with a foster parent would be terminated.

Clause 196 mandated the Director of Social Welfare to maintain a register of foster parents.

Part XIV

Adoption

Clause 197 set out the principles that were to be applied in matters relating to adoption such as, the best interests of a child as the paramount consideration and subsidiarity.

Clauses 198 to 203 set out the types of adoptions that could be made; the conditions upon which a child was adoptable; the criteria applicable to persons who may adopt; the requirement for confidentiality during the process of adoption and post-adoption; the requirement for a child to undergo medical examination prior to placement with a prospective parent; and the prohibition of two or more adoption orders being made simultaneously in respect of the same child.

Clause 204 set out general prohibitions relating to the adoption of a child. The clause prohibited a person from giving or receiving a contribution or gift for the adoption of a child or from deriving improper financial or other gain from an activity relating to an adoption, among others.

Division 1-Domestic Adoptions

Clauses 205 to 216 set out the procedure applicable to domestic adoptions in the country.

Division 2-Inter-Country Adoption

Clauses 217 to 235 set out the procedure applicable to inter-country adoptions.

Division 3-Effect of Grant or Refusal of Adoption

Clauses 236 to 241 set out the effects of a rejection of an application for adoption; the effect of an adoption on parental rights; the effect of an adoption of a child born outside wedlock on an order or agreement in respect of that child; the effect of an inter-country adoption and the devolution of property where a child was adopted.

Division 4-Post Adoption

Clause 242 mandated a child welfare inspector to report to the Director of Social Welfare on the child's welfare twice within the first year of the adoption and mandated an adoptive parent, in an inter-country adoption, to report on the child's welfare through the central authority if the adoptive parent resided outside Zambia and adopted a child who was resident in Zambia.

Clause 243 permitted the children's court to appoint a guardian for an adopted child, on an application by an adoptive parent or the Director of Social Welfare, under certain circumstances.

Clauses 244 to 246 set out the procedure for the revocation of an adoption order or an inter-country adoption order; the making of a subsequent adoption order or interim adoption order; and the procedure for an amendment to an adoption order.

Division 5-Registers and Case Record

Clauses 247 to 251 prescribed matters relating to registers and child case records in adoption.

Part XV

Adoption Agencies

Clause 252 set out the functions of an adoption agency and provided generally that an adoption agency shall provide adoption services.

Clause 253 prohibited an adoption agency from providing adoption services without a certificate of accreditation.

Clauses 254 to 267 set out matters connected with, or incidental to, adoption agencies such as, the manner in which an application for accreditation would be made; the procedure for suspension or revocation of accreditation; the prohibition of transfer of a certificate of accreditation; and the requirement for the Director of Social Welfare to keep and maintain a register of accredited adoption agencies.

Part XVI

Child Care Facility

Clause 268 prohibited a person from establishing a child care facility without the approval of the Director of Social Welfare.

Clause 269 mandated a person who intended to establish a child care facility to apply to the Director of Social Welfare for approval of the child care facility.

Clauses 270 to 275 set out matters that were connected with, or incidental to, child care facilities such as, the grounds on which an approval of a child care facility would be suspended or cancelled; the requirements for the maintenance of a child in a child care facility; and the inspection of a child care facility by a child welfare inspector or child development officer.

Part XVII

Child Safeguarding

Clause 276 set out the measures on child safeguarding in an institution or organisation which included, the requirement to establish and implement child safeguarding and protection procedures to prevent violence against a child and child rights abuse.

Clauses 277 to 278 set out the reception of a child into the care of an institution or organisation in an emergency situation if a person in an institution or organisation had reasonable cause to believe that the child needed care and protection, and the requirements for the maintenance of a child if the child was received into an institution or organisation.

Clauses 279 to 280 mandated the Director of Social Welfare to monitor the progress of a child admitted into an institution or organisation and permitted a child welfare inspector to inspect an institution or organisation that was accommodating a child in need of care and protection.

Clause 281 permitted the Minister to make regulations relating to child safeguarding.

Part XVIII

International Child Abduction

Clauses 282 to 287 prescribed matters relating to international child abduction, which included, the circumstances when a child could be considered to be wrongfully removed from Zambia or wrongfully retained in Zambia, cooperation between central authorities in international child abductions; and the manner in which legal proceedings could be commenced.

Part XIX

General Provisions

Clauses 288 to 298 set out the general provisions of the Act, once enacted, such as the appeals procedure where a person was aggrieved with a decision of the Director of Social Welfare; the Director of Child Development or the Minister; the general penalty applicable where a penalty was not provided under the Act; and the Acts of Parliament that would stand repealed on the coming into operation of the Act.

8.0 Concerns Raised by Stakeholders

The stakeholders who appeared before the Committee supported the Bill save for a few, who raised the following concerns:

Objects of the Bill

- a) Some stakeholders held the view that the Bill should reflect within its objects, that it included children with disabilities, without which it posed a serious risk of overlooking the specific needs pertaining to the rights and welfare of children with disabilities.

Title of the Bill

Other stakeholders recommended that the title of the Bill should include a statement to read “ensuring inclusiveness in all the provisions of this Act “in order to accommodate children with disabilities.

Part I: Preliminary and Provisions

- a) Under clause 2, some stakeholders proposed the following;
 - i. the inclusion of the word ‘inclusiveness’ in order to demonstrate that the Bill mainstreamed disability in its provisions. Additionally, clauses within the Bill should demonstrate inclusiveness in the various judicial proceedings or procedures provided therein;
 - ii. the need to delete the word single woman as there was no substantive provisions dealing with a single woman in the Bill;

- iii. the definition of “child abuse” to include economic abuse because the exclusion of it would entail that economic abuse was not a form of child abuse;
 - iv. the interpretation of “child abuse” should be deleted from the Bill because it had not been used in the body of the Bill;
 - v. “Minister” should be defined in the Bill because it had been mentioned in certain clauses of the Bill;
 - vi. “alleged” in the interpretation of the word “diversion” was misplaced as one could only divert a child proven to have committed an offence and had readily admitted to having committed such an offence. There should be evidence of such commission of the offence. The word alleged, therefore, entailed a claim that something happened without proof of it happening. In view of the foregoing, the definition of the word “diversion” should be recast to remove the word “alleged”;
 - vii. the word “investigate” should be replaced with the word “assess” under the definition of “assessment order” because the use of the word investigate on the welfare or upbringing of a child meant that the child had committed an offence, when in fact not;
 - viii. the word “Police” should be replaced with “Zambia Police Service” under the definition of “law enforcement agency”. This was because the word police was broad, making it difficult to ascertain who police were. Moreover, the definition of the word “police” was not provided for under the Bill; and
 - ix. the word “officers” should be replaced with the word “agencies” under the definition of “law enforcement agency” so that all the law enforcement institutions were catered for in the definition.
- b) Under clause 3 (3) (c), there were stakeholders who held the view that the provision appeared to contradict the general spirit of the Bill which was to promote the best interest of a child at all times. They contended that the juvenile criminal proceedings were special proceedings in which the courts sought not to punish the offender or deter would-be offenders, but rather establish what was in the best interest of a child. Because of this, it was improper that a court or an administrative institution or authorised officer ought to secure for the child guidance and correction in the public interest.

The stakeholders further contended that public interest was vast and wide and at any given point, public interest outweighed individual interest. Therefore, if left unchecked, clause 3 (3) (c) would be wrongly interpreted and lead to results that may not promote the best interest of the child but uphold that of the public. In view of the foregoing, the stakeholders proposed that the words “and in public interest” be deleted and the clause to read as: “A court, an administrative institution, an authorised officer or a person acting in the name of an administrative institution secures for the child guidance and correction as is necessary for the welfare of the child”

Part II: The Rights and Responsibilities of the Child

- a) Stakeholders observed that clause 13 (2) provided that the minimum age of a child for the purposes of admission to employment and the number of hours and conditions of employment of a child shall be in accordance with *the Employment Code Act, 2019*. They, however, noted that the *Employment Code Act, 2019 section 16 subsection 3* provided that a person shall not, except under prescribed conditions, employ or cause to be employed, a person under the age of fifteen years. Therefore, clause 13 (2), should be harmonised with the *Employment Code Act* in order to ensure that the child was fully protected.
- b) Other stakeholders observed that the proposal under clause 18 (2) (b), to prohibit *inter alia*, harmful traditional practices which were likely to interfere with a child's welfare was progressive. They informed the Committee that this provision was also in harmony with other legislation such as the *Anti-Gender Based Violence Act No. 1 of 2011* and the *Gender Equity and Equality Act No. 22 of 2015*. This notwithstanding, the stakeholders held the view that there was need to amend the Constitution of Zambia to repeal *Article 23 (4) (c) and (d)* and also amend the *Penal Code Chapter 87 of the Laws of Zambia* in order to also penalise offenders.
- c) Other stakeholders held the view that clause 23(2) of the Bill, should be enhanced to outrightly prohibit the use of imprisonment against juvenile offenders. In this regard, the clause must be recast to read:

“Despite any other written law, a person shall not subject a child to capital punishment, life imprisonment or a term of imprisonment”.
- d) Other stakeholders informed the Committee that clause 25 (2), was progressive but may be difficult to implement, especially in far flung areas where the courts did not have the necessary infrastructure and specialised equipment. Currently, only the Anti-Gender Based Violence (GBV) Fast Track Courts were fitted with specialised equipment such as video links which prevented the child from coming into contact with the perpetrator. Further, Anti GBV Fast Track Courts were currently only in six provinces in Zambia with efforts being made to contract the remaining four in other provinces.
- e) Some of the stakeholders held the view that clause 26 (1) was not progressive and did not protect the best interest and welfare of the child but rather placed responsibilities on children to uphold philosophical ideologies, theories and culture. The stakeholders contended that the *Constitution of Zambia (Amendment) No. 2 Of 2016*, adequately provided for the general national values, principles and economic policies which every citizen was expected to uphold and promote, under *Articles 8, 9 and 10*. In view of the foregoing, the stakeholders recommended that clause 26 (1), be deleted from the Bill.
- f) Other stakeholders observed, with concern, that clause 27 did not appear to provide sanctions against the State where it violated the rights of a child. They, therefore, recommended that the Bill should address this concern.
- g) Stakeholders observed that clause 32 (k) provided for welfare services only to child victims of gender-based violence and human trafficking. However, stakeholders contended that it was not only children that were victims of the aforementioned offences

that were in need of welfare services. For instance, a child who was a victim of an aggravated robbery would need support from social welfare. The stakeholders, therefore, recommended that the clause be amended accordingly and not only be limited to child victims but child witnesses as well.

- h) Stakeholders held the view that clause 35 (4) was a progressive provision, however, the way the sub clauses were drafted may lead to abuse and infringement of human rights under *Part III of the Constitution of Zambia Chapter 1 of the Laws of Zambia*. They, therefore, recommended that the contents of clause 35 (4) be reviewed.
- i) Other stakeholders also submitted that clause 35 (4) and (5) ought to complement *Article 11 (d)* and *Article 17* of the Constitution.
- j) Under clause 35 (4), some stakeholders held the view that the child development officer and a child welfare officer should only enter a private dwelling of a child if that child was in imminent danger. The stakeholders, therefore, recommended that clause 35(4) should be recast to provide that a private dwelling where a child resided or was being kept should only be searched without a warrant when there was reason to believe that a child was in imminent danger. This had to be carried out in the company of law enforcement officers.
- k) Other stakeholders observed that a child development officer and a child welfare officer had both been given the powers to inspect under clause 35 (4). The stakeholders were of the view that it was not necessary for both of these officers to be given such powers. Giving them too many powers would result in the inefficiency of the Child Development Department, as the officers may be overburdened with work. In this regard, the stakeholders recommended that the powers to inspect should only be exercised by the child welfare inspector.
- l) There were stakeholders who recommended that the officers under clause 35 (4) should work together with law enforcement agencies when conducting searches and seizing property. This was to ensure that all technicalities and formalities surrounding such exercises were followed. Further, there were legal requirements such as chain of custody and storage of seized exhibits that had to be mandated, which the officers may not be well vested with. Furthermore, the officers may find themselves in dangerous situations in which they may not be able to defend themselves without law enforcement agencies.
- m) Other stakeholders informed the Committee that the word “without” should be replaced with the word “with” under clause 35 (4), in order to protect the fundamental rights of the people enshrined in *Part III* of the *Constitution of Zambia*.
- n) There were stakeholders who also contended that clause 35 (4) was detrimental to the owner of these private properties, therefore, a child development officer and child welfare inspector should not be given absolute powers.

Part IV: Parental Responsibility

Stakeholders made the following observations and recommendations under Part IV:

- a) clause 38 (1) (a) should include a provision of assistive devices to cater for a child with disability;
- b) despite clause 39 (2) having allowed for mothers to have parental responsibility at the first instance, the Bill was not clear at what point the court would not consider exercising this option first. The clause should, therefore, address this concern;
- c) clause 42(2) was not realistic, especially if the parent assuming parental responsibility remarried and wished that their new spouse be a guardian who would take up parental responsibility. Therefore, the provision should include a guardian chosen by the parent assuming parental responsibility; and
- d) the age of a child under clause 43 (1) should be harmonised with the age provided for in the United Nations Convention on the Rights of the Child (UNCRC).

Part V: Arrest, Bail and Deprivation of a Child’s Liberty

- a) Under clause 47(2), some stakeholders proposed that the word “shall” be replaced with the word “may” because the word shall was a mandatory word with an implication of police officers not executing their duties diligently. The police officers should have an option to be in uniform or carry a firearm when arresting a child as this would assure the safety of the police officers when executing their duties and avoid harassment by members of the community. Furthermore, the police uniform was an identity that did not require explanation.
- b) Other stakeholders held the view that “use reasonable means” under clause 47 (4) should be clearly defined in order to avoid abuse or use of excessive force which may be harmful to the child.
- c) There were stakeholders who also held the view that clause 55 should provide for how interviews would be conducted for a child with a mental disability, a hearing or visual impairment, or a physical disability.
- d) Some stakeholders were of the view that “child’s own recognisance” under clause 56 (1), should be removed from the clause because a child may not be in a proper position to understand the conditions, effects and the nature of the police bond, especially on the effect of abrogating the conditions of the police bond. Additionally, this provision was in conflict with clause 55 (1) of the Bill which allowed the presence of a parent; guardian; child welfare inspector; legal representative; close relative of the child; or the person having parental responsibility for the child to be present at the questioning or interview. In view of the foregoing, the stakeholders recommended that the clause should be recast to read “a child under arrest shall be released by a law enforcement officer on the recognizance entered into by the child’s parent, guardian, and close relative of the child or the person having parental responsibility for the child, unless the offence which the child was accused of was a serious offence.
- e) Other stakeholders held the view that clause 57 should consider a child with a disability when making custody arrangements.

- f) Under clause 47 (3), some stakeholders observed that law enforcement officers would not be allowed to be in uniform when arresting a child at that child's home. The stakeholders, therefore, contended that it was imperative that the law enforcement officers be mandated to show proof to the child or the parents or guardians to that child that they were in fact law enforcement officers. The stakeholders held the view that leaving it to the child or the child's parent or guardian's request was a recipe for danger as cases of impersonation could be encouraged. The Bill should, therefore, address this concern.

Part VI: Diversion Options

- a) Some stakeholders submitted that clause 58 (3) should include the disability of the child, if any.
- b) Other stakeholders held the view that clause 59 should include a disability aspect, which may also contribute to the child coming into conflict with the law.
- c) There were stakeholders who informed the Committee that the word "likelihood" under clause 59 (a) was misplaced. This was because the diversion may be applied if the evidence disclosed a prima facie case and not likelihood. The stakeholders, therefore, recommended that clause 59 (a) be amended accordingly.
- d) Some stakeholders were concerned that clause 60 (3) (a) seemed to give power to the courts to divert. They contended that courts were not diverting bodies. Therefore, this provision should not stand. They further argued that the Child Welfare Officer should not be allowed to make such application to the court to determine what was to be done in the event that the diversion failed. What would be appropriate would be for the Child Welfare Officer to inform the body that diverted the child, either the Law Enforcement Agency (LEA) or the National Prosecution Authority (NPA) of the failed diversion. Where it was a Law Enforcement Agency, the LEA could inquire into the issue and decide to either open a docket for that child or divert that child again. Where NPA was the diverting body, an inquiry was to be made and NPA may decide to take the matter to court or divert.
- e) Other stakeholders held the view that the Bill should state which institutions had the powers to make the decision to divert a child or not, under clause 60 (3) (a). Currently, what was prevailing on the ground was that the diverting bodies included the Zambia Police; the Drug Enforcement Commission; and the National Prosecution Authority.
- f) Stakeholders also observed that clause 60 (4) had given the court the power to order trial where diversion had failed. The stakeholders argued that this was beyond the courts' powers in the circumstance, because it was only the National Prosecution Authority that had the constitutional and statutory power to decide that a matter be taken to court for prosecution. The stakeholders, therefore, recommended that clause 60 (4), should provide that "where diversion fails, a decision as to whether or not to prosecute such a child should still be made by the National Prosecution Authority before any trial is ordered."
- g) Some stakeholders also informed the Committee that it was important for clause 61 of the Bill to consider a child with a disability when assessing the requirements for diversion.

- h) Other stakeholders informed the Committee that clause 63 should set out the criteria for one to apply to be an accredited diversion service provider. They contended that leaving it open without proper guidance from the substantive law would allow for anyone to send in applications, making the selection process tedious and laborious.

Part VII: Court Proceedings

- a) Some stakeholders submitted that the provisions under Part VII should take into consideration a child offender with a disability, as this would affect communication during proceedings or add emotional stress to such a child.
- b) There were stakeholders who held the view that clause 65 reiterated what had been happening in practice and did not seem to introduce anything new. They proposed that the Bill should instead establish a Juvenile Court as a division of the Subordinate Court. This way, it would be possible to appoint and train magistrates specifically to preside over the Juveniles Court. The idea was to develop and nurture specialised competencies that would robustly and effectively safeguard the rights of the child through the interpretation of the Act.
- c) There were stakeholders who also observed that clause 66 (1) (a), should specify the piece of legislation being referred to.
- d) The Bill under clause 66 (3), provided that such appeals shall lie with the Children's Court, a specialised division of the High Court. While this step was applauded by some stakeholders, other stakeholders held the view that the Bill was oblivious of what happened when the matter was appealed against in the Children's Court to the Court of Appeal, and further to the Supreme Court. The stakeholders, therefore, contended that it would be important for the Bill to place a requirement that Judges with demonstrable knowledge in children's rights must be seized with the conduct of such appeals. This requirement would yield and ensure uniformity of approach in upholding the rights of children by the courts as enshrined in the Bill.
- e) Other stakeholders submitted that clause 68, should take into consideration a child appearing before the court with a disability in order to make appropriate provisions such as sign language interpreters, Visual Aids and Physiotherapists. Additionally, the Bill under this clause should provide for the accessibility of a child with a disability to the Children's Court or Juvenile Court in order to comfortably settle the child before and during the proceedings.
- f) Stakeholders also informed the Committee that clause 68 (4), was ambiguous as the word informal had not been defined. They contended that this could entail that the court proceedings being informal vis-a-vis the nature and recording of the proceedings, or that traditional rules of evidence should not be followed. In view of the foregoing, they proposed that the Bill should give guidance on what was entailed when it provided that proceedings would not be formal.
- g) There were stakeholders who also recommended that in addition to non-uniformed officers, clause 68 (4) should also state that judges and lawyers for the defence and state in the Children's Court should not be robed as they could also be intimidating.

- h) Other stakeholders contended that clause 71 should take into consideration children with disabilities such as children with autism.
- i) Other stakeholders observed that clause 71 (2), mentioned a sworn affidavit to be used as proof of age of a child. However, the clause was not clear on who was responsible for swearing this Affidavit. The stakeholders, therefore, recommended that the clause should provide that a parent's evidence on oath on the age of a child should suffice, as it was similar to that of a sworn affidavit if the affidavit was to be sworn by that parent.
- j) Some other stakeholders observed that clause 71 (2), was progressive. They however, expressed concern that the uptake of birth certificates was still very low in Zambia and recommended that the proposed Act should be supported with other programmes aimed at increasing the uptake of birth certificates.
- k) There were stakeholders who recommended that the age of the child under clause 71 (2), should be harmonised with the age of a child provided for under the United Nations Convention on the Rights of the Child (UNCRC).
- l) Some stakeholders held the view that clause 75 should take into consideration a child with a disability (keeping in mind the sex, age and cognitive abilities) when placing such a child in remand or child transit centre. Additionally, such a transit centre should be accessible to a child with a disability, and should provide services that were accommodative to a child with a disability, with the appropriate professional care such as physiotherapists, sign language interpreters and visual and voice aid materials for learning at the centre.
- m) Other stakeholders also observed that clause 75 required a child not to be detained in a prison meant for adults or a correctional centre, but in a transit home. While they appreciated the good intentions of the reform, they were of the view that it was not practical, as not all districts had transit homes. They, therefore, proposed that this provision should not be in mandatory terms. Therefore, the word "shall" should be replaced with the word "may".
- n) Stakeholders also recommended that the social welfare report, under clause 76 (4), should not recommend diversion firstly because the court could not make an order for diversion as it was not a diverting body. Secondly, social welfare reports were normally submitted at the time trial was concluded for purposes of either sentencing or making an order. Therefore, such recommendation for diversion of a child could not be made because at this point, the child would have already undergone the criminal justice system, thereby, defeating the purpose of diversion.
- o) Other stakeholders contended that clause 76 (3), should also include details of a child with a disability. They held the view that this would help the court make considerations for the appropriate Court Order in the best interest of the child.
- p) Under clause 78, some stakeholders observed that the Bill did not seem to be alive to the fact that children would be able to testify in other courts apart from the Juveniles and Children's Court. Therefore, the use of the terms or phrases such as "Juvenile Court and Children Court" under the clause were misleading, as they tended to mean that children would appear exclusively in Juvenile and Children's Courts and no other courts. In this

regard, the stakeholders proposed that the Bill should use a general term ‘court’ as it appeared under *the Juveniles Act chapter 53 of the laws of Zambia*, to address the concern raised.

- q) Other stakeholders held the view that the subsections of clause 78, appeared to be problematic and would in turn tamper with the established rules of evidence. They contended that it was very clear that the intent of this clause was to protect child witnesses but at the same time this should be done in line with the principles and rules of evidence law, because it would greatly disadvantage defence counsels in cases where child witnesses were involved.
- r) Some stakeholders observed that clause 78 (1), mirrored *section 122 of the Juveniles Act, Chapter 53 of the Laws of Zambia*, which stated that a child below the age of fourteen must go through the process of inquiry to determine whether the child was possessed with sufficient intelligence to justify the reception of that evidence from the child, and whether the child understood the duty of telling the truth. The Bill, however, did not set out any specific age for this purpose.

Therefore, the implication of failure to define the age under clause 78, was that the generic definition of a child under the Bill must be employed when this section was invoked. The Bill defined a child as per the meaning assigned to the word in the Constitution. According to *Article 266 of the Constitution*, child means a person who had attained, or is below the age of eighteen years. Put differently, a child was a person below the age of nineteen as per the Constitution.

The consequence of the above was that any person below the age of nineteen was subject to the process of inquiry, as to whether he/she was possessed with sufficient intelligence to justify the reception of that evidence, and whether the child understood the duty of telling the truth. This, in the stakeholders’ view was a troubling provision. A person aged eighteen in the Zambian jurisdiction was entitled to vote in an election. This meant that this person could make sound decisions about how he/she wanted the affairs of the country to be managed. A person aged eighteen could be a partner in a partnership business. This meant this person could make business decisions. A person aged eighteen could be a director in a company. Again, the meaning was that this person could manage the intricate affairs of a company. Further, a person aged fifteen and above was eligible to enter employment as per the *Employment Code Act*.

The stakeholders, therefore, contended that there did not appear to be any rational justification for the upward adjustment of the age of a child when it came to testifying before courts of law from fourteen to eighteen. In view of the foregoing, they recommended the age, for purposes of holding an inquiry to determine whether or not a child was competent to give evidence before the courts of law should be as it appeared in the *Juveniles Act*. If a witness was aged 14 and above, such a child must give evidence in the ordinary manner like an adult did.

- s) Other stakeholders held the view that the safeguard of corroboration that guarded against the danger of unsafe convictions, appeared to have been done away with under clause 78 of the Bill. They contended that the clause wiped out the critical safeguard that had been erected around the criminal justice system since time immemorial. The stakeholders,

therefore, recommended that the Bill should retain corroboration as a condition precedent to a conviction when dealing with the evidence of a child.

- t) Stakeholders further observed, with concern, that clause 78 (1) and (2), did not mention an inquiry. It simply referred to the court forming an opinion without stating how the opinion would be formed and what the court was required to do to form this opinion. The stakeholders, therefore, recommended that the Bill should clearly state that an inquiry must be conducted out of which an opinion would be made as to whether or not the child should testify.
- u) Other stakeholders observed that clause 78 (2) (b), allowed a child welfare inspector to testify on behalf of a child, where a child was not called as a witness. However, the position of the law was that the evidence of a statement given to a witness by a person who was not called as a witness was hearsay and inadmissible if the object was to establish the truth of what was contained in that statement. In view of the foregoing, the trouble with this provision was that a child welfare inspector would be in the shoes of a child and testifying as a witness of fact. The evidence of a child welfare inspector would, therefore, be hearsay and inadmissible. Therefore, it was very difficult to see any justification in this provision, especially that the child welfare inspector was testifying after the court had formed an opinion that the child was not possessed with sufficient intelligence to justify the reception of the evidence, and that the child did not understand the duty of telling the truth.
- v) Stakeholders also informed the Committee that they did not support the provisions of clause 78 (2) and recommended that the provisions be deleted. They contended that in as much as the proposed law intended to protect child witnesses, it was problematic because it was important that a child who was about to give evidence understood the duty to tell the truth and had sufficient intelligence. The intention behind this was to avoid a situation where a child had been influenced by a third party, or due to immaturity of the mind and lack of appreciation to the truth, the child allowed his or her mind to wander in imagination. Further, courts in Zambia had emphasised this point in the case of Benard Chisha V the People. Furthermore, allowing a child to give unsworn evidence when the court determined that the child did not possess sufficient intelligence or the duty to tell the truth, would entail that the child would not be cross examined and the evidence would be admitted even when there was a possibility that the child's evidence was influenced by a third party.
- w) Other stakeholders submitted that clause 78 (4) (e), was ambiguous and needed to be qualified. They contended that the provision was unclear on whom or which institution should not question the child twice. The stakeholders argued that failure to clarify this provision would result into an injustice being occasioned to all parties concerned. The spirit of the provision should be to prevent a child from undergoing multiple interviews during the criminal investigation process, thereby, occasioning traumatising on the child. The provision should instead state that multiple interviews of the child shall be avoided as practicably possible to prevent occasioning more harm on the child.
- x) There were stakeholders who informed the Committee that clause 78(6) (a) was very progressive. They, however, proposed that measures should be put in place to safeguard the integrity of the evidence being presented in court because it was possible to tamper

with the contents of a video recording or the contents of a report submitted in court as evidence.

- y) Other stakeholders observed that clause 78(9) had a typographical error. The word “collaborated” was supposed to read as “corroborated.”
- z) Some stakeholders also held the view that the word “may” should be replaced with “shall” under clause 78(9). This was because child witnesses should be corroborated since they were susceptible to influence by third parties and the immaturity of the mind presented opportunities for them not to differentiate between falsehood and truth, as they allowed their imagination to run wild.
 - aa) There were stakeholders who also informed the Committee that the methods and procedures under clause 79, should take into consideration a child with a disability. Additionally, the court, where possible, should also invite professional experts such as officials from the Zambia Agency for Persons with Disabilities, physiotherapists, sign language interpreters, child counsellors or any other expert, when need arose, when dealing with a child with a disability.
 - bb) Other stakeholders held the view that the age of children to be liable to a custodial sentence under clause 79 (3) should be revised. They contended that qualifiers must be set in to allow courts to address issues of severity, antecedents and prevalence of the offence and the offender. The stakeholders, however, proposed the age of 12 to 14 years for the approved school and 16 to 18 years for the reform school.

Part VIII: Probation of Children

- a) Stakeholders observed that clause 84 listed various probation related programmes that could be utilised in probation orders. However, the list was not comprehensive and did not mention any framework for probation officers and probation orders to refer children/probationers to service providers, in the same way referrals were allowed under diversion. The Bill should therefore, address this concern.
- b) Clause 85 used mandatory language, yet listed responsibilities that were not applicable in every case of the probation of a child. The stakeholders further observed that the clause was inconsistent in its use of the terms “probationer” and “child”.
- c) Other stakeholders observed that clause 86 (1) was redundant, as the process of bringing a child/probationer before the court for failure to comply was set out in detail under clause 91.
- d) Other stakeholders held the view that clause 88(5) was also redundant as clause 90 already set out the parties that were to be given copies of the probation orders.
- e) Some stakeholders submitted that the considerations of the court when making a probation order under clause 87 (2) should include a child with a disability, in order to make an appropriate order in the best interest of such a child.
- f) Other stakeholders observed that clause 96 lacked a clear caption. They held the view that the term “Reformatory Children” must be a typographical error as the term was not used

in the Bill. Stakeholders observed that in some situations, parents were failing to control their children because they could not provide the basic needs of the child or if the child had a mental health problem or other condition that made the parents unable to care for or control them. In such cases, a child care facility may be suited to take on the child, and therefore, should be included among the options available to the court under clause 96 (1) (b).

- g) Other stakeholders held the view that the Probation Committee under clause 97 should include a member with a disability in order to ensure that the interests of children with disabilities put on probation were addressed.

Part IX: Child Approved Centre Order and Reformatory Centre Order

- a) Some stakeholders were of the view that several of the provisions under this Part were repeated or were inconsistent with provisions found in Part VII, particularly provisions found under clause 79.
- b) Under subsections 98 (3) and 99 (2), some stakeholders recommended that the clauses should ensure inclusiveness and accessibility of the centres. In this regard, the management of the child approved centre should ensure that the services and programmes offered, were inclusive in nature and the centre was accessible for children with disabilities.
- c) Stakeholders observed that clause 99(1), made reference to the Minister as being responsible for correctional centres. They however, contended that this was in conflict with the provision of *section 5 of the Zambia Correctional Service Act* that provided that the Service shall be responsible for the management and control of the prisons and correctional centres. It was, therefore, submitted that this provision be reviewed and corrected.
- d) Some stakeholders submitted that the wording under clause 100 (4), gave wide discretionary powers to the courts to determine how long a child should be kept in the transit centre upon the expiration of the twenty-eight days. The stakeholders, however, contended that there should be a limit to how long the court should order a child to be kept in the transit centre upon the expiration of twenty-eight days because from experience, children in conflict with the law tended to over stay in transit centres, as their conveyance to reformatory schools depended on the conclusion of their cases by the courts.
- e) Some stakeholders held the view that clause 100 (5), spoke to the age of a child when orders were no longer effective. However, this provision was not well placed under this clause, as this clause dealt with a very limited range of orders. The stakeholders, therefore, recommended that the provision be moved to clause 79 if it applied to all orders given to children or clause 101, if it only applied to approved centres and reformatory centre orders.
- f) Other stakeholders held the view that it was important for the Bill under clause 101 (2), to state whether the child had a disability and the type of disability, and to indicate the disability card number as issued by the Zambia Persons with Disabilities Agency. They contended that these provisions were very important to consider in the Court Order as

they would be critical in designing the rehabilitation programme for the child at the centre. The stakeholders further informed the Committee that these inclusions would also ensure that appropriate vehicles for conveyance to the child approved centres, child reformatory centres and child transit centres were used.

- g) There were stakeholders who observed that clause 103 (3), was commendable. However, seeing that there were not enough juvenile detention cells/facilities in the country, the stakeholders recommended that the Government should prioritise setting up adequate juvenile facilities so as to actualise the aspiration of the Bill of separating children from adults in detention facilities.
- h) Clause 107(1) dealt with children in approved centres and reformatory centres that were problematic and needed to be separated from the other children at the centre. Some stakeholders observed that currently, reformatory and approved schools had a practice of sending problematic children to the nearest prison for “punishment”. Therefore, in order to avoid this clause being used to condone this practice, the clause should make it clear that adult prisons and correctional facilities should not be used for the purpose of “separation.”
- i) Other stakeholders observed that clause 113, dealt with the very critical issue of how findings of guilt would impact a child as they moved forward in life. They noted that the issue of past “findings of guilt” was addressed in clause 93 under probation. Therefore, these two clauses created many classifications and categories of treatment that may not consider the context of each child’s case and would be confusing to implement. The stakeholders, therefore, recommended that the issue of past findings of guilt should be comprehensively addressed and in a straight forward manner under clause 113, as submitted below:

“(1) A record of finding of guilty and order made in respect of a child shall be expunged after the child reaches the age of 19. (2) A finding of guilty in respect of a child shall be disregarded for the purposes of any law which imposes a disqualification or disability on convicted persons, or authorises or requires the imposition of a disqualification or disability.”

- j) Some of the stakeholders also observed that there appeared to be a clear conflict between the provisions dealing with child marriages under the Bill vis-à-vis the *Marriage Act, Chapter 50 of the Laws of Zambia*. According to *section 17* of the *Marriage Act*, any intended party to a marriage below the age of 21 required consent of the parent or guardian. Further, *section 33* of the Act provided that a marriage between persons either of whom was under the age of sixteen years shall be void.

Therefore, the discrepancy between the provisions of clause 170 of the Bill and the *Marriage Act* was that while the *Marriage Act* permitted a person aged between 16 years and 20 years to contract a valid marriage, subject to parental consent, the Bill regarded a marriage for a person below the age of 19 as a criminal offence and empowered the court to declare it as void. The stakeholders, therefore, recommended that there was need to harmonise the *Marriage Act* and bring it into compliance with the *Children’s Code Bill*.

Part X: Affiliation, Status of Child, Maintenance and Custody

- a) Some stakeholders recommended that clauses 132 (2) (e) and clause 133 (2) (d), should be recast to read ‘Child with a disability or medical condition’ because the term ‘disability’ was all encompassing as it included mental, visual, hearing and physical impairment disabilities. They contended that, it was important to capture the disability of the child as this would also help in determining maintenance needs.

Part XII: Child in Need of Care and Protection

- a) Some stakeholders held the view that Part XII of the Bill should have a provision for the ‘Establishment of a Place of Safety’ which should be in compliance with the accessibility of the physical environment for children with disabilities, and inclusive for the services and programmes offered, such as education materials in braille, visual and sound learning aids, among other things.
- b) Other stakeholders held the view that clause 168, should include a clause for the responsible authorised person to consider the mode of transport when conveying a child with a disability and the type of disability.

Part XIV Adoption

- a) Stakeholders also submitted that there was need to include a register for children with disabilities adopted under clause 250, and to indicate the disability card number as issued by the authorised Agency, the Zambia Agency for Persons with Disabilities.

Division 5: Custody of Children

Some of the stakeholders contended that clause 142 (1) should provide for a waiver of the consent, where such consent was unreasonably withheld.

9.0 Other Concerns Raised

- a) Some stakeholders observed that the Bill was more focused on the rights of children in conflict with the law and child witnesses, leaving out child victims when this piece of legislation was meant to protect all children found in different circumstances. The stakeholders, therefore, recommended that the Bill should provide for child victims of crime.
- b) Some stakeholders informed the Committee that *section 95(3) of the Juveniles Act*, provided that there shall be established a Reformatory Board for each province in which a reformatory had been established and each Board shall consist of a chairman and such other members, not exceeding nine, as the Minister may appoint. They explained that these Boards were important as they kept a close eye on behalf of the Chief Inspector on how the reformatory school was being run. The stakeholders, therefore, expressed concern that the Bill did not provide for the establishment of the Reformatory Boards hence their recommendation that the Bill should provide for the establishment of these important Boards.

- c) Other Stakeholders expressed concern that the Bill did not expressly call upon all members of society to participate in the protection of children. They contended that all sections of society should be encouraged to advance the protection of children by developing rules and codes of conduct. Therefore, the Bill was an opportunity to provide a legislative impetus to society's role in protecting children.
- d) Some stakeholders held the view that the Bill did not expressly set out the obligations of law enforcement agencies. Therefore, the Bill should spell out law enforcement agencies' obligations when children came into conflict with the law. This would ensure accountability for non-compliance with the provisions of the Bill.
- e) Other stakeholders submitted that the Bill did not clearly outline diversion mechanisms for children below the minimum age of criminal responsibility. The Bill made no distinction about what age range was being referred to as it used the broad definition of a child in the Constitution of Zambia. In view of the foregoing, the Bill needed to set out what ages and categories children diversion applied to.

10.0 Committee's Observations and Recommendations

Following the interaction with stakeholders, the Committee makes its observations and recommendations as outlined below.

Objects of the Bill

1. The Committee observes that the objects of the Bill do not explicitly reflect inclusivity of children with disabilities. The Committee, therefore, recommends that the objects of the Bill should clearly demonstrate inclusiveness to avoid overlooking the specific needs of children with disabilities once the Bill is enacted.

Part I: Preliminary and Provisions

2. The Committee observes that the Bill refers to a "Minister" without specifying who the minister is. The Committee, therefore, recommends that for avoidance of doubt, the Bill should provide the definition of "Minister".
3. The Committee observes that the word "police" in the definition of "law enforcement agency" is too broad and difficult to refer to. In this regard, the Committee recommends that the word "police" should be replaced with "Zambia Police Service" for ease of reference especially that the Bill has not provided for the definition of "police".

Part II: The Rights and Responsibilities of the Child

4. The Committee finds clause 25 (2), which provides for a child witness and a child victim giving evidence to a law enforcement officer not to come in contact with an alleged perpetrator of a crime or be made to confront the alleged perpetrator of a crime progressive. However the Committee is concerned that this provision may be difficult to implement, especially in far flung areas where the courts do not have the necessary infrastructure and specialised equipment to actualise the provision. The Committee, therefore, urges the Executive to provide the necessary budgetary considerations for

infrastructure development and equipment in all the districts in order to ensure and guarantee the success of this provision.

5. The Committee observes that clause 27 provides for sanctions for the infringement of the rights of a child. However, the Committee is concerned that the Bill does not appear to provide sanctions against the State, where it violates the rights of a child. The Committee is aware that as a general principle, the accountability for violating rights primarily rests on the State as the primary duty bearer. In this regard, the Committee recommends that the Bill explicitly provides for sanctions against the State, where the State violates the rights of a child.
6. The Committee observes that clause 35 (4), among other things, empowers the child development officer and the child welfare inspector to enter and search any premises without a warrant at any reasonable time. The Committee recommends that these officers be accompanied by law enforcement agencies when conducting searches and seizing property in order to ensure that all technicalities and formalities surrounding such exercises, which the officers may not be well vested with, are followed. Additionally, the officers may find themselves in dangerous situations where they may not be able to defend themselves without law enforcement agencies.

Part V: Arrest, Bail and Deprivation of a Child's Liberty

7. The Committee observes that clause 47(2), provides that a law enforcement officer shall not be in uniform or carry a firearm when apprehending a child at the child's dwelling home. The Committee is of the view that police officers should be given an option of being in uniform or not and whether or not to carry a firearm, when apprehending a child, in order to guarantee their safety and the safety of the child when faced with harassment by members of the community when executing their duties. In view of the foregoing, the Committee recommends that the word "shall" be replaced with the word "may" to make the provision optional and not mandatory.
8. The Committee observes that clause 47 (4) provides for a law enforcement officer to use reasonable means to effect the apprehension, where a child forcibly resists an apprehension, or attempts to evade the apprehension. However, the Bill does not define "reasonable means". The Committee, therefore, recommends that the Bill clearly defines "reasonable means" in order to avoid abuse or use of excessive force which could be detrimental to the child.
9. The Committee observes that clause 55 provides for the interview of a child in relation to an alleged offence. However, the Committee is concerned that the clause does not provide for how the interviews will be conducted for a child with a disability. The Committee, therefore, recommends that a provision be made under the clause to accommodate a child with a disability.

Part VI: Diversion Options

10. The Committee observes that clause 60 (4) has given the court the power to order trial where diversion has failed. The Committee is of the view that this provision is beyond the courts' powers in this circumstance, because it is only the National Prosecution Authority that has the constitutional and statutory power to decide that a matter be taken to court for

prosecution. The Committee, therefore, recommends that this clause should provide that “where diversion fails, a decision as to whether or not to prosecute such child should still be made by the National Prosecution Authority before any trial is ordered”.

11. The Committee notes that clause 63 provides for the application of accreditation for a diversion programme. However, the Committee is concerned that his provision will make the selection process tedious and laborious, as anyone can send in their applications even if it is wrongly done. It is in this regard that the Committee recommends that the clause provides proper guidance by setting out the criteria for one to apply to be an accredited diversion service provider.

Part VII: Court Proceedings

12. The Committee observes that clause 65 provides for a subordinate court sitting for the purposes of hearing a charge against a child or for any other purpose relating to a child to constitute itself as a juvenile court, which is simply reiterating what has been happening in practice and does not seem to introduce anything new. In this regard, the Committee recommends that the Bill should instead establish a Juvenile Court as a division of the Subordinate Court. This move will entail that magistrates will be appointed and trained to specifically preside over the Juveniles’ Court. The idea is to develop and nurture specialised competencies that will robustly and effectively safeguard the rights of the child through the interpretation of the Act.
13. The Committee notes that clause 71 (2) is progressive but expresses concern that the uptake of birth certificates is still very low in Zambia. Therefore, this provision may be difficult to implement. The Committee, therefore, urges the Executive to ensure that other programmes aimed at increasing the uptake of birth certificates are introduced and supported once the Bill is enacted.
14. The Committee observes that clause 78 (1), which provides for the evidence of a child mirrors *section 122 of the Juveniles Act, Chapter 53 of the Laws of Zambia*, which states that a child below the age of fourteen must go through the process of inquiry to determine whether the child is possessed with sufficient intelligence to justify the reception of evidence from the child, and whether or not the child understands the duty of telling the truth. The Bill, however, does not set out any specific age for this purpose. Therefore, the failure to define the age of a child under clause 78 implies that the generic definition of a child must be employed when this clause is invoked. The Bill uses the definition of a child provided under *Article 266 of the Constitution*, which says that a child means a person who has attained, or is below the age of eighteen years. Put differently, a child is a person below the age of nineteen, as per the Constitution.

The consequence of the above provision is that any person below the age of nineteen is subject to the process of inquiry as to whether or not they possesses sufficient intelligence to justify the reception of that evidence, and whether or not the child understands the duty of telling the truth. The Committee contends that this should not be the case because currently in the Zambian jurisdiction, a person aged eighteen is entitled to vote in an election, meaning that such a person could make sound decisions about how they wanted the affairs of the country to be managed. Further, a person aged fifteen and above is eligible to enter employment, as provided for under the *Employment Code Act*.

In view of the foregoing, the Committee contends that there is no rational justification for the upward adjustment of the age of a child when testifying before the courts of law from fourteen to eighteen. In this regard, the Committee recommends that the age for holding an inquiry to determine whether or not a child is competent to give evidence before the courts of law should be as it currently stands in the *Juveniles Act*.

15. The Committee observes that clause 78 (1) and (2) makes no mention of an inquiry. The clause simply refers to the court forming an opinion without stating how the opinion will be formed and what the court is required to do to form the opinion. The Committee, therefore, recommends that the Bill should clearly state that an inquiry must be conducted out of which an opinion will be made whether or not the child should testify.
16. The Committee observes that clause 78 (2) (b) allows a child welfare inspector to testify on behalf of a child. According to this clause, the child welfare officer will testify on behalf of that child and this will amount to hearsay evidence, which is inadmissible. The Committee notes that currently, the position of the law is that the evidence of a statement given to a witness by a person who is not called as a witness, is hearsay and inadmissible if the object is to establish the truth of what is contained in that statement. In view of the foregoing, the Committee recommends that clause 78 (2) (b) should be amended to provide that the evidence of a child may be given through the production of that child's written statement by a child welfare officer responsible for that child.
17. The Committee observes that clause 78 (4) (e) is unclear on who or which institution should not question the child twice. The Committee observes that the failure to qualify this ambiguity will result in an injustice being occasioned to all parties concerned. The spirit of the provision must be to prevent a child from undergoing multiple interviews during the criminal investigation process, thereby, occasioning re-traumatisation on the child. In view of the foregoing, the Committee recommends that clause 78 (4) (e), should clearly state that multiple interviews of the child shall be avoided as practicably possible to prevent occasioning more harm on the child.

Part IX: Child Approved Centre Order and Child Reformatory Centre Order

18. The Committee notes that clause 99(1) refers to the Minister responsible for correctional centres issuing statutory instruments to establish child reformatory centres and child transit centres. The Committee observes with concern that this is in conflict with the provision of *section 5 of the Zambia Correctional Service Act*, which provides that the Service and not the Minister shall be responsible for the management and control of prisons and correctional centres. The Committee, therefore, recommends that the provisions of the Bill and the Act be harmonised.
19. The Committee observes that clause 100 (4) gives wide discretionary powers to the courts to determine how long a child will be kept in the transit centre upon the expiration of the twenty-eight days. The Committee holds the view that the Bill must provide a limit on how long the court should order a child to be kept in the transit centre upon the expiration of the twenty-eight days to avoid children in conflict with the law over staying in transit centres as their conveyance to reformatory schools depends on the conclusion of their cases by the courts.
20. The Committee applauds the provision at clause 103 (3), which provide that a child will not be kept in custody in an adult prison or correctional centre. However, the Committee observes,

with concern, that there are not enough juvenile detention cells/facilities in the country to implement this provision. The Committee, therefore, recommends that the Government should prioritise setting up adequate juvenile facilities so as to actualise the aspiration of the Bill of separating children from adults in detention facilities.

21. The Committee observes that there appears to be a conflict between the provisions dealing with child marriages under the *Marriage Act, Chapter 50 of the Laws of Zambia* and the Bill under clause 170 (g). The conflict is that the *Marriage Act* permits a person aged between 16 and 20 years to contract a valid marriage, subject to parental consent. However, the Bill regards a marriage to a person below the age of 19 as a criminal offence and empowers the court to declare it void. The Committee, therefore, recommends that the *Marriage Act* and the provisions of the Bill be harmonised.

11.0 CONCLUSION

The Children's Code Bill is progressive and encompasses international best practices that promote and safeguard the best interests of a child. Therefore, its enactment will improve and unify existing laws on the protection of children. The enactment of the Bill will further positively impact children by creating an enabling environment for them to realise their full potential and in turn contribute to the developmental issues that affect them. It is, therefore, anticipated that the Government will develop a comprehensive implementation strategy with the necessary budgetary considerations to ensure and guarantee the success of this Bill.

The Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions. The Committee thanks you, Madam Speaker, and the Clerk of the National Assembly for the guidance and support services rendered to the Committee during its deliberations.

We have the honour to be, Madam, the Committee on Youth, Sport and Child Matters, mandated to consider the Children's Code Bill, N.A.B. No. 12 of 2022, for the First Session of the Thirteenth National Assembly.



Mr Edgar Sing'ombe, MP
CHAIRPERSON

July, 2022
LUSAKA

APPENDIX I -National Assembly Officials

Mr F Nabulyato, Principal Clerk of Committees (SC)

Mrs C K Mumba, Deputy Principal Clerk of Committees (SC)

Mrs A M Banda, Senior Committee Clerk (SC)

Ms C T Malowa, Committee Clerk

Ms C Chibuye, Administrative Assistant

Ms V B Tembo, Typist

Mr D Lupiya, Committee Assistant

APPENDIX II- WITNESSES

Ministry of Community Development and Social Services
Ministry of Justice
Zambia Correctional Service
Zambia Police Service
National Prosecutions Authority
Law Association of Zambia
University of Zambia, School of law
Zambia Agency for Persons Living with Disabilities
Human Rights Commission
Magistrates' and Judges' Association of Zambia
Chapter One Foundation
Child Fund
Undikumbukire Project Zambia
Jesuit Centre for Theological Reflection
Plan International Zambia
Save the Children