

LEGAL ALERT

THE NEW CHILDREN'S CODE ACT – 10 KEY FEATURES

NOVUS^{HM}

LEGAL PRACTITIONERS

Suite B15, Block B, 1st Floor, Greencity Office Park, Kelvin Siwale Road,
Lusaka, Zambia.

T: +260 211 257718/19 - E: inquiries@novushmlegal.com

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Introduction

The new Children's Code Act No. 12 of 2022 (the "Code") attempts to consolidate and codify the law relating to children in Zambia. Previously, issues relating to children were dealt with under different types of legislation. For instance, matters relating to the adoption of children were dealt with under the Adoption Act, (Cap 54); the affiliation/paternity and maintenance of children was dealt with under the Affiliation and Maintenance of Children Act, (Cap 64); the custody and protection of juveniles in need of care and the correction of juvenile delinquents, under the Juveniles Act, (Cap 53); and the legitimization of children born out of wedlock under the Legitimacy Act, (Cap 52). The Code however, has repealed the aforesaid statutes (the "repealed Statutes") and codified them into one piece of legislation.

We highlight 10 key features of the Code, which NGOs, INGOs and Institutions with a child focus should be aware of.

1. The Code has introduced a standard definition for a child.

The Code defines a "child" as a person aged 18 years or below - this definition is in accordance with the age limit for a child provided in the Constitution of Zambia. The Code now sets out a precise and standard age of a child in tandem with the Constitution, as opposed to the varying ages which were provided for under the repealed Statutes. Notably, the Code has also done away with definitions of a "juvenile" (i.e. a person below the age of 19 as per the repealed Juveniles Act) and a "juvenile adult" (i.e. a person who is below the age of 21 years but not less than 19 years as per the repealed Juveniles Act). Consequently, there is no distinction between a child and a juvenile, as the latter is now covered under the definition of a child in the Code.

2. The Code codifies various children's rights

including: the right to social protection and social services; the right to expression; the right to health care; the right to privacy; the right to parental care; the right to survival and development; the right to education; the right to leisure and recreation; and the right to protection from corporal punishment and sexual harassment. The Code has also made it clear that a person shall not subject a child to capital punishment or life imprisonment. In terms of enforcement, the Code has criminalized any violation of a child's rights with attendant criminal penalties.

3. The Code has domesticated 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. This entails therefore, that the aforesaid Conventions and Charter are now applicable and enforceable as law in Zambia.

4. The Code prohibits the subjection of a child to:

(i) **child marriage** – which has been defined as a marriage to a child or any arrangement made by a person for that marriage (whether statutory or customary); (ii) **female genital mutilation**; and (iii) to cultural rites and religious or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity, and physical or psychological development. Notably, the Code prohibits child marriages (statutory and customary) which has been a major concern in this jurisdiction. It appears however, that there is a conflict between the provisions relating to child marriages under the Code and the provisions of the Marriage Act, (Cap 50). Under the latter Act, any intended party to a marriage below the age of 21 requires consent of the parent or guardian, the absence of which would render the marriage void. Further, the Marriage Act provides that a marriage between persons either of whom is under the age of 16 years shall be void. Therefore, while the Code prohibits the marriage of a person who is 18 years or below (as they are considered to be a child), the Marriage Act permits such a person (provided they are aged between 16 and 20), to contract a valid marriage, subject to parental/guardian consent. However, with regards to customary marriages, the Code completely prohibits



child marriage. It is recommended that the Code must be made a Superior Act with regards to matters relating to children subject to the Constitution, so that where there is any inconsistency between the provisions of the Code and the provisions of any other written law, the provisions of the Code must prevail to the extent of the inconsistency.

5. The Code has created a Children's Court and registry at the High Court to specifically deal with petitions relating to the violation of children's rights and the contravention of any of the provisions of the Code. The Code provides that any person may petition the Children's Court on behalf of a child to seek redress.

6. The Code sets out Child Safeguarding Measures

by placing an obligation on an Institution/Organization to, among other things: (i) establish and implement child safeguarding and protection procedures to prevent violence against a child and child rights abuse; (ii) to educate a child on child rights and what constitutes physical, emotional, sexual and self-inflicting violence in a manner that is adapted to the age and maturity of the child; (iii) to ensure that a child has access to a safe channel to report any form of abuse or violence and that a child in the care or custody of the institution or organization is informed on the manner of reporting any form of violence or abuse. Notably, an institution which fails to comply with the requirement of establishing and implementing safeguarding measures may be liable to a fine. An institution/organization dealing with children is therefore, obliged to put a child's best interest first by establishing and implementing these safeguarding measures.

7. The Code places an obligation on an Institution or Organization, to inform a Child Welfare Inspector or other authorized officer (including a police officer) of any violence or abuse against a child. The Code criminalizes the failure of an institution to report an incident of child abuse; if found guilty the institution would be liable to a fine. Therefore, an Institution or Organization must report any occurrence or possible occurrence of violence or abuse against a child to a Child Welfare Inspector.

8. The Code prohibits any person from subjecting a child to sexual abuse or sexual

exploitation or inducing/coercing a child to engage in sexual activity. Notably, the act of child abuse has been given a broad interpretation, to include physical, sexual, psychological and mental injury to a child. The Code also prohibits the act of exposing a child to obscene or pornographic material or using a child in prostitution. Any person found guilty in this respect is liable on conviction to a fine, or imprisonment for a term not exceeding ten (10) years, or to both. The offender could also be liable to community service depending on the circumstances of the offence.

9. The Code has introduced a strict timeframe for dealing with court matters involving children who are in conflict with the law.

Previously, the law did not provide for a specific time period within which matters relating to child offenders would be dealt with by the courts. The Code now makes it mandatory for the courts to conclude such cases within six (6) months of the child's first appearance before the court. This will no doubt promote expediency in resolving court matters involving children.

10. The Code introduces regulations of a Childcare facility, establishment of Child Approved Centre and Reformatory Centre,

to the extent that: (i) a childcare facility cannot be established without the approval of the Director of Social Welfare. A person who establishes a childcare facility without such approval commits an offence and is liable, on conviction, to a fine or to imprisonment for a term not exceeding three (3) years, or to both. This has therefore, heightened the regulations regarding children's welfare.

For further information on the Code, please contact any member of our team below:



Misozi Hope Masengu

Managing Partner,

LLB (Zambia), LLM (England)

misozi@novushmlegal.com

(+260) 960 256 031 - (+260) 974 449 816 - 211 2577118/19 Ext. 12



Munida Mukelebai

Associate

LLB, Advocate (Zambia)

munidia@novushmlegal.com

211 2577118/19 Ext. 19