



## CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY IN ZAMBIA: MEASURES, RIGHTS, PROCEDURE, PARTICIPATION

### **National Report for AIMJF's Comparative and Collaborative Research.**

Niños por debajo de la edad de responsabilidad penal en Zambia: medidas, derechos, procedimiento, participación

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

Enfants n'ayant pas atteint l'âge de la responsabilité pénale en Zambie: mesures, droits, procédure, participation

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

### Judiciary of Zambia

**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on children below the age of criminal responsibility. The article explains the applicable measures and the procedure adopted, the child's rights and his or her participation in the Protective and Justice System in Zambia.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre niños por debajo de la edad de responsabilidad penal. El artículo explica las medidas aplicables, el procedimiento adoptado, los derechos del niño y su participación en el sistema de protección y de justicia en Zambia.

**Résumé:** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur les enfants n'ayant pas atteint l'âge de la responsabilité pénale. L'article explique les mesures passibles d'application et la procédure adoptée, les droits des enfants et leur participation dans le système de protection et de justice en Zambie.

### **Introduction**

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts

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to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of measures, procedure, rights and participation of children below the minimum age of criminal responsibility.

This national report is based on a questionnaire prepared by AIMJF.

## QUESTIONNAIRE:

### 1. general information

1.1. What is the minimum age of criminal responsibility in your country (the **age of criminal responsibility** is the age below which a child is deemed incapable of having committed a criminal offence, it can also be referred as age of accountability, age of responsibility, and age of liability for children and it is different of the age when a person becomes an adult)?

**In Zambia, the age of criminal responsibility is twelve (12) years, pursuant to the Penal Code (Amendment) Act No. 13 of 2022.**

1.2. Is there more than one minimum age of criminal responsibility? Which one? Is it possible to apply the ‘doli incapax rule’ in your country (possibility of demonstration that the child is sufficiently mature and capable to understand that the behavior was an offense and therefore could be criminally responsible)?

**In Zambia, following the enactment of the Penal Code (Amendment) Act No. 13 of 2022, there is now only one age of criminal responsibility.**

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Previously, children aged between 8 and 12 were presumed incapable of crime unless proven that they knew their act to be wrongful and criminal, however, the amendment now provides for a uniform age of criminal responsibility at 12 years, making the rule of *doli incapax* inapplicable.

## 2. age assessment

2.1. In case of application of the ‘*doli incapax* rule’, how is this assessment made? Is there a specific methodology for this evaluation? A protocol on how to evaluate? Who assesses the child? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

N/A

2.2. In case of necessity of age assessment (due to a lack of birth registration), how is this assessment made? Is there a procedure? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

**In Zambia, where the age of a child during court proceedings, is uncertain and there is no birth record to prove it, the court makes an inquiry and makes an order for the child to be examined by a health practitioner to ascertain the age; this is usually done by means of physical (bone) and dental development tests using specialized machines. Usually, the child receives assistance, in addition to their parent/guardian, from the Child Welfare Inspector, and in some instances where the child is receiving legal aid services or private counsel, does receive legal assistance. The child, through their representatives can challenge the findings of the medical assessment.**

## 3. police intervention

3.1. In case a child under the minimum age of criminal responsibility commits an act considered as a crime, is he/she brought to a police station? Is it mandatory to do so? If not, in which situations is it necessary to be brought to the police station?

**In Zambia, when a child under the minimum age of criminal responsibility commits an act which would constitute an offence, such child may not be brought to the police station. The Child Welfare Inspector is notified as soon as reasonably practicable to offer the immediate relevant support services to the child as the child is**



considered a child in need of care under the Children’s Code Act, No. 12 of 2022.

3.2. In case the child is brought to the police station, what is expected from the police to do? What are the legal guarantees for the child in this context? Is it possible, in any circumstance, that the child be imprisoned, even for a very short time? In this case, how long is it possible for the child to be deprived of liberty?

**The law enforcement officer who becomes privy to this information is duty bound to engage the Child Welfare Inspector who will then conduct a needs assessment for the child and facilitate the provision of the necessary welfare services as the child is considered a child in need of care and protection under the Children’s Code Act No. 12 of 2022. Where however the child requires protection owing to them being at risk of harm from the community or it is in the best interests of a child, the child is instead taken to a place of safety. Detention of a child in a police station or imprisonment of a child is prohibited by law.**

#### 4. measures

4.1. In case a child below the minimum age of criminal responsibility has committed an act considered as a crime, is it possible to impose any kind of measure? Which one?

**A child below the minimum age of criminal responsibility who commits an act which would constitute an offence is considered a child in need of care and thus eligible to various protection orders provided under the Children’s Code Act, No. 12 of 2022 such as care or supervision orders.**

4.2. Is it possible to impose an out-of-home placement (such as alternative care, in institutions or foster family; in health facilities, for instance)? in which circumstances? For how long?

**Yes. For a child in need of care there are various alternative care methods that can be used where the child may not be safe in their home or community due to retaliation from the aggrieved or community members. Such placement may also be necessary where it is established that the home environment played a role in influencing the child to commit the act and it is not in the best interests of the child to remain in that home. The authorised officer is to apply to a court, within forty-eight hours of a child being taken to a place of safety for an order to determine whether the child is in need of care and**

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protection. However, as a measure of first resort, the child should remain in the child's birth family before they can be placed in a place of safety, into kinship care or emergency foster care, unless it is not in their best interests.

## 5. procedure

5.1. Who imposes such measures?

**The Department of Social Welfare initiates the process and makes the necessary applications before court, seeking an order to place the child in alternative care.**

5.2. Is there a legal procedure for the determination of these measures? What is the nature of these procedures? Can you describe it shortly?

**Yes. The Department of Social Welfare, through the assigned Child Welfare Inspectors, conduct a needs assessment, home/community visits and obtain holistic information regarding the child and apply to the relevant court for an order to place the child in alternative Care. The Court hears the application and requires a Social Welfare Report to be submitted for its consideration before making the appropriate order.**

5.3. Is it possible to adopt alternative resolution mechanisms in these situations, such as mediation or restorative justice?

**Typically, restorative justice measures that include mediation, family/group conferencing provided under the Children's Code Act, No. 12 of 2022 relate specifically to a child in conflict with the law undergoing diversion. The Act, however, does not preclude the use of non-judicial resolution mechanisms for children exhibiting harmful behaviour (in need of care), who have committed acts that would be criminal offences if they were of age. As such, the department of Social Welfare can use early intervention services such as mediation or family/group conferencing between the child, child's family and aggrieved party.**

## 6. assessment

6.1. Is there any kind of assessment of the child for the imposition of such measures (on vulnerabilities, risk, rights violations)? Who assesses the child? Is there a protocol or guideline on how to assess the child? Can you please share it?

**The Department of Social Welfare through the assigned Child Welfare Inspectors conducts assessments on the child's circumstances**

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through home/community visits and compiles a Social Welfare Report which is tendered into court for the Court's consideration in making the appropriate order. The guidelines on assessments forms part of the trainings in cases of management guidelines for social welfare workers.

#### 7. legal and procedural guarantees

7.1. What are the rights of the child in this procedure (legal and procedural guarantees)?

**The Children's Code Act No. 12 of 2022 provides for various rights, among them, the child's right to express themselves and to actively participate in the process. Procedurally, the child should have their parents/guardians involved in the process, or in their absence have a Child Welfare Inspector available.**

7.2. Does the child have the right to refuse any of these measures? Or to challenge in court any of these measures?

**The child does have the right to express their views in a decision or a matter of procedure affecting the child, and that opinion shall be taken into account, based on the child's age and level of maturity and the nature of the decision. However, the court must decide in the best interests of the child.**

7.3. What happens if the child does not fulfill the obligations inherent to these measures?

**Where the child does not comply with the obligations, the authorities must, as far as they can, consider an alternative measure which will be appropriate for the child's compliance.**

#### 8. the role of the justice system

8.1. Is it possible in your country that the justice system gets involved in these situations? In which situation (vg. to impose the measure or to review it, in case of resistance by the child or his/her family, or to impose some child protection order)? For what purpose? Which branch of the justice system is involved (youth court, family court, child protection court, criminal court...)?

**Yes, the justice system does get involved. The Children's Code Act No. 12 of 2022 provides that a Juvenile Court (Subordinate Court level) can make orders for the protection for a child in need of care and protection. The case can also be reviewed by the Children's**

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**Court (part of the High Court's Family and Children Court Division).**

8.2. In case of involvement of the justice system, can you briefly describe the procedure?

**A court may, where an application is made for the care and protection of the child, make an appropriate order for either the temporary accommodation of the child in a place of safety, for the child's temporary committal to the care of a fit person, supervision, into kinship care or emergency foster care etc.**

8.3.. What are the rights of the child in this procedure? Does the child have the right to legal assistance? The right to appeal against any kind of decision?

**A child before the Juvenile's court or children's court has the right to legal representation; and the right to legal aid pursuant to the Children's Code Act No. 12 of 2022.**

#### 9. assistance or support

9.1. Besides the measures imposed to children, are there other kind of assistance available on a voluntary basis (social, psychological, medical)?

**The Department of Social Welfare is mandated by the Children's Code Act, No. 12 of 2022 to provide welfare services to a child in need of care. These include and are not limited to medical care, psycho-social counselling, education, shelter, etc.**

#### 10. child participation

10.1. Is the child heard in this procedure? By whom? At which stage of the procedure?

**Yes, it is the right of the child to be heard in all matters pursuant to the Children's Code Act No. 12 of 2022. At every level of the justice system, the child's views and opinions are considered in a decision or a matter of procedure affecting the child.**

10.2. Is the child heard more than once in this procedure? How many times?

**The child is heard at every stage of the justice process. As such, every stakeholder handling the child and making a decision that affects the child accords the child an opportunity to give their views.**

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10.3. Is there a protocol or guideline on how to hear the child in this situation? Can you please share it?

**There is no protocol or guideline on how to hear the child aside the provisions of the Children’s Code Act, No. 12 of 2022 which has also domesticated the United Nations Convention on the Rights of the Child.**

#### 11. legal implications

11.1. Is there any record of legal infringement committed by children below the age of criminal responsibility? When the child reaches the age of criminal responsibility, are these records taken into consideration?

**No record of the legal infringement is made.**

11.2. In case of damages, what kind of rights and remedies does the victim have regarding the child and the family? Besides financial reparation, does the victim have the possibility to have a say on the measures applied to the child?

**Where the child is considered not criminally liable, the victim may pursue a civil action where compensation or restitution may be ordered by a competent court of law.**

#### 12. reforms in progress

12.1. Are there ongoing reforms on this subject?

**The development of Court Rules and Statutory instruments for the Children’s Code Act No. 12 of 2022 are in their final stages and are soon to be promulgated. These provide for the procedural application of the provisions on the care and protection of the child in need of care, among other matters.**

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