



**UNIVERSITY of LUSAKA**

*Passion for Quality Education: Our Driving Force*

**AN ANALYSIS OF THE LAWS AND PRACTICE GOVERNING THE RIGHT TO  
EDUCATION IN RESPECT OF CHILD OFFENDERS: LESSONS FROM KENYA.**

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**LLB22112752**

**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN  
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## DECLARATION

I **MIDORY HANZOOMA** declare that this dissertation **AN ANALYSIS OF THE LAWS AND PRACTICE GOVERNING THE RIGHT TO EDUCATION IN RESPECT OF CHILD OFFENDERS: LESSONS FROM KENYA** which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution. I understand what plagiarism entails and I'm aware of the University's policy in this regard. Thus, where other people's work is cited, I have duly acknowledged. The errors or omissions in this work are solely mine.



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MIDORY HANZOOMA

2025

## **ACKNOWLEDGEMENT**

First and foremost, I wish to express my utmost gratitude to the Lord God Almighty, for His unwavering mercies, guidance and strength throughout this entire journey. It is by His grace that I have been able to pull through from the challenges of this process, and it is through His strength that I have come this far.

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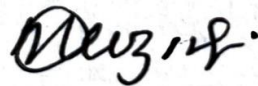
Thank you all for your invaluable contributions to my academic journey.

## **DEDICATION**

This dissertation is dedicated to the Lord God Almighty, whose guidance and grace have been a constant source of strength throughout my academic journey and truly it is neither by my might nor my power that I have been able to make it this far but by his love and mercy. I also dedicate this work to my beloved parents, Mr. Felix Hanzi Hanzooma who has been a great inspiration and motivator throughout my journey, his sacrifices are what have brought me this far and Mrs. Hellen Hanzi Hanzooma whose support and prayers have been relentless and what have protected me thus far and my mother Ms Charity Mwaka Mweene who has been a pillar of strength, her encouragement and guidance have helped me come this far in my journey and her unwavering support is something I could not have done without , and my siblings, Dorcas Hanzooma, John Hanzi Hanzooma, Glory Hanzooma, Nathania Hanzooma, Nathan Hanzooma and Charmaine Blessing. Through their support, love, and sacrifices, they made it possible for me to successfully complete my program of study. I am eternally grateful to each of you and remain deeply indebted for your encouragement and sacrifices.

## RECOMMENDATION

I **MWAKA CHIZINGA** recommend that this dissertation prepared under my supervision by **MIDORY HANZOOMA**, entitled **AN ANALYSIS OF THE LAWS AND PRACTICE GOVERNING THE RIGHT TO EDUCATION IN RESPECT OF CHILD OFFENDERS: LESSONS FROM KENYA** be accepted for examination. I have checked it carefully and I'm satisfied that it fulfills the requirement pertaining to the format laid down in the regulations governing directed research.



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MWAKA CHIZINGA

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Basic Education Act of 2013.

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The African Charter On The Rights And Welfare Of The Child (ACRWC)

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The United Nations Convention On The Rights Of The Child (CRC)

The United Nations Rules For The Protection Of Juveniles Deprived Of Their Liberty (RPJDL)

United Nation Standard Minimum Rules for the Administration of Child Justice (The Beijing Rules)

Universal Declaration of Human Rights.

## **ABSTRACT**

This dissertation critically examined the realization of the right to education for child offenders in Zambia, assessing the adequacy of the existing legal and institutional framework.

In comparison with Kenya. The study was grounded in the understanding that education is both a fundamental human right and a rehabilitative tool essential to the reintegration of child offenders into society. Despite international commitments under instruments such as the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, many child offenders in Zambia continue to face systemic barriers to accessing education while in detention.

The research adopted a qualitative approach, employing a comparative legal analysis of statutes and policies from Zambia and Kenya. It draws on both international and domestic legal sources to evaluate compliance with human rights obligations. The referenced key authors who have equally had an interest in the matter and secondary literature further illuminate the practical challenges within correctional institutions, such as inadequate infrastructure, limited teacher deployment, and weak coordination between the Ministries of Education and Home Affairs as well as society.

Findings revealed that while Zambia's child Justice Framework recognized education as a right, implementation remains fragmented, under-resourced and outdated. In contrast, Kenya demonstrated a more coherent integration of education within its child justice system, supported by stronger policy alignment and institutional mechanisms. The dissertation concluded that Zambia must strengthen inter-ministerial collaboration, allocate dedicated funding for correctional education, and incorporate explicit legal guarantees to ensure that child offenders enjoy meaningful access to quality education. The study contributed to the discourse on children's rights and penal reform in Africa, advocating for the recognition of education as a cornerstone of restorative justice and human development.

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## CHAPTER ONE

### INTRODUCTION AND BACKGROUND OF THE STUDY

#### 1.0 INTRODUCTION

Education is a fundamental human right essential to the realization of other rights and the holistic development of the individual. The right to education for all children is enshrined in the Convention on the Rights of the Child<sup>1</sup>. This right must be guaranteed to all children, including those in conflict with the law and held in detention. In reality however, too many children, such as children deprived of their liberty, still face enormous barriers in accessing this right.<sup>2</sup> Other International instruments such as the Universal Declaration of Human Rights (Article 26), the UN Convention on the Rights of the Child (Article 28), and the African Charter on the Rights and Welfare of the Child (Article 11) affirm this obligation.

In Zambia, the rights of child offenders—particularly the right to education— have historically received limited attention. However, the enactment of the Correctional Services Act No. 13 of 2021, the Children’s Code Act No. 12 of 2022 as well as the Education Act No.23 of 2011 represents a significant legislative shift. These statutes acknowledge the specific needs of children in the justice system and promote rehabilitative, child centred approaches. Despite this, implementation remains uneven and under resourced, especially regarding access to education in correctional facilities. This challenge is not unique to Zambia. Across Africa, states grapple with fulfilling child rights obligations in detention settings under constrained conditions. Kenya provides instructive examples through the Children Act (2022) and Child Protection Units. This study investigates Zambia’s legal and institutional framework for ensuring child offenders' right to education, assesses the implementation of the new laws, and draws comparative lessons from Kenya. It aims to recommend practical reforms, grounded in the conviction that educational access for detained children is both a legal and moral imperative for their reintegration into society and national development.

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1 DCI\_Education in detention

2 ibid

## 1.1 BACKGROUND TO THE STUDY

Everyone agrees that education is a fundamental human right that is necessary for a child's growth and for facilitating the enjoyment of other civil, political, economic, social, and cultural rights. Against a backdrop of poverty, social exclusion and exploitation, children in conflict with the law represent a particularly vulnerable group. However, instead of receiving care and protection, these children often face discrimination and denial of their social, cultural, economic and political rights<sup>3</sup> Article 26 of the Universal Declaration of Human Rights (UDHR)<sup>4</sup> upholds this right, and it is further supported by legally binding agreements like Articles 28 and 29 of the United Nations Convention on the Rights of the Child (UNCRC), which require states to provide primary education to all children, including those who are deprived of their freedom. Similarly, State Parties are required by Article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC) to take particular actions to guarantee that children in challenging situations, including those who are detained, receive an education. Apart from that Article 1.2 and 1.3 of the United Nation Standard Minimum Rules for the Administration of Child Justice (The Beijing Rules)<sup>5</sup> advocates that member states shall endeavor to develop conditions that ensure for the child a meaningful life in the community that includes education that is free from crime and that sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources including schools for the purpose of promoting the well-being of the child.

Reforming Zambia's child justice system has long been a priority for both the government and civil society organizations. Early institutional attempts in the nation to address child offenders through a rehabilitative framework based on vocational training and education were exemplified by historical models, such as the Katombora Reformatory School, which was founded in 1957. Underfunding, uneven policy backing, and an excessive focus on discipline over structured learning, however, hampered the reformatory's potential.

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3 DCI\_Education in detention

4 UDHR, Art 26

5 United Nation Standard Minimum Rules for the Administration of Child Justice

With the passage of the Correctional Services Act<sup>6</sup> and the Children's Code Act<sup>7</sup>, modern legal advances have been made. While the latter in compliance with The Beijing Rules embraces a rehabilitative approach for custodial administration, including child offenders, the former unifies Zambia's child protection regime in compliance with the UNCRC and ACRWC. Both Acts aim to change the way the legal system implements child rights, including the right to education.

Yet, empirical findings from recent studies indicate a persistent gap between legal norms and practical enforcement. For instance, **Mazunda's** (2017) ethical evaluation of child rehabilitation at Chirundu and Nakambala Approved School identified systemic problems, including inadequate infrastructure, a shortage of qualified teachers, a lack of educational opportunities, and the early release of offenders before significant rehabilitation could take place. The goal of their rehabilitation is undermined, and the new legal regime's vision for their right to education is violated, as child in custody frequently do not have access to formal education or vocational training that meets their reintegration needs. Widespread human rights issues that undermine the child justice system's aim of rehabilitation and education, such as the failure to separate child from adult offenders, court process delays, and psychological abuse during detention, further muddy this picture. This situation contravenes not only Zambia's own legislation but also its binding international obligations.

Kenya, on the other hand, has implemented changes that offer adolescent offenders significant educational assistance. The creation of Child Protection Units and community rehabilitation models that place an emphasis on education and psychosocial assistance are encouraged by Kenya's Children Act (2022), providing an encouraging example of how education may play a major role in child justice.

Therefore, the purpose of this study is to critically examine how Zambia's Children's Code Act, Education Act and Correctional Services Act implement child offenders' entitlement to an education. Additionally, it uses Kenyan comparative experiences to pinpoint

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6 Act No. 13 of 2021

7 Act No. 12 of 2022

institutional, policy, and legislative improvements Zambia could implement to bring its child justice system into compliance with human rights norms.

## **1.2 STATEMENT OF PROBLEM**

Zambia's legal framework governing children's right to education, most notably the Children's Code Act No. 12 of 2022, the Education Act of 2011 and the constitution collectively reflects the country's commitment to aligning its child justice system with international human rights standards. These statutes contain progressive provisions guaranteeing children's right to education, including those who are deprived of liberty. And this is further backed in the Correctional Services Act No. 13 of 2021. In principle, the laws envisage that all children should access free, compulsory, and quality education. However, despite this progressive legislative landscape, the right to education for child offenders remains insufficiently realized in practice. A central challenge is that although the Education Act of 2011 guarantees free education for all children, it does not expressly state that this right extends to children in conflict with the law or those in detention facilities. This legislative ambiguity contributes to sluggish and inconsistent implementation, leaving many detained children unable to fully realize their right to education.

In addition, persistent gaps continue to be highlighted by civil society reports, institutional assessments, and anecdotal evidence. Correctional facilities that house child offenders remain critically under-resourced, lacking adequate classrooms, trained teachers, learning materials, and child-appropriate curricula. In some cases, contrary to legal provisions, children are still held in adult facilities, exacerbating their vulnerability and further limiting access to rehabilitative and continuous education.

Furthermore, the effective delivery of education within correctional settings is hindered by institutional fragmentation and weak inter-ministerial coordination—particularly among the Ministry of Education, the Ministry of Home Affairs, and the Ministry of Community Development<sup>8</sup>. Although the legislation assigns responsibilities to these bodies,

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<sup>8</sup> Mbewe, A., 2023. An Assessment of Part IX of the Children's Code Act on the Laws Governing Child Reformatory Homes in Zambia. University of Lusaka (Unpublished LLB Dissertation).

enforcement mechanisms are either unclear or poorly executed, resulting in inconsistent or absent educational programming for detained children.

Thus, the core problem is not the absence of legal commitment, but the failure to translate these commitments into operational, child-sensitive, and enforceable educational programmes within correctional environments

This study is therefore motivated by the need to examine, the existing disconnect between Zambia's legal obligations and the lived experiences of children in detention with respect to education. It seeks to identify the legislative and practical gaps, propose actionable reforms, and draw insights from jurisdictions with more effective child-offender education frameworks. Ultimately, the study aims to support evidence-based advocacy, enhance public awareness, and push forward a renewed human rights agenda that ensures no child, regardless of legal status is denied the fundamental right to education.

### **1.3 RESEARCH OBJECTIVES**

1. To examine the international and regional provisions that protect and govern child offenders' right to an education.
2. To examine the laws and practices that govern child offenders' right to education in Zambia.
3. To do a comparative analysis of Kenya's legal and policy frameworks as well as suggest administrative, legislative, and policy changes to improve Zambia's child inmates' access to quality education.

### **1.4 RESEARCH QUESTIONS**

1. What international and regional provisions govern and protect the right to education of child offenders?
2. What legal and institutional measures protect the right to education for child offenders in Zambia?
3. What lessons can Zambia draw from Kenya's approaches to child offenders' education?

### **1.5 SIGNIFICANCE OF STUDY**

With its location at the nexus of children's rights, penal policy, and educational access in Zambia's changing legal environment, this study is both relevant and timely. Zambia has made significant legislative pledges to protect the rights of children in legal trouble,

particularly their right to education, with the recent passage of the Correctional Services Act of 2021 and the Children's Code Act of 2022. However, there are important legal, institutional, and policy issues that require academic investigation due to the discrepancy between legislative commitments and their actual implementation in correctional settings hence ,through its findings, the study will propose actionable recommendations for improving access to quality and continuous education in line with Zambia's obligations under both domestic and international law and because it offers an evidence-based platform for strategic engagement, advocacy, and litigation on behalf of children who are detained, the study is especially pertinent to civil society actors and human rights advocacy organizations. It will be a resource for continuing efforts to improve reintegration results through education and change the child justice system.

## **1.6 SCOPE OF THE STUDY**

The Children's Code Act<sup>9</sup> and the Correctional Services<sup>10</sup> are specifically mentioned in this study, which focusses on the legal, institutional, and practical aspects of child offenders' access to an education in Zambia. It investigates the extent to which these requirements are being applied in child correctional facilities as well as how these statutes safeguard and provide for the educational rights of children who are in legal trouble.

Based on official records, secondary literature, and pertinent field reports, the study mainly examines child correctional facilities and accredited schools in Zambia. Although the study does not conduct a full national empirical survey, it does use information from government publications, case studies, and evaluations conducted by child justice organizations as well as other authors who have shown an interest in the matter.

A comparative component of the study also looks at the design and execution of educational programmes for young offenders in Kenya. This nation was chosen because it has innovative policies, reformative legal frameworks, and regional significance in the context of African child justice. The study's scope is focused but not restricted to the legislative era following 2021, which reflects the legal landscape influenced by the two

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9 Act No. 12 of 2022

10 Act No. 13 of 2021

main bills' passage. For contextual depth and to show the development of educational policy for Zambian kids in prison, historical allusions to past child justice establishments (such Katombora Reformatory School and Nakambala Approved School) are incorporated.

This study is meant to bring awareness to parliament that despite progressive legislative frameworks the law pertaining to children's education specifically child offenders in the education area is lacking. The lack of express provisions that the free education being granted to all children also extends to those who are detained gives room for the right not to be realized as well as an escape for those who are in-charge of carrying out this obligation to escape liability. Furthermore, it also seeks to bring awareness to the community so even they are able to speak up when they see this injustice of child offenders not being granted a free education to better their re-integration into society.

## **1.7 LITERATURE REVIEW**

The worldwide legal system makes it clear that all children, even those who are in legal trouble, have the right to an education. All children, even those who are deprived of their freedom, must have access to education, according to Article 28 of the UN Convention on the Rights of the Child (UNCRC).<sup>11</sup> In a similar vein, Article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>12</sup> requires African countries to uphold children's right to an education and make sure that detention does not impair or reduce that right.

According to researchers like **Reyneke**<sup>13</sup> and **Onyango**<sup>14</sup> education in incarceration should be rehabilitative rather than punitive in order to foster cognitive growth, reintegration, and lower recidivism. Nonetheless, systemic implementation flaws frequently stand in stark contrast to this normative clarity.

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11 United Nations Convention on the Rights of the Child (UNCRC), 1989

12 African Charter on the Rights and Welfare of the Child, 1990. Addis Ababa: OAU.

13 Reyneke, M., 2011. The Right to Dignity and Restorative Justice in Schools. Potchefstroom Electronic Law Journal, 14(6), pp.129–217.

14 Onyango, J.O., 2013. Effectiveness of Rehabilitation Programmes on Child Delinquents in Kenya: A Case Study of Kamiti Youth Corrective Training Centre. Master's thesis. University of Nairobi.

A fundamental historical viewpoint on Zambia's early approach to child rehabilitation may be found in **Phiri's** dissertation from 2022 on Katombora Reformatory School.<sup>15</sup> Founded in 1957 during the colonial era, Katombora placed a strong emphasis on formal and vocational education with the goal of rehabilitating young offenders through programmes in agriculture, carpentry, and tailoring. According to Phiri, the school was one of the few that offered structured instruction and even made it easier for students to enroll in Kazungula Secondary

School's mainstream secondary program.

**Phiri** does point out some significant drawbacks, though: Katombora's educational programming was not sustainable due to administrative negligence, isolation, and inadequate money, even with its model structure.<sup>16</sup> These difficulties established a standard that still shapes Zambia's child justice system. From his study it can be inferred that the lack of prioritization or recognition of the right to education of offenders in statutory provisions gives leeway for it to be disregarded.

**Msipu phiri** in her dissertation titled critical analysis of the law on probation of child offenders, its impact on the administration of justice and its effects on victims in Zambia and south Africa,<sup>17</sup> talks about the probation of child offenders and in her study she discovered that probation of child offenders in Zambia is regulated by the Probation of Offenders Act and the Childs Act. The childs Act provides that in all offences committed by child, child must be put on probation whilst the Probation of offenders Act provides for probation of young people below the age of 21. The law has since then been revised with the introduction of the Childrens Code Act, 2022 which has repealed and replaced the Child Act.

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15 Phiri, R., 2022. The Impact Of Katombora Reformatory School On Incarcerated Childs, 1957–1990. Lusaka: University Of Zambia

16 Ibid

17 Msipu Phiri, 2021, Critical Analysis Of The Law On Probation Of Child Offenders, Its Impact On The Administration Of Justice And Its Effects On Victims In Zambia And South Africa. University Of Lusaka: Lusaka

18 Mutale, 2021, An Analysis Of The Laws Governing Diversion Of Child Offenders In Zambia: Lessons From South Africa, University Of Lusaka, Lusaka.

**Mutale** wrote, the standards and procedures for dealing with child offenders has been set by international instruments and they make reference to diversion as one of the mechanisms to be used and although there has been some progress in developing an appropriate justice system for children in Zambia, it can be argued that our current laws do not adequately incorporate the aspect of diversion as an alternative means to dealing with child offenders<sup>18</sup>. But with the introduction of the Childrens Code Act, 2022 this has since then been addressed under Part VI of the Act. Now although it has been established in Zambia, **Angel** in her study says while Zambia has established a comprehensive legal framework that aligns with international standards, practical challenges in its implementation, such as inconsistent application, limited resources, and inadequate stakeholder training, hinder the effectiveness of diversion programmes<sup>18</sup>

**Mbewe** offers an institutional and historical analysis of child justice, concentrating on Katombora Reformatory School.<sup>19</sup> According to Mbewe, Zambian reformatory institutions do not follow a common curriculum, and formal education systems frequently do not accept accreditation. Mbewe stresses that if Zambia is to fulfil its responsibilities under the African Charter on the Rights and Welfare of the Child and the UNCRC, education must be at the forefront of any reform agenda. In order to promote comprehensive child development, the report urges formal cooperation with the Ministry of Education, reinvestment in reformatory institutions, and the inclusion of psychosocial services.

**Muchindu** concludes that, on paper, Zambia's child justice system complies with international law, particularly in light of the 2022 Children's Code Act.<sup>20</sup> Muchindu contends, however, that in reality, the State has not taken all necessary steps to safeguard the right to education of minors who are in custody. The study points out that most resources are allocated to security and discipline in detention institutions, making educational access a secondary concern. When education is provided to child offenders,

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18 Angel Enhancing Children's Rights: An Analysis of the Implementation of Diversion under Part VI Children's Code Act of 2022 in Zambia.

19 Mbewe, A., 2021. *Child Justice in Zambia: An Analysis of the Reformatory Model*. Lusaka: University of Lusaka

20 Muchindu, T.W., 2022. *A Legal Analysis of Zambia's Child Justice System vis-à-vis the UN Convention on the Rights of the Child*. Lusaka: University of Lusaka

it is usually sporadic and non-certifiable, and they generally lack access to formal curriculum, educational resources, and competent teachers. Muchindu suggests that explicit guidelines for schooling in detention be established, based on the child's best interests and right to development, and overseen by impartial monitoring organizations.

**Mazunda** (2017) examines Nakambala and Chirundu Approved Schools and offers a dismal evaluation of Zambia's modern child rehabilitation facilities.<sup>21</sup> Due to a lack of funding and space, he discovers that children were routinely released too soon, often just a few months after being admitted—much before they had been given any real education or rehabilitation.

**Mazunda** notes that formal academic education was irregular, disorganized, and understaffed, despite the availability of fundamental vocational training (such as carpentry and sewing). He also criticizes the lack of textbooks, the lack of age or grade-based class segregation, and the total lack of legal or psychosocial therapy services. These results provide credence to the claim that systematic implementation of legal reforms, such as those included in the Children's Code Act, has not yet occurred.

**Banda** wrote, circumstantial children have the same rights that children outside the confines of prison or correctional facilities have and these rights are contained in international human rights instruments. These rights include right to food, adequate accommodation and health, leisure and recreation among others, however there is little to no effort being put to ensure that these rights are respected in our Zambian correctional facilities.<sup>22</sup> The study focused on the rights of children born in jail whilst this study focuses on the right of children who are in conflict with law and whether they are adequately being awarded their right to education.

This study will focus on how despite domesticating the Convention on the Rights of a Child as well as the Beijing rules, Zambia still struggles with the education of child

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21 Mazunda, L., 2017. *An Ethical Assessment of the Treatment of Child Offenders in Zambia: A Case Study of Chirundu and Nakambala Approved Schools*. Lusaka: University of Zambia

22 Banda, k, T A Critique Of The Legal Protection Accorded To Circumstantial Children In Zambia: Identifying Best Practices From South Africa And Kenya,

offenders as addressed by Muchindu as well as how the right to education for child offenders is still not fully realized in practice.

## **1.8 RESEARCH METHODOLOGY**

Using a qualitative method to legal research, this work blends comparative and doctrinal analysis. It looks at how well Zambia's institutional and statutory frameworks—in particular, the Correctional Services Act of 2021 and the Children's Code Act of 2022—support child inmates' right to an education. The report also looks at implementation problems and learns from Rwanda and Kenya, two nations that have made significant reforms to their child justice systems. The study draws from primary legal sources, such as national laws, international agreements like the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (UNCRC), and regional legal instruments. To place Zambia's advancements in a regional context, a comparison with Kenya and Rwanda is used. This method makes it possible to find best practices, structural advancements, and policy lessons that are pertinent to the integration of education into child justice systems. Data will be gathered by reviewing and analyzing the content of academic studies, institutional reports, and legal texts. Where practical and morally acceptable, semi structured interviews may be used to obtain more information from solicitors, prison guards, or representatives of the justice and education sectors.

## CHAPTER TWO

### AN ANALYSIS OF INTERNATIONAL LAWS THAT PROTECT THE CHILD OFFENDER'S RIGHT TO EDUCATION

#### 2.0 INTRODUCTION.

The right to education for children in conflict with the law began to gain international attention in the late 20th century, as human rights instruments increasingly recognized that all children, regardless of their circumstances, are entitled to protection and development. Initially, the focus of international frameworks was on general child welfare, but over time, the specific needs of children in detention or involved in justice systems came into sharper focus. Key milestones such as the adoption of the **United Nations Convention on the Rights of the Child (CRC) in 1989**, and later the **Beijing Rules (1985)** and **Havana Rules (1990)**, emphasized not only the need for humane treatment but also the critical role of education in rehabilitation and reintegration. These instruments are part of what marked a shift from punitive approaches to restorative justice, placing education at the core of efforts to support children's development, reduce recidivism, and uphold their fundamental rights even within the justice system. This chapter aims to discuss the initiatives, movements and measures taken by international instruments to further recognize, promote and protect this right.

#### 2.1 THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS APPLICABLE TO CHILDREN'S CRIMINAL PROCEEDINGS.

The discourse surrounding the treatment of children in conflict with the law has dramatically shifted over the past half-century, moving from purely punitive approaches focused on custody to a rehabilitative model centred on the child's developmental needs and dignity. This transition is comprehensively anchored in international human rights instruments, which collectively articulate the universal standard that a child's right to education must not be suspended merely because of their detention, hence this segment sorts to address some of the most important international and regional Human Rights instruments relevant to children in conflict with the law worldwide as well as Zambia in particular.

### **2.1.1 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)**

The UDHR was the first comprehensive human rights instrument to be proclaimed by the UN General Assembly,<sup>23</sup> as it catered for right for every person without any form of discrimination. This document was impressive evidence of the consensus and commitment to human rights on the part of the nations in the world.<sup>24</sup> The author Mumba in his study made mention that this instrument, though non-binding established the blueprint for most human rights related treaties<sup>25</sup>. The fundamental idea behind the UDHR is that every person is born free and equal in dignity and rights. They possess reason and conscience and ought to treat each other with a sense of brotherhood<sup>26</sup>. The rights and freedoms contained in the UDHR are to be enjoyed by everyone without distinction of any kind on grounds such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>27</sup> Everyone has the right to life, liberty and security of person.<sup>28</sup> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>29</sup> Everyone has the right to recognition everywhere as a person before the law.<sup>30</sup> Further, all people are equal before the law and are entitled without any discrimination to equal protection of the law.<sup>31</sup> Therefore, no one shall be subjected to arbitrary arrest, detention or exile.<sup>32</sup> Above all, everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.<sup>33</sup>

### **2.1.2 THE BEIJING RULES**

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice more commonly known as the 'Beijing Rules', These rules were adopted by the UN in

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<sup>23</sup>Resolution 217 (111) of 10 December, 1948

<sup>24</sup> Permanent Human Rights Commission, 'National Plan of Action for Human Rights', 1999 – 2009 at p.3

<sup>25</sup> Mumba, 2016

<sup>26</sup> UDHR, Art 1

<sup>27</sup> Ibid, Art 2

<sup>28</sup> Ibid, Art 3

<sup>29</sup> Ibid, Art 4

<sup>30</sup> UDHR, Art 5

<sup>31</sup> Ibid, Art 6

<sup>32</sup> Ibid, Art 7

<sup>33</sup> Ibid, Art 9

Beijing, China in 1985. These are the first set of international standard minimum rules for the administration of child justice or children who come into conflict with the law. The significant point about these rules is that they provide for separate and specialized systems of child justice and set out the minimum standard rules for the handling of children in conflict with the law under any legal system of UN member states. Certain principles of the Beijing Rules have been incorporated in the CRC and are, therefore, legally binding on states-parties. There are thirteen fundamental guiding principles enshrined in the Beijing Rules and these include,

- (i)** The fair and humane treatment of children who come into conflict with the law, thus promoting the well-being of the child.<sup>34</sup>
- (ii)** The juvenile justice system must react proportionately to the circumstances of both the child who comes into conflict with the law and the offence. The principle of proportionality enhances the well-being of children and curbs punitive sanctions against them.<sup>35</sup>
- (iii)** The use of diversion programmes which entails dealing with children in conflict with the law without resorting to formal trial by courts of law. This allows the police, the prosecution and the courts of law to remove the child in conflict with the law from criminal justice process at any stage of the proceedings before the final order is made. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration, for example, the stigma of 'conviction' and 'sentence.' Diversion need not be limited to petty or minor offences only, thus rendering it an important instrument.
- (iv)** The use of detention only as a measure of the last resort, and for the shortest possible period of time.<sup>36</sup>
- (v)** Children should always be detained separately from adults. This is the only sure way of avoiding "criminal contamination" of children. This principle stresses the

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34 Beijing Rules, Rule 1(3).

35 Ibid, Rule 5(1).

36Ibid, Rule 13(1).

fact that no child should be held in a detention facility where they are vulnerable to the negative influences of adult offenders.<sup>37</sup>

- (vi)** Proceedings should always be conducted in the best interests of the child and should be conducted in a manner which allows for the child's full participation.<sup>38</sup>
- (vii)** Deprivation of the child's liberty should be carefully considered, and only for serious offences.<sup>39</sup>
- (viii)** Capital punishment shall not be imposed for any crime committed by juveniles.<sup>40</sup>
- (ix)** Juveniles shall not be subjected to corporal punishment.<sup>41</sup>
- (x)** Institutionalization should be a last measure after consideration of alternatives and for the minimum necessary period.<sup>42</sup>
- (xi)** There should be continuous and specialized training for police officers who deal with children.<sup>43</sup>
- (xii)** Where children do undergo institutional treatment, educational services should be provided to enable the children to return to society.<sup>44</sup> This is one of the fundamental rights that has spear headed this particular study, and in considering the best interest of a child the adoption of this provision meant looking out for the child's well-being despite them being in conflict with the law for the purposes of their re-integration into society.
- (xiii)** Release of a child should be considered as soon as possible after the arrest. A judge or other competent official/body (e.g. a magistrate or police officer) shall without delay consider release of a juvenile who is arrested.<sup>45</sup>

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<sup>37</sup> Ibid, Rule 13(4) as read with Rule 26(3). See also International Covenant on Civil and Political Rights (ICCPR) art. 9 and 10(2)(b). the United Nations Standard Minimum Rules for the Administration of Juvenile Justice

<sup>38</sup> Beijing Rules, Rule 14(2). See also Rule 15(1) and 2 of the same Rules.

<sup>39</sup> Ibid, Rule 17(1)(b)(c).

<sup>40</sup> Ibid, Rule 17(2). See also Art. 6(5) of the ICCPR.

<sup>41</sup> Ibid, Rule 17(4) as read with Rule 18(1). See also art. 7 of ICCPR.

<sup>42</sup> Ibid, Rule 19(1).

<sup>43</sup> Ibid, Rule 12(1).

<sup>44</sup> Ibid, Rule 26(1).

<sup>45</sup> Beijing Rules, Rule 10(2).

Further, the Beijing Rules in Rule 7(1) provide for the due process rights that are essential for a fair and just trial of juveniles. These procedural safeguards include the presumption of innocence; the right to be notified of the charges; the right to remain silent; the right to legal representation; the right to the presence of parents or guardians<sup>46</sup>; the right to call and cross-examine witnesses; and the right of appeal. These procedural safeguards are supposed to be guaranteed at all stages of proceedings. Additionally, Rule 8(1) of the said Rules entitles a juvenile to the right to privacy which right shall be respected at all stages of proceedings in order to avoid harm being caused to her/him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published. Therefore all state parties to these rules have a mandate to uphold them and better apply them in their respective states.

### **2.1.3 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (CRC)**

This is the key international legal instrument for the protection of children's rights. And was most recently domesticated in Zambia in 2022 in the Children's Code Act, The CRC provides the most extensive articulation of the international standards relating to the protection of children's rights. First and foremost, the CRC is premised on the 'best interests of the child' principle as a primary consideration in all matters concerning children. This principle's application is not limited to decisions made by courts of law, the United Nations Convention on the Rights of the Child (CRC). Article 3 CRC states: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' The Committee on the Rights of the Child has issued General Comments in order to provide authoritative guidance to States regarding the interpretation and implementation of the CRC<sup>47</sup>. It must be broadly applied to administrative decisions, policy formulation, diversion measures and so forth. The

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46 Rule 18(2) of the Beijing Rules also protects juveniles in this respect. See also Art.10 of ICESOR.

<sup>47</sup><https://euaa.europa.eu/>

principle guides the application of all other principles of the Convention.<sup>48</sup>It implores states parties to respect and to accord each child within their jurisdiction the enjoyment and protection of the rights enshrined in the Convention without discrimination of any kind.<sup>49</sup> The importance of the CRC is highlighted by the fact that it includes the whole spectrum of rights such as civil and political, as well as economic, social and cultural rights, adapted to the specific needs of all children in all social contexts.<sup>50</sup>

Therefore, state Parties recognize the rights of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.<sup>51</sup> And, it is therefore cardinal, having regard to the provisions of the penal law and the CRC that each state party shall ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.<sup>52</sup> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in

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48 J.S. Nielsen and J. Gallinetti, (eds). 2004. *Child Justice in Africa, a guide to good practice*. Community Law Centre. South Africa p. 22-23.

49 CRC, Art. 2.

50 UNICEF, *International Criminal Justice and Children. No Peace without Justice* p.35

51 CRC, Art. 40(1)

52 Ibid, Art. 37(a).

exceptional circumstances.<sup>53</sup> To sum up, states-parties are required to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children who are in conflict with the law.<sup>54</sup>

#### **2.1.4 THE UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY (RPJDL)**

In addition to the CRC and the Beijing Rules, there is the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (RPJDL)<sup>55</sup> which is a very important international legal instrument for the protection of children in detention. These rules supplement the principles and procedures set forth in both the CRC and the Beijing Rules. Further, juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available. They should have private and confidential access to their legal representative. And that among other things, they should also be provided with opportunities to pursue work with remuneration and continue education or training but such work, education or training should not be the cause for their continued detention. They should be afforded leisure and recreation compatible with the interests of the administration of justice.<sup>56</sup> From this provision it can be inferred that the education of a child in conflict with the law though deprived of their right to liberty should still be accorded the right to education. In addition, every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, including a police cell, in order to record evidence of prior ill-treatment or to establish whether there is need for further medical care.<sup>57</sup> The family or guardian of a child and any other person designated by the child have the right to be informed of the state of health of the child while in a detention facility, this includes but is not limited to the child's illness, injury and death.<sup>58</sup>

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53 Ibid, Art. 37(c).

54 CRC, Art. 40(3).

55 The Rules were adopted by the UN General Assembly resolution 45/113 of 14 December, 1990 barely a year after the adoption of the CRC.

56 Ibid, Rule 18.

57 Ibid , Rule 50.

58 Ibid , Rule 56.

### **2.1.5 THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (ACRWC)**

The African Children's Charter was adopted by the OAU Assembly of Heads of State and Government in July, 1990. The African Children's Charter came into force on 27<sup>th</sup> November, 1999 after its ratification by 15 member states. To date 26 member states, including Zambia, have ratified it while 34 countries have signed it. In adopting the African Children's Charter, the African Heads of State and Government committed themselves individually and collectively to take all necessary steps and measures, legislative and otherwise to ensure the protection, survival and development of the child in conformity with the provisions of the African Children's Charter and discourage any inconsistency with regard to the rights, duties and obligations contained therein. The African Children's Charter recognizes the unique and privileged position of a child in an African Society. In a broader sense, the African Children's Charter supplements the CRC as it spells out some clauses that have not been covered in the CRC. It further covers some specific aspects which are peculiar to Africa.<sup>91</sup> For example, it provides for the elimination of customs, social and cultural practices that endanger the health or life of a child.<sup>92</sup> The African Children's Charter notes with concern that the situation of most African children remains critical due to the unique factors of their socioeconomic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger; and on account of the child's physical and mental immaturity he/she needs special safeguards and care. Furthermore, the child requires legal protection in conditions of freedom, dignity and security.<sup>93</sup> With regard to the legal protection of children, the African Children's Charter stipulates a number of safeguards which include the following: Every child shall be entitled to the enjoyment of the rights and freedoms without any form of discrimination.<sup>94</sup> The best interests of the child shall be a primary consideration in all actions concerning the child.<sup>95</sup> Every child has an inherent right to life and no death sentence shall be imposed on him/her for any offence.<sup>59</sup> No child shall be

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59 ACRWC, Art. 5.

subjected to arbitrary or unlawful interference with his/her privacy.<sup>60</sup> The child shall be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse.<sup>61</sup> The African Children's Charter makes special provisions for the administration of juvenile justice and states that, every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.<sup>62</sup>

### **2.1.6 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly in 1966 and came into force in 1976. It is one of the key international human rights treaties that aims to ensure the protection and promotion of economic, social, and cultural rights. These rights include the right to work, the right to social security, the right to an adequate standard of living, the right to education, and the right to participate in cultural life. The ICESCR complements the International Covenant on Civil and Political Rights (ICCPR), together forming the International Bill of Human Rights. The Covenant obligates its parties to take steps, to the maximum of their available resources, to progressively achieve the full realization of these rights.

Article 2<sup>63</sup> of the ICESCR states, state parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. And Article 13<sup>64</sup> of the same provides as follows

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<sup>60</sup> Ibid, Art. 10.

<sup>61</sup> ACRWC, Art. 16.

<sup>62</sup> Ibid , Art. 17.

<sup>63</sup> ICESCR, Art 2

<sup>64</sup>ICESCR, Art 13

1. The States Parties to the present Covenant recognize the right of everyone to education.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
  - (a) Primary education shall be compulsory and available free to all;
  - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
  - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; ...

The ICESCR affirms the fundamental right to education for all individuals, including children in conflict with the law as under Art 13(1) it states that the right be availed to everyone. These provisions emphasize the obligation of states to ensure equal access to education without discrimination and to take appropriate measures to make education available, accessible, acceptable, and adaptable. Upholding these rights is essential to promote the rehabilitation, reintegration, and development of children in conflict with the law, enabling them to realize their full potential and participate meaningfully in society.

## **2.2 CONCLUSION**

To sum it up, international instruments have progressively evolved to recognize and protect the right to education as a fundamental human right for all individuals. Over time, their provisions have increasingly emphasized the importance of inclusive education, ensuring that even marginalized groups, such as children in conflict with the law, have access to quality education. This development underscores the critical role education plays not only in personal growth but also in the successful reintegration of young offenders into society. As such, the right to education must be upheld and prioritized, reflecting its indispensable value in fostering rehabilitation, social inclusion, and the realization of human dignity.

## **CHAPTER THREE**

### **CHILD OFFENDERS' ACCESS TO EDUCATION IN ZAMBIA: A LEGAL REVIEW**

#### **3.0 INTRODUCTION**

This chapter aims to bring to the fore the extent to which, or if at all, the existing legal framework on juveniles' right to education has been implemented. In doing so, the chapter shall commence with a discussion on the importance of not only having a robust legal framework on the issue under discussion, but equally a stringent implementation system. This will then lead into a discussion on the existing framework as well as their short comings. Lastly, the discussion will revolve on the factors that have led to a lapse in the implementation of the existing legal framework.

#### **3.1 CHILD OFFENDERS' RIGHT TO EDUCATION**

Zambia's commitment to upholding the right to education for child offenders is embedded within a robust legal and institutional framework. The Constitution of Zambia guarantees fundamental human rights, including the right to education, without discrimination. Complementing this, the Education Act of 2011 mandates accessible and inclusive education for all children<sup>65</sup>, which should include those in detention. Additionally, the Children's Code Act of 2022 specifically addresses the rights and welfare of children in conflict with the law, emphasizing their entitlement to education while in detention. Institutional oversight is provided by bodies such as the Ministry of Gender and Child Development and the Zambia Correctional Service, which collaborate to ensure that child offenders receive appropriate educational opportunities in line with national and international standards.

##### **3.1.1 THE EDUCATION ACT**

This Act was enacted in 2011 to regulate the provision of accessible, equitable and qualitative education, provide for the establishment, regulation, organization, governance, management and funding of educational institutions, provide for the establishment of education boards and for their functions as well as domesticate the Convention on the

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<sup>65</sup> Act No.23 of 2011

Rights of the Child in relation to education of all children. Under Article 14(2), it provides that the Government shall make general and vocational education progressively available and accessible to all persons and under Article 15 it goes on to say, a child has the right to free basic education<sup>66</sup>. These provisions are what guarantee the right to education of all children but in addressing all children it does give or provide a particular provision for child offenders it only goes as far as touching on children with special education needs and does not give a definition of what this class of children includes and leaves a question of whether child offenders are to be regarded as children with special education needs.

### **3.1.2 THE CORRECTIONAL SERVICES ACT**

The introduction of correctional education started as elementary education in Zambia. Initially, the focus of prison education was training inmates on how to read, and this was accompanied by recreational activities meant to supplement the same. Thus, in 1973 prison education was renamed correctional education in order to best reflect the objective of correctional facilities, which is simply, as the name suggests, to correct. The intention of correctional education was to rehabilitate and reform the behavior of incarcerated persons. In 1999 the government implemented a policy which provided that inmates needed skills to become acceptable members of society. Sometime in July 1974, the Republican President at the time, Dr. Kenneth Kaunda visited one of the most notorious prisons in the republic, Mukobeko prison, and during this visit, the President made pronouncements to the effect that prisoners were to be provided with basic education to improve their literacy and political knowledge to inculcate in them skills that would enable them reform into law abiding citizens and from then on, the focus of the prison service in Zambia has been on the improvement of the behavior of inmates through literacy, basic education and vocational training skills so that after serving their sentence in prison they could be reintegrated into society as useful citizens prepared for the world of work.<sup>67</sup> As of 2021, the correctional services Act in its preamble states, it is An Act to continue the existence of the Zambia Prisons Service and rename it as the Zambia Correctional

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<sup>66</sup> Act no.23 of 2011

<sup>67</sup> Mate Situmbeko and Kalisto Kalimaposo, 'The Status of Prison Education in Selected Correctional Facilities of Western Zambia' (International Journal of Research and Innovation in Social Sciences Volume VI, Issue XII, December 2022)

Service and redefine its functions, provide for the establishment, management and control of prisons and correctional centres, provide for the correction and reformation of inmates provide for extension services, provide for aftercare orders, establish the National Parole Board and provide for its functions and domesticate the United Nations Standard Minimum Rules for Treatment of Prisoners which is part of the main focus of this study as it touches on the treatment and right to education of child offenders<sup>68</sup>.

The Act in section 10 further illustrates and provides that The Minister may, by notice in the *Gazette*, declare a building, enclosure or place, or any part of a building enclosure or place, to be a prison or correctional centre and under section 50 it goes on to state that The Service shall provide rehabilitation programmes including educational, work and social programmes which shall, as far as possible, improve the inmate's possibility of successful reintegration in the community after discharge<sup>69</sup>, now the provision is motivational in that we see that there is initiative to being placed to make sure that education is being provided to offenders but it does not state the type of education and whether it is in-correspondence with that being provided in the local schools furthermore, the provision does not touch on the child offenders education specifically and this ambiguity leaves room for neglect.

### **3.1.3 THE CONSTITUTION.**

The Zambian Constitution is legally recognized as the supreme law of the land to which or other laws and pieces of legislation are subordinate and any law or legislation that is contradictory or inconsistent is null and void to the extent of its contradiction or inconsistency (Article 1(1)), this position of the law was affirmed in the case of *Christine Mulundika and 7 others v The People*<sup>70</sup> and was reiterated in the case of *Resident Doctors Association v The attorney general* and as such the constitution can be referred to as the Alpha law. This alpha law contains and provides the fundamental rights and freedoms accorded to a person by virtue of them being human under its part III and among the National principles and core values are human dignity, equity, social justice, equality and

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<sup>68</sup> Act no 37 of 2021

<sup>69</sup> Ibid

<sup>70</sup> (S.C.Z. Judgment 25 of 1995) [1996] ZMSC 26 (9 December 1996)

non-discrimination according to Article 8(d)<sup>71</sup>, discrimination is defined under Article 266 of the constitution, hence non-discrimination means not directly or indirectly treating a person differently on the basis of that person's birth, race, sex, origin, color, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status(Article 266) and further, the alpha law binds all persons in Zambia, State organs and State institutions(Article 1(3))<sup>72</sup>. Now, like many other second generation rights, the right to education is not one that is enshrined as an entrenched provision of the Zambian Constitution. In the 2016 general election, a constitutional referendum was held alongside the poles, putting the question to the electorate whether part three of the Constitution should be amended to include certain rights contained in international instruments that Zambia had ratified in the past, but has yet to domesticate in a more effective way. Among these was the right to education contained in the Convention on the Rights of a Child (CRC), A Convention ratified by Zambia in 1991. The referendum failed owing to a lack of awareness about the nature of the exercise which led to a voter turnout that was not sufficient to meet the high threshold of affirmative votes set out by the Constitution that were required in order for the referendum to succeed.<sup>73</sup>

### **3.1.4 THE CHILDRENS CODE ACT**

It is no secret that the ideal time in one's life to begin obtaining an education (especially formal) is at the start of their formative years<sup>74</sup>. This fact underscores the need to have children's education be an uninterrupted process regardless of the circumstances that the child finds themselves in. This is owing to the fact that childhood is the critical stage at which human beings develop skills that enable them to become responsible and productive members of society. In due recognition of this fact, the Children's Code Act was enacted in 2022, to among other things, provide for the development of treatment programmes, early intervention services and programmes to combat crime and prevent further offending, limit the negative effects of confinement by minimizing the impact of a finding of guilty on the family of a child in conflict with the law and facilitate the

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<sup>71</sup> Act no. 2 of 2016

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> S. Foster, 'Human Rights and Civil Liberties' (2<sup>nd</sup> edn Pearson Education 2008) p.289

reintegration of the child in conflict with the law into society, provide for the establishment of child approved centres and child reformatory centres, provide for the regulation of child care facilities, provide for child safeguarding, domesticate the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and the Convention on the Civil Aspects of International Child Abduction.

It is currently recognized as the supreme law when it comes to matters concerning or in relation to a child and in defining a child it has adopted the definition of a child under Article 266 of the Constitution of Zambia Act no.2 of 2016 which is that a child means a person who has attained, or is below, the age of eighteen years. Under Article 10(1), it states that a child's right to education provided under the Education Act, 2011, shall be directed at (a) developing the child's—

- (i) personality, talents, skills, and mental and physical abilities to the child's fullest potential;
  - (ii) respect for human rights and fundamental freedoms enshrined in the Constitution;
  - (iii) respect for the child's parents, cultural identity, language and values; and
  - (iv) respect for the natural environment and ecosystem; and
- (b) preparing the child for responsible life in society, in the spirit of tolerance, peace, equality of sexes and friendship.

It goes on to state under sub-Article 2 that, a child has a right to religious education, subject to appropriate parental guidance. And additionally, under Article 10(3) it goes on and mandates that the State and the parents of a child shall ensure the education of the child<sup>75</sup>. To cement on the need for these provisions, in his speech at the ceremonial opening of the Lusaka High Court criminal session in 2023, Chief Justice Malila lamented the increasing number of children finding themselves in conflict with the law adding that the implementation of the Children's Code Act will require judicial reforms which are to be facilitated by financial support from the central government.<sup>76</sup>

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<sup>75</sup> Act no. 2 of 2016

<sup>76</sup> Remarks By the Hon. Chief Justice Dr. Mumba Malila, SC at the ceremonial Opening of the Lusaka High Court Criminal Session on 9 January 2023.

That being the law on the ground, it is even more imperative that this provision be strictly implemented to children who have been legally detained as it is evident from the wording of the statute that its overall aim is to, among other things, prevent the predicament in which child offenders find themselves in. Though not worded in those precise terms, it can be inferred from reading the provisions of the statute that the intention of parliament was to be indiscriminate as the statute does not appear to draw a distinction between children detained and those freely roaming, hence the need for robust implementation of the right set out in the aforementioned provision. Sadly the downside of not mentioning that this applies to all class of children is that the assumption by readers of this law is that it applies indiscriminately to the class of children mention which includes children with special education needs

### **3.2 SHORTCOMINGS OF LEGAL FRAMEWORK ON CHILD OFFENDERS' EDUCATION**

While the legal framework governing child offenders' right to education in Zambia has made strides in ensuring that child offenders are afforded the same educational opportunities as their emancipated counterparts, it has shown several shortcomings when examined critically. Below are some prominent issues, supported by real-life examples:

#### **3.2.1 INADEQUATE IMPLEMENTATION**

Although Zambia's legal framework recognizes the right to education for children without distinguishing the application of the same between free and detained children from its wording and emphasis on non-discrimination, it nonetheless falls short of full and meaningful implementation especially, in the case of children who are detained, in rural and marginalized communities. For instance, in remote areas, even children who are not in detention are unable to attend school due to lack of infrastructure, qualified teachers, or learning materials, despite the legal provisions advocating for free and compulsory education. This being the case for free children, the situation is direr for those in detention centres.

#### **3.2.2 INADEQUATE LEGAL PROTECTIONS FOR MARGINALIZED CHILDREN**

The problem identified by this study is further complicated by the existence of legal provisions that do not adequately protect vulnerable groups of children who have been detained under the authority of the state such as children with disabilities. Although this

a significantly small group compared to their better advantaged counterparts. As a result, the already marginalized children often face barriers in accessing inclusive education even as a ward of the state, due to the absence of specific legal mandates requiring reformatory institutions be financed and have facilities specifically tending to these special needs of the child offenders with special needs which eventually leads to their exclusion.

### **3.2.3 INADEQUATE REDRESS FOR VIOLATIONS**

The Zambian legal framework on the protection of child offenders' right to education lacks clear mechanisms for children or their adult representatives to seek redress if their right to education is violated. This is especially the case for child offenders as this challenge in their case is further worsened by their predicament.

It is worth mentioning at this juncture that correctional education in this context makes reference to a wide array of education programmes available to men and women under correctional supervision. These programmes range from basic skills training to tertiary and vocational training that provides the skills necessary for offenders to obtain employment upon being released. And for child offenders should include the levels of education provided for under the Education Act which is free basic education and secondary education.

### **3.2.4 CHALLENGES IN PRACTICAL IMPLEMENTATION**

In a study carried out by Situmbeko and Kalimaposo (*supra*)<sup>77</sup> they note that during an interview with an officer at Correctional facility a correctional facility, the officer confirmed that they were at times compelled to use inmates having some experience but not technically qualified in the teaching profession, to increase the number of teachers from what was at the time called the 'Ministry of General Education'. Quoted verbatim, the officer stated as follows:

"Sometimes it appears difficult to find teachers to come and interact with inmates. Some of the teachers seconded to teach in correctional facilities are not committed due to lack

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<sup>77</sup> Mate Situmbeko and Kalisto Kalimaposo, 2022, 'The Status of Prison Education in Selected Correctional Facilities of Western Zambia' (International Journal of Research and Innovation in Social Sciences Volume VI, Issue XII

of incentives. Therefore, we have no choice but to pick on inmates with certain levels of education to serve as volunteer teachers.”<sup>78</sup>

In addition to this, it was found that during focus group interviews, the researchers observed that class management was difficult for some teachers. Some volunteer teachers chosen among inmates as earlier stated found it difficult to manage fellow inmates who were regarded as ‘Bosses’ in a manner of speaking, in the cells. One of these inmate volunteer teachers had this to say;

“If a ‘Boss’ misbehaves in class and you tell him to behave properly he will harbor a grudge against you and deal with you in the cells. Sometimes they instil fear in us and we are forced to take a blind eye when they make noise disturbing the lessons.”<sup>79</sup>

The researchers carried out interviews with officers in-charge of correctional centres under review and It was reported that the Ministry of Home Affairs allocated finances in the national budget every year specifically for prison education. In addition, it was observed that the curriculum used in correctional facilities was the same as that used for schools. Thus, students would write the same examinations provided by the Technical Education, Vocational and Entrepreneurship Authority (TEVETA) and the Examination Council of Zambia (ECZ)<sup>80</sup> and so to this extent, the legal framework records some wins on this front. But at the same time the education provided for them is by unqualified or semi-qualified personals and as such the education granted is not of the same quality and would be lacking in qualitative value.

### **3.2.5 LOGISTICAL CHALLENGES**

Because of the inadequate funding for child correctional facilities, the effective implementation of the legal framework on this issue, the delivery of education to child offenders has been hampered. For instance, these correctional institutions were built without the idea of the education of its inhabitants in mind. Thus, some correctional institutions have had to improvise<sup>81</sup>

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<sup>78</sup>Mate Situmbeko and Kalisto Kalimaposo, 2022, ‘The Status of Prison Education in Selected Correctional Facilities of Western Zambia’ (International Journal of Research and Innovation in Social Sciences Volume VI, Issue XII

<sup>79</sup> Ibid

<sup>80</sup>The Status of Prison Education in Selected Correctional Facilities of Western Zambia

<sup>81</sup> Ibid

### **3.3 BENEFITS OF CORRECTIONAL FACILITIES**

Correctional education has had a significant impact on the lives of inmates especially child offenders and through this process, as earlier alluded, they acquire vital skills and knowledge. These findings are collaborated by Tolbert (2002) who posited that correctional education programmes lead to lower recidivism rates because they provide inmates with the knowledge, skills, attitude, and values needed to succeed in society as well as ensuring that they avoid engaging in further criminality. The findings of this could be mirrored to those of Chilimboyi in his study on the *Prisons and education provision in Zambia: A historical perspective, 1964-2011* which revealed that Correctional education reformed many inmates from different backgrounds into productive members of society<sup>82</sup>.

### **3.4 CONCLUSION**

Although Zambia's legal framework acknowledges the right to education for children without making a distinction as to their state of being, that is; whether they are detained or not, issues such as the lackluster enforcement heretofore identified by the study, have impeded the effective implantation of the already inadequate existing legal framework. Lack of protections for marginalized groups, limited legal remedies, and gaps in regulation contribute to ongoing challenges and this is backed by Lewis Chilufya's study where the author lamented that Zambia faces violation of children's rights as well as difficulties in accessing justice by children. This situation stems from interplay of various factors, fundamentally, these include poor legislative framework as well as weak enforcement mechanisms for existent laws.<sup>83</sup> Therefore addressing these shortcomings requires strengthening legal mechanisms, improving enforcement, and ensuring that laws are inclusive and accessible for all children regardless of their status as wards of the state.

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<sup>82</sup>Chilimboyi Prisons and Education provisions in Zambia; A historical perspective

<sup>83</sup> Protection of children's rights and Access to Education in Zambia

## CHAPTER FOUR

### KENYA'S APPROACH TO CHILD OFFENDERS' RIGHT TO EDUCATION

#### 4.0 INTRODUCTION

Kenya recognizes that education is the key for empowering the most marginalized and vulnerable individuals in society and makes efforts on an affirmative basis to enable these individuals to best exploit their life-chances alongside their other Kenyan peers through primary, secondary and tertiary education<sup>84</sup> and in doing so they have developed a comprehensive law and policy framework to protect and implement the right to education which is aligned with international human rights treaties<sup>85</sup> on that basis, this chapter seeks to look at what advances Kenya has made to better recognize and implement the right to education of children and child offenders as they are in rehabilitation schools, it will also address the challenges they have and are currently facing and it will also see what lessons can be drawn from then to better recognize and implement that right in Zambia as well.

#### 4.1 HISTORICAL DEVELOPMENT OF THE RIGHT TO EDUCATION

From as early as 2003, Kenya has been able to recognize the vulnerability of children and also recognized the importance of them being educated, though different approaches such as signing to treaties that provide a great variety of rights that better advocate and protect the rights of children, they have shown their willingness to provide better circumstances for this vulnerable group of individuals, for education specifically, free primary education was introduced in 2003 and free secondary education in 2008. The objective of this programme was to increase access to secondary education by providing more resources in line with the policy of providing 12 years of basic education as well as meeting the constitutional requirements to provide education to all its citizens. Apart from that, the State had introduced mobile schools in arid and semi-arid areas in Kenya and went on to ban extra coaching by teachers to reduce indirect cost to parents. This is

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<sup>84</sup> RTE\_Right\_To\_Education

<sup>85</sup> Ibid

notwithstanding parent's willingness to pay for extra as coaching fees defeats the implementation of this policy.

#### **4.1.1 LEGAL FRAMEWORK: THE CONSTITUTION**

When it comes to the right to education, the 2010 constitution of Kenya recognized that “every person has the right to education” under Article 43(1)(f)<sup>86</sup> and stipulates that “every child has the right to free and compulsory education” in Article 53(1)(b)<sup>87</sup>, this early recognition of the right helped furnish the early implementation of this right. In addition, “every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitive labour” Article 53(1)(d).<sup>88</sup> It goes on to provide that, the State shall put in place affirmative action programmes to ensure that the youth access relevant education and training under Article 55 and that minorities and marginalized groups are provided special opportunities in education under Article 56.<sup>89</sup> Furthermore, Article 27 guarantees equality and freedom from discrimination. It states: “(1)Every person is equal before the law and has the right to equal protection and equal benefit of the law this provision fosters non-discrimination<sup>90</sup> and read with article 55 as well as article 43(1)(f) speaks to even child offenders being availed the same right set in stone that this right must be availed to everyone no matter what class they may fall under.

#### **4.1.2 THE BASIC EDUCATION ACT**

So as the 2010 Constitution guaranteed to every child the right to free and compulsory education under Article 43(1)(f) to give effect to it, the Basic Education Act No 14 of 2013 was passed into law to regulate the provision of basic education and adult basic education in the country. The Basic Education Act provides for free and compulsory primary and secondary education and it also explicitly prohibits tuitions fees additionally<sup>91</sup>, this Act backs up the provisions of the 2010 constitution in providing for free education for all. The Act regulates the education been awarded to all children, what they are taught and who

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<sup>86</sup> Act of 2010

<sup>87</sup> Ibid

<sup>88</sup> Ibid

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Act no. 14 of 2013

should teach them<sup>92</sup>. Through its express provision that education must be free and compulsory for all, it mandates all institutions providing such service to avail it and also by giving sanctions for failure to do it keeps institutions and role players on their toes at all times.

#### **4.1.3 THE CHILDRENS ACT**

The 2001 Children's Act (repealed) also came in to guarantee this free compulsory basic education under Article 7 the said Children's Act also acknowledged and protected every child's right to education and other education laws guaranteed the implementation of the right to education, taking its place and adding on to what it had already established is its 2022 successor The Children Act, it provides for the establishment of rehabilitation schools under Article 78<sup>93</sup> where the right to education of child offenders is executed as this right is fully brought into recognition in these facilities as studies by various scholars have shown, for instance the study by ojweke<sup>94</sup> shows how education and vocation training is carried out in rehabilitation facilities and as many authors before her have emphasized that the main challenge faced by the facilities is mainly lack of funding from other sources.

#### **4.1.4 INSTITUTIONAL/OPERATIONAL DOCUMENTS**

In addition to the pieces of legislation mentioned earlier, Kenya adopted various general and specific policies on education, some of which include the second Medium Plan Term of Vision 2030 of 2013 which identified key policy actions, reforms, programmers and projects that the Government was to implement in the 2013-2017 period in line with the Government's priorities, the Kenya 2010 Constitution and the long-term objective of Vision 2030<sup>95</sup>. Accordingly the theme of this MTP was "Transforming Kenya: Pathway to Devolution, Socio-Economic Development, Equity and National Unity." and it gave priority to devolution as spelt out in out constitution and to more rapid socio-economic development with equity as a tool for building national unity<sup>96</sup>. The Second MTP also

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<sup>92</sup> Act no 14 of 2013

<sup>93</sup> Act of 2022

<sup>94</sup> Ojweke Charles Omamo 2011 An Assessment Of Factors Related To The Effectiveness Of Government Rehabilitation Schools For Delinquent Adolescents In Nairobi And Western Counties In Kenya

<sup>95</sup> Second Medium Plan Term of Vision 2030

<sup>96</sup> Ibid

aimed to increase the scale and pace of economic transformation through infrastructure development, and strategic emphasis on priority sectors under the economic and social pillars of Vision 2030<sup>97</sup>. It also highlighted that the initial year of the First MTP up to the year 2012, progress recorded included among others Enrollment in early childhood education increased by 40 % from 1.72 million in 2008 to 2.4 million Transition rate from primary to secondary education increased from 64 % in 2008 to 77 %, another policy passed was the Policy Framework for Education and Training (2012), as well as the Kenyan government's "Blueprint for Rehabilitation and Social Reintegration Programmes"<sup>98</sup> outlines that educational level must be assessed, and that rehabilitation schools (RSs) should offer upper primary and lower secondary classes, as well as foundational literacy and numeracy for those who missed schooling.

#### **4.2 REFORM OR REHABILITATION SCHOOLS IN KENYA**

In the Children Act, 2022 rehabilitation schools means a rehabilitation school established under Article 78<sup>99</sup> it goes on to state, the Cabinet Secretary may, by notice in the *Gazette*, establish such number of rehabilitation schools as the Cabinet Secretary may consider necessary to provide rehabilitation, accommodation, education, training and facilities for the care and protection of children.<sup>100</sup> Furthermore , Article 78(1) provides, subject to subsection (3), any person may, with the approval of the Cabinet Secretary, establish and manage a private institution suitable for–(a)the reception, education and vocational training of children; and(b)the rehabilitation, care and protection of children<sup>101</sup>.Without prejudice to the generality of subsections (1) and (2), every rehabilitation school shall be suitably designed and equipped to implement such educational and vocational training programmes as may be approved by the Cabinet Secretary for the time being responsible for matters relating to basic education and vocational training, this is according to Article 78(3)<sup>102</sup>. Prior to that it was established by the repealed Children Act, 2001.

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<sup>97</sup> Second Medium Plan Term of Vision 2030

<sup>98</sup> Ibid

<sup>99</sup> Act of 2022

<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> Ibid

#### **4.2.1 ROLE OF REHABILITATION SCHOOLS IN ACHIEVING THE RIGHT TO EDUCATION**

According to the children's Act (2022), the government establishes rehabilitation schools to provide accommodation and care for children<sup>103</sup>. The government then ensures that they are in proper conditions and are being managed in the best interest of children according to **Ojweke** in her study *An Assessment Of Factors Related To The Effectiveness Of Government Rehabilitation Schools For Delinquent Adolescents In Nairobi And Western Counties In Kenya*,<sup>104</sup>. The rehabilitation schools therefore play both the welfare and rehabilitative roles and according to **Lauer**<sup>105</sup>, the legal theory recognizes that children who violate laws are in need of the same care and treatment as are law-abiding citizens who cannot care for themselves and require state interventions into their lives. As such the legal action is considered as a civil action that determines their need for treatment. **Kitada** (2004)<sup>106</sup> contends that the key aim for juvenile justice system is to assist in their sound development while **Siegel and Senna** in their book *Juvenile Delinquency*<sup>107</sup> states that the purpose of rehabilitation schools is to rehabilitate the adolescents within the institutions, to reform them into well adjust individuals and send them back into the community to be productive citizens. The rehabilitation schools then have a responsibility of reforming the delinquents and enhance their re-integration into the society. They place emphasize on correctional services and short-term places for safety. **Mugo J et al**<sup>108</sup> states that it should be a minimum of three years, of which during this period, they are engaged in various rehabilitation programmes. According to **Sullivan and Thomson** (1994), **Siegel and Senna** (1997) and **Mugo J et al** (2005) rehabilitation schools ought to have educational, vocational, spiritual, recreational and medical programmes. Education caters for children who fit in the formal system of education. The formal section consists of full academic schools from class 1 to 8 with teaches from

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<sup>103</sup> Act of 2022

<sup>104</sup> Ojweke Charles Omamo 2011 *An Assessment Of Factors Related To The Effectiveness Of Government Rehabilitation Schools For Delinquent Adolescents In Nairobi And Western Counties In Kenya*

<sup>105</sup> Lauer R. 1998. *Social Problems and the Quality of Life*. New York: McGraw-Hill

<sup>106</sup> Kitada M.2004. *Juvenile System in Japan*

<sup>107</sup> Siegel L. and Senna J. (1997). *Juvenile Delinquency* (6th Ed).

<sup>108</sup> Mugo J. et al (2001). *Juvenile Justice and Management of Child Offenders in Kenya: An annotated bibliography of research 1958-2005*.

Teachers Service Commission, adult education department and volunteers. Children who score good marks in Kenya Certificate of Primary education join various secondary schools. They are sponsored by the children's department, Ministry of Education, individual churches, companies and non-governmental organizations. Vocational training is meant to provide skills and knowledge needed for a particular job to those who are academically disabled. The training involves dress-making, cookery and housekeeping for girls and carpentry, masonry, metal work for boys. Recreational programmes engage the delinquents in such activities as choir singing, sports, scouting, drama, debate and watching television. Recreational programmes help in relieving adolescence aggression. Furthermore, according to **Siegel and Senna**<sup>109</sup> educational, vocational and recreational programmes are designed to teach juveniles skills that will help them adjust easily when they will be released into the community.

#### **4.3 CHALLENGES**

Before the commencement of the Childrens Act of 2022, a study was carried out by **Onyango** on the effectiveness of rehabilitation programmes on child delinquents (referred to as juvenile delinquents) in Kenya<sup>110</sup>. The study was carried out in government rehabilitation schools in Nairobi County which included Kabete, Getathuru and Dagoretti. Specifically the study sought to establish the existing rehabilitative programmes in the institutions, environmental settings of the institutions, competence level of the officers working in the institutions, management policies and guidelines for these institutions. Overall, the study intended to find out how those factors affected the rehabilitation of child delinquents committed to these institutions by looking at both short and long term benefits of the rehabilitation programmes to the child delinquents.<sup>111</sup>

The study found out that the rehabilitation programmes for the juvenile delinquents in Kenyan rehabilitation schools were counseling, Education, spiritual welfare, vocational

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<sup>109</sup> Siegel L. and Senna J. (1997). Juvenile Delinquency (6th Ed).

<sup>110</sup> Onyango Tobias Odera (2013) Effectiveness Of Rehabilitation Programmes On Juvenile Delinquents In Kenya: A Survey Of Rehabilitation Schools In Nairobi County

<sup>111</sup> Onyango Tobias Odera (2013) Effectiveness Of Rehabilitation Programmes On Juvenile Delinquents In Kenya: A Survey Of Rehabilitation Schools In Nairobi County

training and life skills training courses which included - masonry, mechanic, tailoring & dressmaking, carpentry & joinery and barber for the boys, hair dressing, tailoring & dressmaking, fashion & design and bakery for the girls. Training in agriculture and personal hygiene were common for all the children in the institutions<sup>112</sup>.

These programmes were carried out in deplorable conditions which have greatly affected the juvenile's rehabilitation process. Therefore most of the juveniles had not benefited from the rehabilitation programmes. The personnel that had been deployed within the rehabilitation schools were well trained and competent enough to effectively take the children through the process. At the same time the programmes that were provided within the institutions were carried out according to the management principles and guidelines. The study went on to recommended that vocational training courses should not be gendered as the current society does not distinguish between the male and female skills but should address areas where the juveniles are strong and areas of interest. Training in other courses should also be made more interesting especially education which improves on the country's literacy levels. The stakeholders should put the necessary efforts to make living conditions more favourable for the children and learning facilities should be provided to facilitate effective delivery of the rehabilitation programmes. The government should increase the staffing/personnel of the juvenile rehabilitation schools and ensure that they are adequately trained to aid the juveniles through rehabilitation process. Boys need to be assessed on the challenges that are impeding on their rehabilitation process. The boys' schools should evaluate the conditions provided in the institutions which seemed to be the greatest challenge while that of the girls should be given more favorable conditions to enhance their rehabilitation process.<sup>113</sup>

Furthermore, a further study was carried on Kabete Rehabilitation School on the educational challenges, it should be noted that the challenges faced are educational meaning at the institution in question the right to education is being realized. The study spoke on a specific class which is Class eight students, despite their determination, many

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<sup>112</sup> Onyango Tobias Odera (2013) Effectiveness Of Rehabilitation Programmes On Juvenile Delinquents In Kenya: A Survey Of Rehabilitation Schools In Nairobi County

<sup>113</sup> Ibid

of the boys are slow learners<sup>114</sup>. This combined with an acute understaffing at the institution makes it difficult to exhaustively cover laid out curricula the school, which runs from class five to class eight, has only three teachers. In addition to understaffing in the teaching department, the school was also short of classrooms, at the time, class five and six had to share a classroom. Non-teaching staff at the institution were 24 in total, spread across departments such as security, healthcare, kitchen, farm, and clerical.<sup>115</sup>

The author went on to state even after power restoration, the students at the Kabete Rehabilitation Centre could not attend night and morning preps because of erroneous internal power cabling. At the time, only class eight has power. Despite all these educational challenges, the students at the centre performed relatively well in national examinations, granted their circumstances<sup>116</sup>. Additionally, the school had a computer lab equipped with 21 Dell machines and a server for internet connectivity. Most of the times, however, students had no internet access because the connection had to be topped up monthly and because of the meager funding that the school was receiving, other expenses were prioritized over payment for internet. Running on the code of Smartness, Cleanliness, Honesty, Obedience, Observation, and Loyalty, the boys at the Kabete Rehabilitation Centre all looked forward to leaving the institution and rejoining their families as better individuals. Many dreamt of joining high school and university and prayed every day that well-wishers address the problems in the school, so that they can have equal learning opportunities as other children of their age attending normal schools.<sup>117</sup> This study shows that education was and is being provided though there certain challenges faced in the institution

#### **4.4 LESSONS TO BE DRAWN**

Because the rehabilitation schools operate under the same national legal regime that guarantees free and compulsory basic education which is the Constitution and the Basic Education Act, children in rehabilitation schools should are not being excluded from the right to education just because they are in a “rehabilitation” setting. In other words, placing

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<sup>114</sup> <https://fireside.co.ke/kabete-rehabilitation-school/>

<sup>115</sup> Ibid

<sup>116</sup> <https://fireside.co.ke/kabete-rehabilitation-school/>

<sup>117</sup> <https://fireside.co.ke/kabete-rehabilitation-school/>

a child in a rehabilitation school must not mean depriving the child of educational opportunity; instead it should mean providing tailored education and training that aligns with rights standards as the example has been set by the rehabilitation schools in Kenya which clearly incorporate educational and vocational training in their rehabilitation so much so that the children in rehabilitation centres are able to sit for the exams written by the children who are not being detained and perform just as well.

#### **4.5 CONCLUSION.**

In Kenya the right to education is firmly recognized in the constitutional and legislative framework. Rehabilitation schools (as provided for under the Children Act) explicitly include education as part of their mandate. This signals a positive recognition that children even in conflict with the law or children in need of protection must not be deprived of education. But at the same time, recognition is not the same as full realisation. Practical gaps remain in implementation, continuity of education, quality of schooling, and reintegration. Ensuring that rehabilitation schools become genuine sites of learning, growth and reintegration rather than mere custody is essential and Kenya's journey in realizing this is close to full realization.

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.0 INTRODUCTION

This chapter recaps the discussions and analyses presented in the preceding chapters of the thesis. Additionally, it offers tailored recommendations aimed at resolving the core issue explored here: the right to education for child offenders.

#### 5.1 GENERAL SUMMARY AND CONCLUSION

This research paper, structured across its introductory and analytical chapters, offers a coherent and critical analysis of the child offender's right to education in Zambia, revealing a profound and persistent gap between legal ideals and practical realities. The study began with chapter one, which established the central problem: despite a progressive legislative wave in Zambia which is the domestication of the convention on the rights on a child , the essential right to education for children in detention is systematically under-realized due to failures in implementation and resource allocation. This foundational problem necessitated the creation of a clear, non-negotiable benchmark, which was provided by Chapter 2. This chapter diligently detailed the normative standard set by international instruments like the UN Convention on the Rights of the Child (UNCRC) and the Beijing Rules, establishing that education is not merely a privilege but a mandatory component of rehabilitation and human dignity for every child, thus defining the high standard Zambia is obligated to meet.

Chapter 3 then served as the core analytical engine, taking the international obligations established in Chapter 2 and exposing the domestic deficit within the Zambian system. This chapter confirmed that while the Zambian Constitution, the Education Act, the Correctional Services Act, and the Children's Code Act create a seemingly robust framework, its effectiveness is crippled by legal ambiguities and a systemic failure of practical implementation. The findings were striking: the education provided to child offenders often lacks qualitative value, is compromised by the use of unqualified "volunteer teachers," and is hampered by severe logistical and funding challenges in facilities that were never designed for education, proves that the domestic laws fall short of the inclusive standards set by international norms. This detailed empirical and legal

critique of Zambia's failings validates the entire research premise and points decisively towards the necessity of corrective action.

In response to these identified deficits, Chapter 4 provided the solution-oriented model for reform through a comparative analysis of Kenya's approach. By examining a regional peer with a similar constitutional guarantee for education, this chapter offered tangible, context-relevant lessons to overcome Zambia's implementation hurdles. Kenya's framework, specifically its use of Rehabilitation Schools and the legal mandate that educational services must be of the same standard as those offered in public schools, presents a clear blueprint for institutional specialization and inter-ministerial cooperation. Ultimately, the research concludes that Zambia's challenge is not one of law-making, but of resource allocation and enforcement. In conclusion, to move from mere legislative acknowledgment to the full realization of the child offender's right to education, Zambia must strategically adopt the structural and policy innovations demonstrated by its peer, ensuring that rehabilitation centres function as true sites of learning, social inclusion, and meaningful preparation for life beyond confinement.

## **5.2 SUMMARY OF CHAPTERS**

The five-chapter research paper analyzes the problem of ensuring that child offender's right to education is fully recognized and realized in Zambia by critically interrogating the legal framework on the right in Zambia, with lessons drawn from Kenya

### **5.2.1 CHAPTER ONE**

This chapter revealed a critical disconnect in Zambia's child justice system, while the nation has enacted progressive legislation, particularly the Children's Code Act No. 12 of 2022 and the Correctional Services Act No. 13 of 2021, the fundamental right of child offenders to a quality, continuous education as provided for in the Education Act No. 23 of 2011 remains largely unfulfilled in practice. It comprises of the introduction and background to the study investigating the right to education for children in conflict with the law (child offenders) in Zambia. Education is framed as a fundamental human right enshrined in international and regional instruments such as the UN Convention on the Rights of the Child (UNCRC), the African Charter on the Rights and Welfare of the Child (ACRWC), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which must be guaranteed to child offenders. Despite Zambia's

enactment of progressive laws like the Correctional Services Act of 2021 and the Children's Code Act of 2022 to align with these standards, the study identified a significant implementation and provision gap, consequently, the right to education of child offenders is not fully realized in practice.

The chapter identified that core problem is that while the laws embrace child-centred, rehabilitative approaches, they do not expressly detail the delivery of high-quality, continuous education for children deprived of their liberty. This legislative ambiguity contributes to pervasive issues in correctional facilities, including inadequate infrastructure, lack of qualified staff, and poor coordination between government ministries which are persistent challenges, contrasting with the more innovative policies observed in Kenya. The study aimed to critically examine the Zambian legal and institutional framework against these realities and comparative experiences. The research's background and literature review confirmed the practical failings of Zambia's child justice system regarding education of child offenders. Historical and recent empirical findings consistently showed that educational opportunities in detention settings are often irregular, underfunded, and lack accreditation, undermining the goal of rehabilitation. Studies pointed to the tendency to prioritize security and discipline over educational development, frequently leading to the early release of children before meaningful schooling can occur.

The findings emphasized the urgent need for reforms to bridge legislative ideals and practical realities, ensuring quality, continuous education aligned with children's best interests. The study further suggested that the lack of explicit statutory prioritization of this right facilitates its systemic disregard which is why Kenya comparisons, provides evidence-based recommendations for advocacy, policy enhancement, and improved reintegration outcomes, contributing to broader child justice reform in Zambia.

## **5.2.2 CHAPTER TWO**

This chapter outlined the evolution and scope of international human rights instruments that recognize, promote, and protect the right to education of all children including those in conflict with the law. Having explored the international and regional human rights frameworks governing the treatment of children in conflict with the law, with a particular emphasis on their right to education. It traced the progression of global attention from

broad child-welfare concerns to more specific standards that address the needs of children involved in criminal proceedings or deprived of their liberty it also brought out the shift from purely punitive approaches to restorative justice positioning education as a critical component of rehabilitation and reintegration efforts.

It went on to look at specific provisions in instruments such as the Universal Declaration of Human Rights (UDHR) which is a blue print for most human right treaties, the Beijing Rules which govern the treatment of people including children who have and are currently being detained. It also looked at provisions in the Convention on the Rights of the Child (CRC) which is the major international instrument that speaks on the rights of the child, the United Nation Rules for the Protection of Juveniles Deprived of Their Liberty (RPJDL) which specifically addresses rights of children deprived of their liberty. Furthermore, the African Charter on the Rights and Welfare of the Child (ACRWC), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were also looked at and all the aforementioned instruments collectively establish the principles that guide fair treatment, due process, dignity, and the preservation of fundamental rights for all children, regardless of their circumstances.

The instruments reviewed also highlighted core safeguards, including the requirement that detention be used only as a measure of last resort and that children be separated from adult offenders to avoid harmful influence. Furthermore, that legal and procedural protections be upheld at every stage of proceedings, and that children be treated humanely and with respect for their inherent dignity. Regional frameworks such as the ACRWC further supplemented international standards by addressing cultural and social conditions unique to Africa while reinforcing principles of non-discrimination and child protection.

The chapter concluded that international human rights laws have progressively developed a robust and consistent system aimed at ensuring inclusive, accessible, and uninterrupted education for all children including those in conflict with the law. Upholding this right is shown to be indispensable for fostering rehabilitation, promoting social inclusion, reducing reoffending, and protecting human dignity. As such, the chapter underscored the obligation of states to align their child justice systems with these standards and to prioritize education as a key component of child-centred justice.

### **5.2.3 CHAPTER THREE**

This Chapter reviewed the extent to which Zambia's legal framework protects and upholds the right to education for child offenders as well as scrutinized the effectiveness of its domestic legal framework in upholding the right to education for children deprived of their liberty that are being held in rehabilitation centres. The chapter moved beyond the mere existence of laws to analyze the crucial issue of implementation and its shortcomings when it comes to the recognition and implementation of the right to education of Child offenders in Zambia.

The chapter went on to examine both the strengths of existing laws and the gaps that hinder their effective implementation. It outlined the constitutional, statutory, and institutional provisions that recognize education as a fundamental entitlement for all children, including those in detention, through instruments such as the Education Act, the Correctional Services Act, and the Children's Code Act. While these laws collectively acknowledge the importance of rehabilitation, non-discrimination, and continuous learning, the chapter found that they fall short in practice. Significant shortcomings arise from ambiguity in legal provisions, inconsistent implementation, as well as inadequate protection for marginalized children especially those with disabilities and the absence of clear mechanisms for redress when educational rights are violated. Practical challenges within correctional facilities further hinder education delivery, including limited resources, understaffing, and reliance on unqualified inmate-teachers, weak infrastructure, and logistical constraints. Despite these challenges, the chapter notes that correctional education has demonstrated important benefits, such as reducing recidivism and improving reintegration outcomes. Ultimately, the findings showed that although Zambia has a seemingly strong legal framework on paper, persistent gaps in enforcement, resource allocation, and institutional capacity continue to undermine the educational rights of child offenders, revealing an urgent need for strengthened implementation, clearer protections, and more robust support systems.

### **5.2.4 CHAPTER FOUR.**

Chapter Four provided a comparative analysis of Kenya's approach to ensuring the right to education for child offenders. It led by examining Kenya's approach to recognizing and implementing the right to education for child offenders, focusing largely on the role of

rehabilitation schools as mandated under the country's constitutional and legislative framework. It went on to highlight its comprehensive legal framework, implementation strategies such as not just looking at rehabilitation centres as remand homes but also making them the centre for education and adopting the same syllabus for the education being provided both in and out of the remand homes.

The chapter outlined the historical development of Kenya's commitment to universal education, beginning with the introduction of free primary education in 2003 and free secondary education in 2008, and showed how Kenya has progressively aligned its laws with international human rights standards. The chapter explained how the Constitution of Kenya, the Basic Education Act, and the Children Act collectively guarantee free and compulsory education for all children, including those committed to rehabilitation schools. It also went on to explore how rehabilitation schools function, emphasizing their dual welfare and rehabilitative role through academic programmes and do not limit themselves to vocational training, life skills, spiritual guidance, and recreational activities aimed at reintegration.

The chapter's findings revealed that while Kenya has made significant legal and policy strides in ensuring educational access for child offenders, persistent challenges hinder full realization of this right. Various studies cited in the chapter highlight issues such as inadequate learning environments, understaffing, limited resources, overcrowding, poor institutional conditions, and inconsistent funding. Despite these obstacles, educational and vocational programmes in rehabilitation schools remain active and have shown positive outcomes, including participation in national exams and the development of employable skills. Ultimately, the chapter concluded that Kenya's framework demonstrates strong recognition of the right to education for child offenders, but gaps in implementation and quality continue to affect the effectiveness of rehabilitation schools. As such Kenya's experience provides valuable lessons for Zambia, particularly the importance of aligning rehabilitation systems with broader education laws and ensuring that detention does not interrupt children's educational progress.

### **5.3 RECOMMENDATIONS**

Having carried out this short but informative study, what has been discovered is that Zambia's laws do to a certain degree address the right to education of Child offenders but

because there are no express provisions it makes it difficult to properly recognize and implement the right to education of these child offenders, furthermore, the approach taken for rehabilitation centres is still behind time and not progressing at the required fast rate for the change in times and laws in that the focus on vocational education should be fully changed to focus on formal education. That being the position, below are some recommendations;

### **5.3.1 STRUCTURAL AND OPERATIONAL REFORM**

Zambia must move beyond the current non-specialized correctional facility model by establishing dedicated, education-focused institutions for children, mirroring Kenya's Rehabilitation Schools.

1. **Mandate Educational Parity:** The Children's Code Act (2022) should be explicitly reinforced with a legal mandate, ensuring that all educational services provided to children in detention are of the same standard and curriculum as those offered in public schools, guaranteeing access to national examinations (ECZ) on a larger scale as compared to the current numbers.
2. **Dedicated Child Centres:** General correctional centres must be phased out for children and replaced with specialized Child Reformatory Centres or Rehabilitation Schools that are intentionally built and funded with adequate classrooms, libraries, and vocational training facilities, addressing the current logistical challenges. And a great way to do this would be by policy as well as engaging the community and educating them as well on how best they can help out to lessen the financial burden on the government whilst at the same time ensuring that the offenders are not left on the rocks in the event that the government is unable to fund them.

### **5.3.2. PERSONNEL, QUALITY, AND INTER-MINISTERIAL COLLABORATION**

The persistent use of unqualified inmate-teachers in Zambia compromises the quality of education and must be eliminated. A formal, cooperative model between key ministries is essential to secure qualified staff.

2. **Recruit and Incentivize Qualified Teachers:** The Ministry of Education must commit to seconding a sufficient number of qualified, specialized teachers to all Child Reformatory Centres. These teachers must receive specific training in child

psychology, trauma-informed care, and child justice, along with adequate financial incentives and allowances to ensure commitment and retention, thereby addressing the finding that teachers are often uncommitted due to lack of incentives.

- 3 Prohibit Inmate Teaching: The practice of using inmates or unqualified staff to teach child offenders must be strictly prohibited and replaced entirely by professional, state-employed educators to ensure educational integrity and safety. Which in-turn will ensure that even as they are learning they are getting that quality education that is guaranteed to them in the Education Act and hence increasing the number of those being able to take the Examination Council of Zambia general Certificate of Education exam.

### **5.3.3. LEGAL CLARITY, INCLUSIVITY, AND REDRESS**

Zambia's legal framework must eliminate ambiguity and specifically cater to all marginalized groups to fully align with international standards.

- 2 Amend for Specificity: The Education Act (2011) and the Correctional Services Act (2021) must be amended to remove any ambiguity by clearly and explicitly specifying the right to education for child offenders. The Children's Code Act (2022) should be leveraged as the legal instrument to enforce this right as mandatory and continuous, drawing strength from the clear constitutional guarantees in Kenya.
- 3 Mandate Inclusive Facilities: New legal mandates must be introduced requiring that government financing for child detention facilities specifically includes provisions for infrastructure, resources, and personnel to cater to the educational needs of detained children and that they should not only focus on skills such as carpentry and tailoring but should be the entire bulk of education provided in government schools. The facilities should also cater for children with disabilities and not neglect them because of their condition
- 4 Establish Clear Redress Mechanisms: The legal framework must be strengthened to provide clear, accessible, and timely mechanisms for children or their representatives to seek legal redress when their right to education is violated, eliminating the current lack of clarity on how to address such violations.

## **5.4 CONCLUSION**

This study examined the right to education for child offenders in Zambia, analyzing the country's current legal framework and established institutions that are obligated to ensure that education by child offenders is attained it went on to draw comparisons with Kenya. Over the years, it is true that the evolution of the right to education in Zambia has been progressive, with the domestication of the Convention on the Rights of the Child and adoption of international instruments like the Beijing Rules. However, despite these advancements, implementation remains a significant challenge, particularly for child offenders who are often excluded from educational opportunities.

International treaties and conventions emphasize the importance of education for child offenders, recognizing them as children in need of guidance and support rather than punishment. Zambia's laws, while progressive, fall short in explicitly addressing the educational needs of child offenders, with detention centres focusing on vocational training rather than formal education. In contrast, Kenya's approach prioritizes rehabilitation and education, providing child offenders with access to formal education and government exams. While challenges persist, Kenya's model offers valuable lessons for Zambia.

Ultimately, ensuring the right to education for child offenders requires a shift in approach, recognizing detention centres as opportunities for rehabilitation and education which should not be limited to vocational education but should include formal education for all and not a selective group of offenders rather than punishment. Zambia can draw inspiration from Kenya's model to strengthen its legal framework and implementation, ensuring that child offenders are not left behind and are not stopped from enjoying the free education that has awarded to all children under the Education Act as well as the constitution simply because they are under rehabilitation. This approach in turn makes the rehabilitation even for effective seeing as once they are released they are not left too far behind by their peers and as such they have less reasons to turn to a life of crime as they would be starting on a leveled playing field with their peers.

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