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DECLARATION

I DAVIES CHALI MUMBA do hereby declare that the contents of this dissertation represent my original work and this dissertation has never been submitted at this university or any other university.

CERTIFICATE OF APPROVAL

This dissertation of DAVIES CHALI MUMBA has been approved as fulfilling the requirements for the award of the degree of Master of Laws by the University of Zambia.

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ABSTRACT

This dissertation examines the juvenile criminal justice system in Zambia vis-à-vis the international protection of the children's rights. The study examines and analyses the existing laws and ascertains the extent to which Zambian laws are compliant with the international standards set out in the Convention on the Rights of the Child (CRC) and other relevant international legal instruments in terms of the appropriate infrastructural facilities, the best practices and procedures for dealing with children in conflict with the law. The research is premised on the notion that children are a special group of people with their own special needs and as such they require special treatment. Therefore, children entangled in the criminal process must be separated from adults at all times. The most important consideration being the enhancement and protection of the best interests of the child.

The study evaluates the procedures that are adopted by various criminal justice agencies in dealing with children in conflict with the law. It identifies the weaknesses and challenges that institutions such as the police, prisons, courts, Legal Aid Board, the Social Welfare Department, Nakambala Approved School and Katombora Reformatory School face in the delivery of juvenile justice. The research shows that the participation of children in criminal proceedings in Zambia presents particular challenges because of the inadequate and poor state of the infrastructure; and the improper procedures adopted in dealing with children in conflict with the law.

The study shows that the laws that govern the administration of the juvenile justice system in Zambia are adequate and in most instances do conform with acceptable international standards. What seems to be lacking, however, is compliance with the relevant provisions of the Juveniles Act, the CRC and the Beijing Rules in dealing with juvenile offenders. Consequently, the non-compliance has resulted in the unfair and ill-treatment of the children in conflict with the law.

The dissertation concludes that there is an urgent need to establish special courts, special police units and build appropriate infrastructure which will be for the sole use of children in conflict with the law. It further argues for the special training of officers who will specifically deal with children's cases. These officers may include magistrates, police officers (both investigation and prosecution officers), Social Welfare Officers and the officers in charge of Nakambala Approved School and Katombora Reformatory. Furthermore, the study argues for the de-linkage of Katombora Reformatory School from the office of the Commissioner of Prisons. It also argues for increased material and human resource allocation by the Government to the relevant criminal justice agencies.

The research implores the Government of Zambia to learn from Zimbabwe some of the best practices and policies in dealing with children in conflict with the law such as the establishment of children's courts, the requirement for the consent of the Director of Public Prosecutions before prosecuting a child or a young person.

It is hoped that the recommendations contained in this study will be useful in helping to reform the juvenile justice system in Zambia.

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DEDICATION

This study is dedicated to my beloved mother the late Abygail Chiti Mumba (1947 – 2010). Despite her illness, she always accorded me time to attend to my research. I remember her say to me ‘go on, don’t worry about me, you have a heavy responsibility to look after the children and family.’

MAY HER SOUL REST IN ETERNAL PEACE. (JOHN 11:23-26)

TABLE OF STATUTES

A. Zambian Statutes

The Constitution of Zambia, Cap.1 of the Laws of Zambia.
The Criminal Procedure Code, Cap. 88 of the Laws of Zambia.
The Juveniles Act, Cap. 53 of the Laws of Zambia.
The Legal Aid Act, Cap. 34 of the Laws of Zambia.
The Penal Code, Cap. 87 of the Laws of Zambia.
The Prisons Act, Cap.97 of the Laws of Zambia.
The Probation of Offenders Act, Cap. 93 of the Laws of Zambia.
The Subordinate Courts Act Cap. 28 of the Laws of Zambia.

B. Zimbabwean Statutes

The Children's Act, Cap. 5:06.
The Constitution of Zimbabwe.
The Criminal Law (Codification and Reform) Act, Cap. 9:23.
The Criminal Procedure and Evidence Act, Cap. 9:07.
The Magistrates Court Act, Cap. 7:10.

C. Ghanaian Statutes

The Children's Act, 1998 – Act No. 560.
The Juvenile Justice Act, 2003 – Act No. 653.

D. South African Statutes

The Child Justice Act, 2008 – Act No. 75 of 2008.

LIST OF INTERNATIONAL AND REGIONAL INSTRUMENTS

The African Charter on the Rights and Welfare of the Child (ACRWC).

The International Covenant on Civil and Political Rights (ICCPR).

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

The United Nations Convention on the Rights of the Child (CRC).

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

The Universal Declaration of Human Rights (UDHR).

The United Nations Guidelines on Justice in matters involving Child Victim and Witnesses.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (RPTDL).

The Vienna Convention on the Laws of Treaties, 1969.

LIST OF CASES

Banda John v The People HP/06/98 (Unreported).

Chalimbana v The People (1977) Z.R. 282.

Chentankumar Shantkal Parekh v The People (1995) Z.R. 78.

Gideon Musonda and Another v The People (1979) Z.R. 53.

Kapya Kandeke v The People SCZ Judgment No. 32 of 2010 (Unreported).

Lumsden v The People (1967) Z.R. 142.

Tembo v The People (1974) Z.R. 286.

The People v Mumba and Others (1978) Z.R. 404.

GLOSSARY OF KEY TERMS

Some key terms used in this study which may require explanation include the following:

Child – The Convention on the Rights of the Child defines a ‘child’ as a person below the age of 18 years, unless national laws recognize the age of majority earlier. In Zambia, the Juveniles Act defines a child as a person who has not attained the age of 16 years.

A child in conflict with the law – is any child aged between 9 and 19 years who according to the Penal Code, Cap. 87 of the Laws of Zambia is criminally liable for his acts or omissions. In this case also subjected to criminal prosecution.

Institution – includes a police station or prison cell, a court’s holding cell, an approved school, a reformatory school or any building designated as a place of safety for children (e.g. safe houses).

Juvenile – according to the Juveniles Act, Cap. 53 of the Laws of Zambia, a ‘juvenile’ means a person who has not attained the age of 19 years and includes a child and a young person. A ‘young person’ means a person who has attained the age of 16 years, but has not attained the age of 19 years. Therefore, for the purposes of this research, the words ‘child’ and ‘juvenile’ are used interchangeably.

Juvenile Court is any subordinate (magistrate) court constituted as such, under the Juveniles Act, Cap. 53 of the Laws of Zambia.

Juvenile Justice – refers to the administration of justice for children and young persons below the age of 19 years, in conflict with the law. The term ‘juvenile justice’ is synonymous with ‘child justice’.

Juvenile Offender – is any child or young person below the of 19 years who has come into conflict with the established laws of the country and faces criminal prosecution.

Party means a State which has consented to be bound by the treaty and for which the treaty is in force. (Refer to the Vienna Convention on the Law of Treaties, 1969).

Ratification may mean ‘acceptance’, ‘approval’ and ‘accession’. According to the Vienna Convention on the Law of Treaties, 1969 ‘ratification’, ‘acceptance’, ‘approval’ mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

Reservation means a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. (Refer to the Vienna Convention on the Law of Treaties, 1969).

Signing of a treaty (Covenant, Convention) is an act on behalf of Government or Parliament. It represents a promise of the state to adhere to the principles and norms specified in the document without creating legal duties to comply with them. Signing is the first step that states undertake towards ratifying and thus becoming states parties to an agreement.

Treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or into or more related instruments and whatever its particular designation. (Refer to the Vienna Convention on the Law of Treaties, 1969).

Treaty bodies are the committees formally established by the United Nations to monitor states-parties compliance with the treaties. For instance, under the CRC there is established ‘the Committee on the Rights of the Child.’

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