

THE CHILD LAW BULLETIN

JUSTICE FOR CHILDREN TRUST

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HEALTH INSTITUTIONS WORKING TO DENY CHILDREN OF THEIR RIGHT TO IDENTITY

The government of Zimbabwe has made significant progress in making health institutions accessible to people including those in rural areas by establishing hospitals and clinics throughout the country. There have been campaigns to encourage pregnant women to register and give birth at these institutions. The Ministry of Home Affairs then took advantage of the widespread institutions to facilitate the acquisition of birth certificates by requiring that children born there are issued with birth confirmation records. An official within the Registrar General's department indicated that the birth confirmation records are supposed to be issued free of charge.

Justice For Children Trust has however uncovered a disturbing development at some health institutions in which health officials are withholding birth confirmation records of those mothers who would not have settled their bills for maternal fees with the institutions. What was more shocking in our findings at some health institutions in Bindura was that they are converting bills that were accrued in Zimbabwean dollars to United States dollars (USD). With most people reeling under the current economic situation which to the majority of the poor people does not seem to be improving they can not afford the new fees in USD. The situation is worse for those children born out of wedlock as their fathers would not want to spend the little, if any, money they might have to pay for these bills and most of their mothers are not formally employed. Space fails us to talk about the orphans.

We believe this is illegal and results in violation of rights of the children to a name and nationality. It will deprive children of other rights which require one to have a birth certificate such as the right to education and freedom of movement where a passport will be required. Parents also end up failing to comply with the birth registration requirements such as the registration of birth within 42 days from the date of birth.

While fees may have to be paid, children should not be caught in the crossfire. In any case there should be a realization that there are some parents who will not be able to pay the fees and the government should still ensure that these enjoy their right to health. This is why we have been calling for a new constitution which guarantees justiciable economic, social and cultural rights. South Africa has witnessed significant improvements following its 1996 Constitution which guarantees these rights and the citizens there have a legal basis for demanding the progressive realization of these rights. We therefore continue to believe that the current constitution making process should be used to advocate for the inclusion of the rights of children in the constitution. South Africa again provides a classic example of how this will help to ensure that the children enjoy their rights such as the right to a name and nationality.

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BIRTH REGISTRATION AND CITIZENSHIP: THE DILEMNA OF CHILDREN BORN TO NON-ZIMBABWEAN PARENTS.

The right to citizenship in Zimbabwe is a phenomenon that has contributed much in depriving children of foreign origin their human rights. Justice for Children Trust (JCT) has noted with concern that a number of children in farming areas of Chegutu and Bindura are unregistered. The major cause of this state of affairs is the citizenship status of those children's parents. Most of the parents do not have identity documents themselves because of the stringent requirements under the citizenship law. Their state of non-registration results in violation of their children's right to identity, freedom of movement, access to public service, education and health, amongst others.

Citizenship refers to the legal relationship between an individual and a state, in which the state recognizes and guarantees that individual's rights. The Zimbabwean citizenship laws have stringent and cumbersome procedures for registration of children of foreign origins. Section 7 of Amendment Number 19 of the Zimbabwean constitution provides that anyone who has been voluntarily and ordinarily resident in Zimbabwe for at least ten years may apply to become a Zimbabwean citizen. Although this can be viewed as giving people of foreign origins the right to a nationality, it can be argued that the time involved inconveniences the child. Furthermore there is no guarantee that after those ten years, citizenship will be automatically granted. The situation has resulted in a lot of children being stateless.

Section 7 of Amendment Number 19 of Zimbabwean constitution does not fully protect the child as compared to the Mozambican constitution wherein Article 23 provides that, "children born in Mozambique whose parents are stateless, or are of undetermined nationality are Mozambicans". In Sierra Leone, the Child Rights Act of 2007 provides that, "no person shall deprive a child of the right from birth to a name, the right to acquire a nationality or the right as far as possible to know his natural parents and extended family".

The Zimbabwean legislation also has gender discriminatory provisions in the citizenship law. Women are unable to automatically pass on their citizenship rights to their children if the father is not a citizen. The Zimbabwean courts have been reluctant to recognize the passing on of citizenship from women who are citizens whilst the other spouse will be otherwise. This has resulted in the denial of the fundamental right to nationality to innocent children.

Zimbabwe prohibits dual citizenship under the Citizenship Act. The provision compels a child to renounce his or her foreign citizenship of birth. This deprives the child of the benefits from the country of birth. The child also has to apply for a visa, where necessary, when intending to travel to their country of birth. The United Nations Convention on the Rights of the Child, Article 7, provides for the right of the child from birth to a name and the right to acquire a nationality and for states to "ensure the implementation of these rights...in particular where the child would otherwise be stateless". The Namibian and Swaziland constitutions recognize dual citizenship if acquired by marriage to a foreign spouse or for citizens by birth.

It is therefore recommended that the new constitution should address this problem by abandoning the prohibition of dual citizenship which does not promote and protect children's rights. Children's rights to citizenship should also be a constitutional right which must be accessed by all children who rightly deserve it according to regional and international legal standards which protect children.



PROMOTING COMMUNITIES' PARTICIPATION IN THE CONSTITUTION MAKING PROCESS: JCT REACHES OUT TO MANICALAND PROVINCE.

The on-going constitution making process has presented an opportunity for the organisation to lobby and advocate for the inclusion of children's rights in the constitution. JCT has noted that in most of the rural areas especially where it does not operate, the community members and children lack information on laws of child protection and the constitution making process. The organisation, in the month of February 2010 engaged in outreach campaigns in Mutasa Central and South, Makoni South and Chipinge, reaching out to 2 332 people. These outreaches were also attended by the members of parliament for the respective areas.

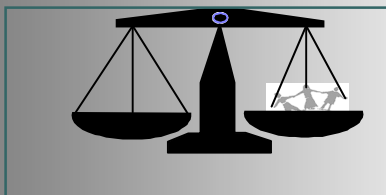
The community of Manicaland is concerned that children of Zimbabwe, for the past decade, have been victims of the disruption of education due to strikes by teachers, (despite paying exorbitant incentives) charging of exorbitant fees and examination fees, failure by Zimbabwe School Examination Council to announce examination dates and fees on time. The collapse of the health delivery system due to lack of drugs, strike by doctors and the charging of exorbitant fees have also affected children. Further, children were not spared by the effects of the cholera outbreak caused by water shortages. Children also fell victim to political violence and HIV and AIDS which has orphaned many children. All these children require legal assistance on various issues in order to protect them from further violation of their rights.

The above challenges that were faced by children were compounded by the failure of the current constitution to include children's rights. Children's vulnerability has been further worsened by the failure of the same constitution to include socio-economic rights which include the right to education, health, food, shelter and clothing which in turn guarantee the right to life, survival and development. This is despite the fact that children are a special group that requires special protection through translating their needs to human rights.

The community members registered their concern over the following issues:

- Most violations occur as a result of ignorance of child protection laws on the part of caregivers
- The children themselves do not have platforms to learn laws of child protection. This exposes them to abuse.
- The requirements for birth registration are cumbersome and are not in the best interests of the child.
- Some participants feared harassment if they were to participate in the constitution making process.
- Some NGOs were reported to be distributing condoms in schools.
- Some members of the Apostolic Sect were violating their children's rights by not having them immunized.
- Cases of child pledging to appease avenging spirits are rampant in Rukweza. JCT is currently attending to one such case from Honde Valley.

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We value your feedback on the issues we raise in our newsletter. Please do not hesitate to get in touch with us through our contact details provided above.

PROMOTING COMMUNITIES' PARTICIPATION IN THE CONSTITUTION MAKING PROCESS: JCT REACHES OUT TO MANICALAND PROVINCE.: CONT;

Community members recommended the following:

- Children should be allowed to participate in the community outreaches on the constitution. They requested child focused NGOs to build the children's capacity to articulate their needs.
- JCT and other organizations should do more constitution making campaigns to ensure that communities are well prepared for the outreach teams' consultations.
- Communities needed to be sensitized to protect and respect children's rights and educated on child protection laws.

The members of the community were urged to lobby and advocate for the inclusion of children's rights in the constitution and to participate during the outreach and the referendum stage to ensure that their concerns will be addressed in the constitution.



Sharara Secondary School Headboy expressing difficulties children are facing in their area.