

THE CHILD LAW BULLETIN

JUSTICE FOR CHILDREN TRUST (JCT)

THE DRAFT CONSTITUTION: DETENTION SHOULD BE USED AS A LAST RESORT

Children and child rights organisations advocated for children's rights, including the rights of children in contact with the law, to be included in the constitution. This was after the realisation that children in contact with the law were being treated in a manner that did not promote their rehabilitation and reintegration into society as responsible citizens. Instead, children were being exposed to conditions that would harden them into more dangerous and serious offenders. Having a Constitution which promotes the welfare of these children is an achievement towards the promotion and protection of their rights.

Unnecessary and long detention of children in contact with the law is common at police stations. The courts perpetuate detention by remanding the children in custody regardless of the offence they would be facing. In terms of the Criminal Procedure and Evidence Act Chapter 9:07, any judge, magistrate or police officer, depending with the nature of offence, may release any person under the age of eighteen years who is accused of any offence other than treason, murder or rape without bail into the custody of the parents or guardian or place him in a place of safety instead of admitting him to bail or detaining him. The intention of the legislation is to avoid children from being exposed to harsh environment either at the police or prison cells. This however has not been the case as children are being incarcerated on arrest and on remand waiting to be tried even for minor offences such as shoplifting. During such detention, these children are mixed with serious and dangerous criminals who coach them. The objective of rehabilitating these children is lost in the process.

The rights of children in contact with the law have been protected by section 4.38 (1) (i) of the Draft Constitution which emphasises that detention should be the last resort and if ever the child is detained, it should be for the shortest appropriate period of time. The Draft Constitution further provides for children to be kept separately from detained persons of over the age of eighteen years. This provision conforms to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. This is also in line with the pre-trial diversion programme which the country initiated to ensure that children facing non serious offences are spared from the criminal justice system by undergoing diversion. It is however important that if and when the Constitution is accepted by Zimbabweans, all stakeholders should play their part in ensuring that children are not detained unnecessarily as it does no good but harm to the children.

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MATERNITY FEES AND THE RIGHT TO IDENTITY

Justice for Children has been providing legal and financial assistance to parents or guardians in order to promote birth registration for children. It has been evident that some parents were forced to give birth to their children at home due to financial constraints. The fees required at the maternity clinics were beyond the reach of these women thus the scrapping of the maternity fees by the Government is a welcome development. Whilst this measure reduces maternal mortality rate, Justice for Children sees this as a measure which promotes the registration of children's birth.

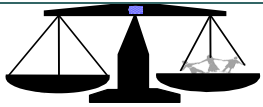
From April to June 2012, the organization assisted two hundred and seventy children to register their birth certificates. Among other reasons, children were failing to get registered due to non availability of birth confirmation records as parents especially those in the rural and farming communities could not afford the maternity fees. Parents were forced into giving birth at home without the special facilities thus increasing the number of children who die during birth which became a major concern. This also posed the risk of mother to child transmission of HIV infection which could be minimised through tests and measures conducted, if the mother seek hospital attention. During an awareness campaign in Bindura, thirty women confirmed giving birth at health institutions whilst eighty women had given birth at home due to financial challenges.

These women indicated that giving birth at home complicates the process of having the child registered as the Registrar would require a witness to the birth who are sometimes not available. Some of these children were born in the presence of relatives mostly grandmothers who by the time of registration would be dead. Some would require financial assistance for them to witness at the Registrars Office which would be a distance away office thus forcing them to ignore the need for the child to get registered. This resulted in a number of children living without any identity and failing to enjoy other rights such as education and food.

Whilst those parents giving birth to children at home faced their own challenges, children who are born in clinics or hospitals are also not getting registered after being denied birth confirmation records by the clinic or hospitals due to the failure by the parents to pay antenatal and maternity fees. The clinics or hospitals are withholding the birth confirmation records as a way to induce the parents to pay the bills. The organisation would then write letters to the clinics or hospitals demanding that they release the birth confirmation records as it is a violation of the child's right to identity. Scrapping of the maternity fees promotes the right to identity for most children and further supports section 4:38 (1) (c) of the Draft Constitution which provides for the right to a prompt provision of a birth certificate for children born in Zimbabwe. It is however important that all government stakeholders and civil society organisations ensure the enforcement of this policy by holding the institutions accountable so that children have their right to identity recognised which would further promote their enjoyment of other rights.



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CHILDREN'S EXPERIENCES

WHEN PUSHED TO EXTREMES

Some parents left for the diaspora leaving their children without any parental guidance in an endeavour to provide basic needs for them. The aftermath has been juvenile delinquency for some children whilst some have been abused as there is no one to provide enough care and protection for them. Whilst other parents leave the children unattended, some have decided to take their children with them and changing their nationality for them to benefit in the foreign land. This has challenges for the children in proving their identity ultimately.

In one case, the mother of three children relocated to Mozambique after failing to look after the children due to the economic situation that gripped the country in 2008. The children were born out of wedlock and the fathers could not be located to provide any assistance for them. In order to survive in Mozambique, the mother changed her name and documents and became a Mozambican citizen. The children had Mozambican birth certificates using their mother's new identity. When the mother died, the maternal uncle was advised of the death since he was the only Zimbabwean relative known by the neighbours. He was left with no option

except to take the children back to Zimbabwe since there was no one who could stay with the children in Mozambique. The death certificate was acquired in Mozambique using the name the mother was now using.

Since the children were back in their country of birth, the uncle wanted them to use their Zimbabwean names but it was proving to be difficult since the mother's particulars indicated she was Mozambican. Even though the uncle had the mothers' Zimbabwean birth certificate, the names were now different from that on the death certificate. The uncle and his wife visited the organization for assistance and the children were registered using their Zimbabwean names through the help of the Department of Social Services.

Whilst some parents are pushed to the extreme by circumstances and sacrifice their nationality to provide for their families, they should consider their children's destiny. The children would be fortunate to have relatives who would be willing to assist as it has both financial and time issues involved.