

### CONSTITUTIONALISING CHILDREN'S RIGHTS

As the drafting of the new constitution unfolds, there is notable hope that children's rights will be enshrined in the new constitution. This is based on the 1<sup>st</sup> draft of the constitution that has been published in The Herald of the 10<sup>th</sup> of February 2012. The proposed Chapter 4 on Fundamental Human Rights and Freedoms Part 2 has children's rights under section 4. 29 of the constitution. The rights include the right to equal treatment before the law, including the right to be heard, education, health care services, basic nutrition, shelter, to be protected from economic, and sexual exploitation, child labour and from maltreatment, neglect, abuse and degradation. The inclusion of children's rights in the constitution is a sign of the commitment of the state to respect, protect and promote childhood.

The draft constitution has taken into consideration JCT's advocacy issues on the need for the incorporation of children's rights as contained in the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. This is because the current constitution had glaring inadequacies due to the failure to enshrine children's rights, socio-economic rights and other fundamental principles that underpins democracy. Such inadequacies led to the constitution reform process under the auspices of the Global Political Agreement signed in 2008. This presented JCT with an opportunity to advocate for the inclusion of children's rights in the constitution.

The organisation embarked on advocacy initiatives that include Children's Summits on the Constitution in Harare where the Co-Chairpersons of Copac attended and country wide consultations which culminated in the National Summit where children from all the 63 administrative districts attended. The National Summit was named 'Copac National Consultative Outreach for Children' due to the attendance of Copac where they adopted the issues that were presented by children in the other districts of Zimbabwe. Children's views that were adopted by Copac provided the guide for the constitutional reform process hence the inclusion of children's rights in the Draft constitution. This is a major milestone towards the inclusion of children's rights in the constitution.

The writing of the new constitution is at an advanced stage and if adopted it will inevitably give a yardstick for the protection and promotion of children's rights by the state and courts. Children's welfare and care would be the primary care of the state and they will have the full protection of the law. This gives a lot of enthusiasm for organisations in the child rights sector to see how the imminent Second All Stakeholders Conference and the referendum will provide the basis for the inclusion of children's rights in the constitution.

This is part of a series of articles to be run in the e-newsletter in order to update stakeholders and partners in the child rights sector on the progress of the constitution making process vis-a-vis the inclusion of children's rights.

JANUARY 2012

VOLUME 1  
ISSUE 10

Inside this  
issue:

A glimmer of  
hope towards  
constitutionalis-  
ing children's  
rights 1

Typhoid Out-  
break: Children  
not spared 2

About the Right  
to Education 3

Contact us 3

## REALITY: CHILDREN NOT SPARED

Zimbabwe has been recently hit by a typhoid outbreak with Harare being the most affected. Typhoid is a disease, transmitted by the ingestion of contaminated food or water. The deterioration of the Zimbabwe's water and sanitation system as well as the increase of unhygienic vending activities has led to the outbreak of different diseases including typhoid. Children have not been spared from this outbreak and because of their age, they can do little to protect themselves from the disease. It therefore becomes the duty of the government and local authorities to ensure that children have consistent and constant supply of clean and safe water as well as an environment that is healthy and safe for them.

Article 14 of the African Charter on the Rights and Welfare of the Child stipulates that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. It further calls on states parties to ensure adequate nutrition and safe drinking water; to combat disease and malnutrition. It is against this background that the government has an obligation to provide every institution and homes with clean and constant water supply in a bid to combat disease like typhoid and other water borne diseases.

On the 3<sup>rd</sup> of February, the Herald reported that more than 1 000 people have been affected by the current typhoid outbreak with 71 people still admitted at Beatrice Infectious Hospital. The local authorities appear to be failing to contain the situation despite their assurance that everything was under control. Some children in Kuwadzana are reported to have been refusing to drink tap water and asking for borehole water pointing out that the tap water is not safe. Zimbabwe should take action in order to achieve goal number six (6) of the Millennium Development Goals which seeks to combat HIV/AIDS, Malaria and other disease by 2015. The typhoid outbreak calls for immediate action before it turns into a crisis.

The government therefore should avail funds to the local authorities for the refurbishment of water and sanitation system to combat the spread of such diseases. Non-governmental organisations should team up with other stakeholders and the government to ensure children are protected. This can be done through the drilling of boreholes as well as provision of water treating chemicals. Similar facilities should be put in schools since children spend most of their time there. Action should also be taken against illegal vending since it is one of the ways in which typhoid is spreading. Lastly, the government should show its commitment to children by ensuring that a new constitution enshrines their rights to best attainable state of physical, mental and spiritual health.

For feedback please get in touch with us through the contact details provided above.

## CHILDREN'S EXPERIENCES

### About the Right to Education

The socio-economic conditions that have affected Zimbabwe have not spared the vulnerable members of the community, the children. Due to the HIV/ AIDS pandemic and the exodus by parents to other countries in search of greener pastures many children have been left orphaned or without a responsible person to look after their needs. This has resulted in many child headed households and children living like destitutes whilst their parents are alive and are people of means who can afford to contribute towards the minor children's welfare.

It has become a trend that in months after school holidays, there is an increase in the number of clients who approach JCT seeking assistance to make applications for maintenance of children in order to pay school fees for the children. There also has been an increase in the number of cases of children whose results are withheld by schools for non payment of school fees when examination authorities release the results. The school authorities refuse to release the children's results until all outstanding amounts owing to the school are paid in full. It has been noted from the cases received by JCT that the majority of such affected children are orphaned children who do not have a responsible parent who contributes to their welfare. Whilst education offers an opportunity for the children to improve their lives and those of their siblings, stringent requirements by the schools deny children of that opportunity. Some of these children have been enlisted on programmes such as the Basic Education Assistance Module (BEAM) and others are getting assistance from organisations such as SOS to pay for their fees but these programmes cannot assist all orphaned children due to resource constraints.

In cases where the children's results have been withheld by the schools, JCT has written letters to the schools drawing the schools' attention to the case of **State v Idah Nyabeza and Munyaradzi Murenga** where the

High Court sitting in Bulawayo ruled that the withholding of pupils' results on the basis of non-payment of school fees and levies is an offence under the Children's Act (Chapter 5:06). The Court went on to highlight that the issue of fees directly relates to the law of contract, a contract between a parent and the school in which failure by a parent results in the institution of proceedings against the parent. The undue pressure to enforce payment of fees using pupils is unlawful. In one case dealt by the organisation, the child was given his results and had attained 3 A level passes and is now looking for a place to enrol for his professional qualification.

The current constitution of Zimbabwe does not provide for children's socio- economic rights which include the right to education. The state cannot therefore be held accountable for children's failure to access education and this has resulted in the prevailing situation where parents are forced to pay teachers' incentives to supplement the teachers' income whilst other children fail to access education at all. In 2010, JCT made nationwide consultations with children on what they wanted to be included in the Constitution. The right to education was one of the rights which children called for to be included in the Constitution. In a Constitution draft (Constitution 2012- 1<sup>st</sup> Draft) published in the Herald of Friday the 10<sup>th</sup> of February 2012, children's right to education is provided for in Section 2.16 where it is provided that the State must take practical measures to promote free and compulsory basic education for children. The section further provides that the State must take appropriate measures, within the resources available to it to afford equitable access to higher education. This is a welcome development. As we prepare for the second all stakeholders' conference on the Constitution, it is hoped that children's right to education, at all levels will be promoted and the final draft will provide for a justiciable right to education for children.