

CHILD LAW BULLETIN

CHILDREN TRUST (JCT)

A CONSTITUTION WITH CHILDREN'S RIGHTS A REALITY

Justice for Children Trust (JCT) continues with the publication of articles focusing on the progress of the constitution making process vis-a-vis the inclusion of children's rights. The last edition that was published in February 2012 informed stakeholders and partners on the inclusion of children's rights in the leaked 1st draft of the constitution that was published in the Herald of the 10th of February 2012. The article presents justiciable rights of children that are included in some of sections of the leaked 1st draft constitution.

Section 4. 29 of the constitution has a specific section on children's rights. This guarantees the protection of children's rights by the state. The inclusion is a response of the call by JCT and other stakeholders and partners in the child rights sector to have a specific section on the constitution which enshrines children's rights. Countries like South Africa and Malawi have specific sections on children's rights and there is no excuse for the failure of Zimbabwe to do the same. This is because Zimbabwe signed and ratified the United Nations Convention on the Rights of the Child and the African Charter which compel it to show its commitment towards the respect, protection and promotion of children's rights. The glaring inadequacy was the failure to domesticate the aforementioned regional and international instruments on children. Section 4. 29 however makes the inclusion of children's rights in the constitution a reality.

Section 4. 29 on Rights of children states that;

- 1) Every child, that is to say every person under the age of 18 years, has the right;
 - a) to equal treatment before the law, including the right to be heard;
 - b) to be given a name and family name;
 - c) in the case of a child who is a citizen of Zimbabwe by birth, to the prompt provision of a birth certificate;
 - d) to family or parental care, or to appropriate alternative care when removed from the family environment;
 - e) to be protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect, abuse and degradation;
 - f) to education, health care services, basic nutrition and shelter, and
 - g) not to be detained except as a measure of last resort, and if detained;
 - i) to be detained for the shortest appropriate period;
 - ii) to be kept separately from detained persons over the age of 18 years; and
 - iii) to be treated in a manner, and kept in conditions, that take account of the child's age.
- 2) A child's best interests are of paramount importance in every matter concerning the child.

As the constitution making unfolds, JCT will continue updating stakeholders and partners on the progress towards the constitutionalisation of children's rights. In the next edition the organisation will continue publishing some of the sections with children's rights.

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CHILD SEXUAL ABUSE

The Newsday of February 28, 2012 had a story of a Chegutu man and his wife who connived to rape a 13 year old girl whom the husband wanted to take for a wife. The two are said to be members of apostolic church sect. The Daily news of February 21, 2012 reported that a Mbare policeman handcuffed his lover's 12 year old daughter and raped her. The same paper on the 1st of February 2012 reported that a 19 year old man raped his 13 year old former housemate. All these stories are a matter of concern to those that have the interests of the child at heart. The increase of cases of child abuse at the beginning of the year has raised questions on the effectiveness of the law enforcement. Despite the existence of laws put in place to protect children from all forms of abuse many defenceless children continue to be victims.

Children continue to be abused of sexually amid measures put in place to combat all forms of child sexual abuse. It is however unfortunate that some of the people who should be spearheading the enforcement of laws that protect children from sexual abuse are the same people who are abusing the children. This raises questions on who can be trusted in the promotion and protection of children's rights. On the other hand, some churches are still perpetrating child sexual abuse through their practices and this is evidenced by the Chegutu couple who still believe in child marriages.

Sexual abuse has numerous and serious immediate and long-term consequences. These include physical injury, sexually transmitted infections, emotional trauma and even death. At times, it may result in unwanted pregnancy and unsafe abortion. Other social outcomes include poor school performance, rejection by family and society, family disharmony, poor parenting and abusive behaviour in later life.

Article 19 of the Convention on the Rights of the Child calls on the protection of the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. It further emphasizes the government obligation to protect the child from all forms of maltreatment perpetrated by parents or others responsible for their care and to undertake prevention programmes. Civil Society organisations especially those that deal with children should continue developing advocacy and communication strategies for prevention in order to complement government efforts. There is also need to continue raising the level of awareness amongst children because at times they lack maturity to understand and vocabulary to report cases of sexual abuse. Members of the community must also take a leading role in eradicating child sexual abuse.



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CHILDREN'S EXPERIENCES

CHILDREN'S LIVES CAN NEVER BE EQUATED TO ANY PRICE

It is sad to realise that parents are still being coerced to accept compensation for a child who has been sexually abused. Some protect their friends who will have raped their children and put the blame on the children. The parents are willing not to report or to withdraw charges of the perpetrator in order to be compensated. The matter becomes an adult issue without regard to the harm and the best interests of the child. The child is never consulted or considered. Such cases are going unreported and the child suffers. What parents do not realise is the fact that the child's life is more important and can never be equated to any price.

JCT had a case of a girl aged 12 years old who was raped by a neighbour and the matter was reported at the local police station. The perpetrator being a neighbour and a trusted friend negotiated with the girl's father to withdraw the matter in exchange for two beasts. The father of the complainant agreed and the case was withdrawn. A JCT community paralegal working in the area heard what had transpired and went to talk to the father of the complainant. He expressed the importance of reporting such matters and perpetrators brought to justice. He advised the father to have the case reopened because what the perpetrator had done was unlawful. With the assistance of the community paralegal the mat-

ter came to light and the perpetrator was arrested, convicted and sentenced to imprisonment.

In another case, one minor child was sexually abused by his brother's friend who took advantage of the brother's absence. When the matter came to light, the child's brother blamed the minor child. He indicated that it was her fault that she got raped since she was too friendly to his friend. He did not report the matter and instead took the child to Mount Darwin so that the matter would be concealed and eventually forgotten. The members of the community who got to know of the case advised the girl's aunt who pursued the matter with JCT until the perpetrator was arrested and tried.

It is crucial to educate the community that accepting compensation from perpetrators and not report cases is an offence as they would have concealed a crime thereby defeating the course of justice. Children should be protected and mostly by their parents. These cases are a reflection that there is still need for community awareness campaigns on child sexual abuse especially in rural areas in order to protect children. Working with community paralegals will also see more children accessing justice and their rights protected.