

Issue No. 5

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Justice delivery system letting down child complainants

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A recent report by the Herald that some complainants had resorted to ferrying prisoners to the courts “after Zimbabwe Prison Service officials indicated they did not have the fuel to do the job” is very disturbing. The question that begs the answer, especially for those who are concerned with the rights and welfare of vulnerable members of society such as children, is ‘what about child complainants?’

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What is happening at the courts and prisons is reflective of the decay that has beset the justice delivery system. Courts can not function properly as the prison service fails to take prisoners remanded in custody to court for routine remands and trials. Whilst the prison service is to be applauded for calling on board other players such as the complainants to assist in carrying accused persons to court for trial, one wonders what happens to cases that involve children as complainants. Whilst one can argue that they have to rely on their parents and other caregivers, the same can not be said about most vulnerable children. These include orphans and those children whose rights would have been violated by caregivers. Such children rely on the state to take up the responsibility of ensuring the restoration of their violated rights. Sadly this does not happen if the state that is supposed to uphold the respect and protection of children’s rights is found wanting. One can therefore safely conclude that the state further perpetrates abuse on an already abused child if it does not ensure the smooth running of the wheels of justice.

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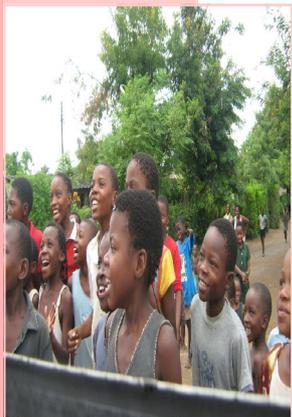
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Failure to ferry prisoners to court results in injustice upon the abused child. If no prosecution takes place where a child’s rights would have been violated, this results in gross injustice. The delay in prosecution that occurs as a result of a non-functioning prison system, results in delayed justice, which may greatly prejudice child complainants as children are prone to forgetting certain issues either as a defence mechanism or as a result of lapse of time. This may further result in mistrust of the justice delivery system as the last recourse for seeking justice. One can also not rule out issues of corruption where connivance between accused persons and certain incorrigible players may result in certain cases not being heard in court. The court may unfortunately fail to pick up such unfortunate goings on if prisoners fail to attend court for purposes of remand.

Justice for Children Trust calls on the government to urgently resolve the crisis that is hampering justice delivery. The government is reminded of its role in upholding the respect, protection and promotion of children’s rights. The government is also reminded that children do not own resources and they rely on others to seek justice.

The Herald, “Complainants bail out Prison Service,” 27th of April 2010.





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“JUSTICE DELIVERY SYSTEM LETTING DOWN CHILD COMPLAINANTS” CONT;

An abused child needs help. Reports that certain cases remain unresolved for as long as the prison service remains in dire need of vehicles do not help child victims at all as it is apparent that their cases may remain untried as a result. What is more disturbing is the report that the ZPS has in the past appealed for “more resources to properly run its operations”. It seems as though their request has fallen on deaf ears. This is uncalled for in any society that respects human rights. The system should not further abuse by delaying prosecution and trails of all criminal cases as this prejudices, especially children.

“CHILDREN COMMITTING CRIMES AGAINST OTHER CHILDREN”

One wonders what the society is turning into. It was once upon a time that children were safe and could be left alone to play on their own; however this is now not the case. It has raised outcry that children were being raped by older men either relatives or strangers and parents were now scared to leave their children even with a close relative. Whilst the society is still trying to come to terms with the shock of their children being vulnerable to this abuse by relatives or fathers, it is now sad to note that it is now children raping other children.

In one case at a Magistrate’s Court in Mashonaland East, a child who is aged 12 years old raped another child who was 7 years whilst she was asleep. These two children are related as first cousins and accused child had visited the complainant’s residence during the school holidays. When the complainant’s mother had gone to the salon for a hairdo, accused proceeded to where the complainant was sleeping, removed her pants and raped her. The mother realized this after she noticed that her child had difficulties in walking. The matter went for a full trial after the Attorney General had authorized the prosecution. The child had his father to assist him during the proceedings. He was convicted and sentenced to corporal punishment. In another case in Mashonaland West, a ten year old boy allegedly produced a screwdriver to threaten an eight year old before he raped her. These cases illustrate the extent and prevalence of children who are in conflict with the law especially on serious cases.

One could suggest that the socio-economic environment is playing a role in children being in conflict with the law. A number of children are not going to school regularly as teachers are sometimes on strike or parents are not able to pay the required school fees. For some children it is not even the economic hardships faced by other children but the urge to experiment on things they see either from the media or peer pressure from other friends, but having a ten-year old boy raping an eight year old girl after producing a screwdriver to scare the eight year old induces a sense of shock. What should be done to protect our children? What has come over our children? Is the media corrupting our children to an extent of being violent?

Our Zimbabwean law provides that a child between the age of 7-14 years is presumed to lack the required intention to commit a crime, although this can be disproved by the prosecutor. This means that a child is deemed to lack the capacity to form the intention necessary to commit the crime or where negligence is an element of the crime concerned, to lack the capacity to behave in the way that a reasonable adult would have behaved in the circumstances.

This law was formulated by the legislators with the view that at that age range the assumption will be that a child is considered too young to commit such an offence and will be too young to formulate such a devious act. Most cases where children are in conflict with the law in Mashonaland East Province are serious offences like rape. Is the law in tandem with this development in children?



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What then should be done to nurture a future generation that is criminally free and upright? Parents are urged to be attentive and teach the children the good values we have always cherished and nurture their children to be good citizens. This implies what the children are watching especially on television should be considered; some of the shows that children are watching are abusive in nature, instead of educating the children they are doing more harm than good. Children are turned into criminals by what they watch or read. Parents are therefore urged to protect their children from abuse that may result in children abusing other children. To this end JCT calls for a Constitution that not only protects all children from abuse, but has clear provision on distinct and different roles by all duty bearers.

CHILDREN AND THE CONSTITUTION

The case of Mutoko children

One child noted, “We are the largest age group in the country yet we are not taken seriously in all that we do.”



See [Children's Views](#) in our [Campaigns](#) on www.justiceforchildrentrust.org.zw

JUSTICE FOR CHILDREN TRUST'S CALL ON ISSUES TO BE CONSIDERED IN THE CONSTITUTION MAKING PROCESS

Justice for Children Trust urges Parliament of Zimbabwe, through the Parliamentary Select Committee on the Constitution and its sub-committees, to be mindful of its obligations towards children, recognizing the need to ensure children's participation in the constitution making process so that their views are taken into consideration.

Justice for Children Trust also advocates for the inclusion of a separate section in the new constitution that specifically caters for children's rights similar to section 28 of the South African constitution and has, through its work with children, identified the following priority issues for consideration.

JUSTICE FOR CHILDREN TRUST



NEWSLETTER

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.

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Birth registration for all

The government is obliged to ensure that every child is not only entitled to a name, identity and nationality, but to immediate registration upon birth.

A functional health delivery system

The government should recognise children's right to health, including reproductive health and work towards combating disease and malnutrition through the provision of adequate food, drugs and timeous treatment.

Education for all children

The government has an obligation to urgently put in place measures that enable children to enjoy constant and consistent access to education. Basic primary education should be for free.

Child participation

The government should ensure child participation. The views of children should be taken into account, where possible, on all issues affecting them.

Food security

The government should ensure that every child has access to food as a basic right.

Adoption of social security measures

The government has to take the necessary measures to ensure that all children, especially the orphaned, vulnerable and all children in difficult circumstances, access the necessary services for their survival and development.

A safe and healthy environment

The government should prioritise the existence of a healthy and safe environment for children to curb the outbreaks of diseases.

Access to clean water

The government should ensure that every institution, home and sector has a consistent and constant supply of clean water.

Access to information

The government should recognise the need for information dissemination throughout the country so that children are aware of issues affecting them such as HIV and AIDS and children's rights.

Protection from all forms of abuse

The government should ensure protection of children from all forms of abuse by implementing laws that protect all children.

Protection from child trafficking, slavery and labour

The government should put in place measures that ensure the protection of children from exploitative and harmful labour practices as well as protect children from child trafficking and child slavery.

Access to non-harmful recreation

Recreational facilities that promote child development should be put in place for the benefit of all children.

The state's obligation to ensure implementation of child protection laws

The constitution should have clear and specific obligations by all duty bearers, from parents, caregivers and the state to ensure compliance with the law and to ensure respect, protection and promotion of children's rights.

JUSTICE FOR CHILDREN TRUST REMINDS ALL THOSE INVOLVED IN THE CONSTITUTIONAL OUTREACH PROCESS TO INVOLVE CHILDREN BY SOLICITING FOR THEIR VIEWS. JUSTICE FOR CHILDREN TRUST ALSO CALLS FOR THE PROCESS TO BE CARRIED OUT IN A PEACEFUL MANNER AS ANY ACT OR CONDUCT THAT IS CONTRARY TO THE PROMOTION OF PEACE WILL ADVERSELY AFFECT CHILDREN AND OTHER VULNERABLE MEMBERS OF SOCIETY.

