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DEFENSE DES ENFANTS INTERNACIONAL DEI  
DEFENCE FOR CHILDREN INTERNATIONAL DCI

## Universal Periodic Review - Zimbabwe

### Defence for Children International -Zimbabwe

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#### **Introduction**

Zimbabwe has a child population of approximately 5,322,240. Zimbabwe ratified the Convention on the Rights of the Child on 11 September 1991 but has not ratified the two optional protocols to the Convention on the Rights of the Child.

Like any country in the World, Zimbabwe has developed laws that regulate human intimations to safeguard individual human rights and to protect society generally. These laws are instruments for enforcing societal norms which Houghugh (1983) defines as "a set of behavioural expectations, rules or guides shared by an identifiable social group". The Country has over 20 laws relating to children's rights, but implementation is weak and many of the laws breached the UN Convention on the Rights of the Child (CRC), according to a UN Children's Fund (UNICEF) report. In cases of deviant behaviour societal laws tend to emphasise more the protection of society or the maintenance of order or stability in society than protecting the rights and welfare of individual children who have violated societal norms. This is critical for young offenders whose vulnerability makes them deserve special protection from society.

#### **Violence and exploitation of children**

Although Zimbabwe has comprehensive laws protecting children from violence, sexual and economic exploitation, children remained disadvantaged. Victim-friendly courts are hampered by high staff turnover among court officials and police officers with child-related skills.

Zimbabwe's Children's Protection and Adoption Act (CPAA) prohibits the exposure of children to hazardous and harmful conditions, and using them for begging purposes. However, because of abject poverty, the employment of children on farms and plantations, in street trading and as beggars was rife and often went on with the "knowledge, encouragement or instruction of the parents".

#### **Birth registration**

The CRC provides for the compulsory registration of children at birth but Zimbabwe's Birth and Deaths Registration Act, while making birth registration mandatory within 42 days of birth, had no enforcement mechanisms, and many children thus remained unregistered.

Transport costs a deterrent issue, as is the requirement for parents to be registered themselves.



A 2003 study in Mashonaland West province revealed that 25 percent of primary school pupils had no birth certificates, and neither did 75 percent of people in farming communities, 60 percent of parents and 70 percent of orphans. The report recommended that personnel from the Registrar General's Office be stationed at all hospitals to register children at birth.

## **Education**

The CRC calls for free compulsory education and the country's Education Act complied with this provision but, again, there were no appropriate enforcement mechanisms. Increased poverty and the impact of the AIDS pandemic had also affected the school dropout rate.

## **Child Labour Laws and Enforcement**

The Labour Relations Act rose the minimum age for employment to 16 years, specifying that children between the ages of 16 and 18 can only be employed as apprentices and only under special training conditions. The minimum age at which children may perform light work is set at 15 years, and young persons under the age of 18 years are prohibited from performing work that might jeopardize their health, safety, or morals.

The Children's Protection and Adoption Amendment Act prohibits the involvement of children in hazardous labour. However, implementation of the Act has been slow. The Act defines hazardous labour as any work likely to: interfere with the education of children; expose children to hazardous substances; involve underground mining; require the use of electronically powered hand tools, cutting or grinding blades; expose children to extreme conditions; or occur during a night shift.

The Penal Code prohibits children from visiting or residing in a brothel, and prohibits anyone from causing the seduction, abduction, or prostitution of children. No laws specifically address trafficking in persons. However, under the Immigration Act, prostitutes and persons benefiting from the earnings of prostitution are barred from entering the country, and the Sexual Offenses Act criminalizes the transportation of persons across borders for sex. Both the Constitution and Labour Relations Amendment Act prohibit forced labour. However, the Labour Relations Amendment Act makes an exception for labour required from a member of a disciplined force.

According to an ILO report, labour regulations, including child labour laws, are poorly enforced because of weak interpretations of the laws, a lack of labour inspectors, and a poor understanding among those affected of their basic legal rights. The Zimbabwe police serve as the primary authority to combat trafficking, and the Department of Immigration monitors borders. In January 2004, the Ministry of Home Affairs launched a program to combat corruption at border posts. Although the government has established Victim Friendly Courts in Harare (where abuses perpetrated against children can be tried), these courts are understaffed as a result of magistrates' preference for more lucrative employment outside Zimbabwe.



## **Juvenile Justice**

### ***Legislation***

There are two main legal instruments which deal with young offenders in Zimbabwe, namely the Children's Protection and Adoption Act (Chapter 33) (CPAA) and the Criminal Procedure and Evidence Act (Chapter 57). Consequently, there are two main institutions that deal with juvenile offenders, namely the juvenile courts and the magistrate's courts which administer the Children's Protection and Adoption Act and the Criminal Procedure and Evidence Act respectively. When a juvenile is alleged to have committed an offence the law requires that the matter be referred to a probation officer, who then prepares a social inquiry report highlighting the socio-economic circumstances of the juvenile. These special circumstances of the juvenile are supposed to be taken into consideration in the disposal process in an effort to achieve juvenile justice.

### ***The minimum age of criminal responsibility***

In Zimbabwe, under 7 years, a child is not subject to legal process. Between the ages of 7-18 years, a 'juvenile' is subject to legal process, but with the subdivision that from 7 to 14 years a child offender has situational factors taken into consideration, while the emphasis between 14 and 18 years is on punishment.

### ***The Arrest***

There is no data about the process of arrest of juvenile offenders. Juveniles are arrested just like adults, particularly when they have committed what are termed adult crimes such as rape and murder. As in investigation, arrests could be used as indicators both qualitatively and quantitatively, the number of arrests made into a quantitative indicator. This indicator will become more important if those working with children strive to know the number of children in their areas. If all the demographic data on children in a given area are known then using the number of arrests will be easier to monitor which children are engaging in acts of delinquency.

### ***Trial Conditions***

Young offenders usually appear in court for minor offences, often in the absence of probation officers.

- **Juvenile courts:** The Criminal Procedure and Evidence Act spells out that the child shall be brought to court as soon as possible. 'As soon as possible' must be specified. This section can be used as a process indicator to show the frequency at which children are taken to courts when they offend and even when they fall victim to an offence. It would be easier to monitor how soon children are taken to courts and whether this is within the requirement of the Act. The statistics developed can be disaggregated by gender, religion, time, land use, proportion if this is deemed necessary.

**Legal representation** is absent in many cases. The system does not provide free legal services to those juveniles whose parents or guardians lack the means to engage the services of a lawyer. Such a measure would ensure that juvenile offenders from poor families are not unduly disadvantaged. The Government must note that the welfare of the child cannot be safeguarded by a system that does not allow for legal representation. Thus, juvenile justice cannot be realised unless the juvenile has an inalienable right to legal representation in court Zimbabwe must provide free legal services to those juveniles whose parents or guardians lack



the means to engage the services of a lawyer. Such a measure would ensure that juvenile offenders from poor families are not unduly disadvantaged.

### ***Information about juvenile offenders***

The basic information about a juvenile offender is recorded in a crime record book. Such data include sex, age, type of offence, date of committal of the offence, place of committal of the offence and a voluntary statement by the offender. A record of the police officer who would have handled the case is also kept. A voluntary statement by the juvenile offender or the juvenile victim is taken. Where the crime is classified as serious, such as murder, this statement is recorded in the presence of a guardian or parent in the case of juveniles below the age of fifteen years. However, these statistics are not separated from those relating to adult offenders.

### ***Conditions of detention***

Only one prison, Khami Medium in Matabeleland, offering four years secondary education, was specifically designed for juvenile offenders but not all could be housed there. Consequently, most juvenile offenders are imprisoned with adults and often abused. The report called for greater support for the pre-trial diversion initiative in terms of training, infrastructure, human and material resources.

### ***Diversion***

In accordance with the CRC's stipulations covering juvenile offenders, Zimbabwe has initiated the pre-trial diversion scheme under the CPAA where, with the support of a probation officer, offenders charged with petty crimes are diverted from the formal criminal justice system, their cases are heard in a closed court, and sentences are imposed along rehabilitative lines. In practice the initiative lacks resources and to date the closest practical option has been the community service programme, which had so far benefited over 50,000 offenders, some of them juveniles.

### ***Rehabilitation***

The disposal of juvenile delinquency cases tend to assume that rehabilitation or treatment goals can be achieved by focusing on the juveniles. There appears to be little recognition of the fact that some parents or guardians lack adequate parenting skills and therefore contribute towards the delinquent behaviour of their children. Even if the primary focus is on the juvenile, the parents must be effective participants in the rehabilitation or treatment process to ensure complimentary of action between social workers and parents. Parents must be empowered to take personal responsibility for the welfare of their children and must be assisted to develop and consolidate good parenting skills.

**Given the aforementioned challenges facing Zimbabwe in legislating and implementing an effective and humane child rights and juvenile justice system, in particular, Defence for Children International (DCI) recommends the following:**

### **Recommendations:**

We urge Zimbabwe:



- to ratify the two optional protocols to the CRC ( the Optional protocol on sale of children, child pornography and child prostitution and the Optional Protocol on involvement of children in armed conflicts
- to implement the existing laws on the rights of the child
- to improve the juvenile justice system. The state should clarify the legal status of children in conflict with the law (i.e. the minimum age of criminal responsibility) and ensure their right to legal assistance. We recommend a comprehensive children's law with "a cohesive integrated all-embracing structure and system to bring together related laws, policies, procedures or protocols.
- to undertake campaign to raise public awareness of the laws related to children (especially juvenile justice), with sustained training for practitioners and increased numbers of probation and social welfare officers
- to ensure effective participation of parents by establishing community centres which are resource centres where parents and children converge and are helped to deal with a variety of social problems. These community centres are preferable to custodial institutions as they are cheap to run and they also reduce the problem of stigmatisation and isolation associated with institutional care.