

# Child

# ZIMBABWE

# Monitor

# 2015

WOMEN'S  
UNIVERSITY  
IN  
AFRICA



Addressing Gender Disparity & Fostering  
Equity in University Education

Child Sensitive Social Policies

# PROGRAMME

FACULTY OF SOCIAL SCIENCES AND GENDER DEVELOPMENT STUDIES

# THE ZIMBABWE CHILD MONITOR 2015

*Tracking Child Rights through Research*

Women's  
University in Africa



Addressing gender disparities and

CSSP  
Child Sensitive Social Policies  
PROGRAMME  
FACULTY OF SOCIAL SCIENCES AND GENDER DEVELOPMENT STUDIES

# ZIMBABWE CHILD MONITOR 2015

*Tracking child rights through research*

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The Child Sensitive Social Policies Programme of the Women's University in Africa. The CSSP Programme endeavours to publish and make available innovative high quality scholarly commentaries on child rights and welfare issues that have been peer reviewed and which would inform interventions for the enhancement of child welfare in the country and beyond

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## FOREWORD

This year is a historic moment for the nation of Zimbabwe as we launch the Zimbabwe Child monitor for the first time. As society we have been given the privilege of ensuring that we protect, promote and fulfil the rights of the child. The *Zimbabwe Child Monitor* gives an annual snap-shot of the status of Zimbabwe's children and critically examine the links between their reality, Zimbabwe's commitment to children's rights, and society's progress in this regard. Hence it will help us to guarantee this requisite which is upon us. Zimbabwe has ratified a series of Conventions to guarantee the adequate protection of the rights of the child in the country. Key conventions to note are the United National Convention on the rights of the Child as well as the African Charter on the Rights and Welfare of the Child.

Therefore this monitor will help a multiplicity of stakeholders in tracking child rights through research and assure evidence based legal and policy reform as well as programming. This issue of the Zimbabwean Child Monitor supports global efforts to monitor and evaluate the rights of the child through research. It provides a sound contribution to our understanding of the challenges faced by children in Zimbabwe and encourages action to be taken by key stakeholders in addressing legal and policy gaps as well as implementation which looks at the lived realities of children.

I welcome this monitor and would like all readers to reflect on what Carol Bellamy said; that "... in serving the best interests of children, we serve the best interests of all humanity." This child monitor through all its different topics will help shape our thoughts and actions as various communities living in this global village. I would like to therefore thank the editors and authors as well as our funders UNICEF (Zimbabwe) and SIDA without all whom this publication would not have been made possible.

**Prof Hope Cynthia Sadza**

Vice Chancellor of the Women's University in Africa

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## LIST OF ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immuno Deficiency Syndrome
ART	Antiretroviral Therapy
ARV	Antiretroviral
AU	African Union
BEAM	Basic Education Assistance Module
CCORE	Collaborative Centre for Operational Research and Evaluation
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CPF	Child Protection Fund
CRC	Convention on the Rights of the Child
CSC	Community Selection Committees
CSO	Civil Society Organisation
CSSP	Child Sensitive Social Policies
CPC	Child Protection Committee
DHS	Demographic and Health Survey
DSS	Department of Social Services (MoLSS)
ECD	Early Childhood Development
GBV	Gender Based Violence
GDP	Gross Domestic Product
GoZ	Government of Zimbabwe
HIV	Human Immuno Virus
ILO	International Labour Organisation
MDGs	Millennium Development Goals
MIMS	Multiple Indicator Monitoring Survey
MICS	Multiple Indicator Cluster Survey
MoPSE	Ministry of Primary and Secondary Education
MoF	Ministry of Finance
MoHA	Ministry of Home Affairs
MoHCC	Ministry of Health and Child Care

MoPSLSS	Ministry of Public Service Labour and Social Services
MoWAGCD	Ministry of Women Affairs, Gender and Community Development
M&E	Monitoring and evaluation
NAP OVC II	National Action Plan for Orphans and Vulnerable Children Phase II 2011-2015
NGO	Non-governmental organisation
PoS	Programme of Support (to NAP OVC II - 2004-2010)

## OVERVIEW OF THE THE ZIMBABWE CHILD MONITOR

The Zimbabwe Child Monitor is an annual publication of the Child Sensitive Social Policies Programme of the Women's University in Africa, which from 2015, monitor the situation of children in Zimbabwe. The Zimbabwe Child Monitor critically examines the incorporation in law and policy and implementation of child rights principles. The Zimbabwe Child Monitor also provides commentary on various trending issues in the country which concern. Most of the commentary is based on research commissioned by the CSSP Programme through the Small Research Grants with support from UNICEF Zimbabwe and the Swedish International Development Agency.

The Monitor is essentially a policy brief that provides research and analysis aimed at protecting effective policies and programmes for children in Zimbabwe. Hence, the intended audience of the Zimbabwe Child Monitor include law and policy-makers, practitioners in the child rights sector, civil society and development agencies working for the welfare of children. This publication is also intended to be a useful resource for academics, researchers and students. It is presented in a simplified format and the least technical language

The Zimbabwe Child Monitor is divided into four parts which include:

### **Chapter 1: Monitoring Law and policy developments on children in Zimbabwe**

As the first issue, this Chapter first outlines international legal framework on children which Zimbabwe subscribes to and which informs the country's legislative and policy developments. The Chapter goes on to assess the level of domestication of the international instruments focusing on the country's constitution, legislative and policy provisions on children.

### **Chapter 2: Monitoring Child Rights through Research**

This section provides a collection of research based commentary on trending children's issues which provides a critical starting point for sustainable child sensitive social policy making and practice for children in Zimbabwe..

### **Chapter 3: Monitoring Budgetary Allocations for Children in Zimbabwe**

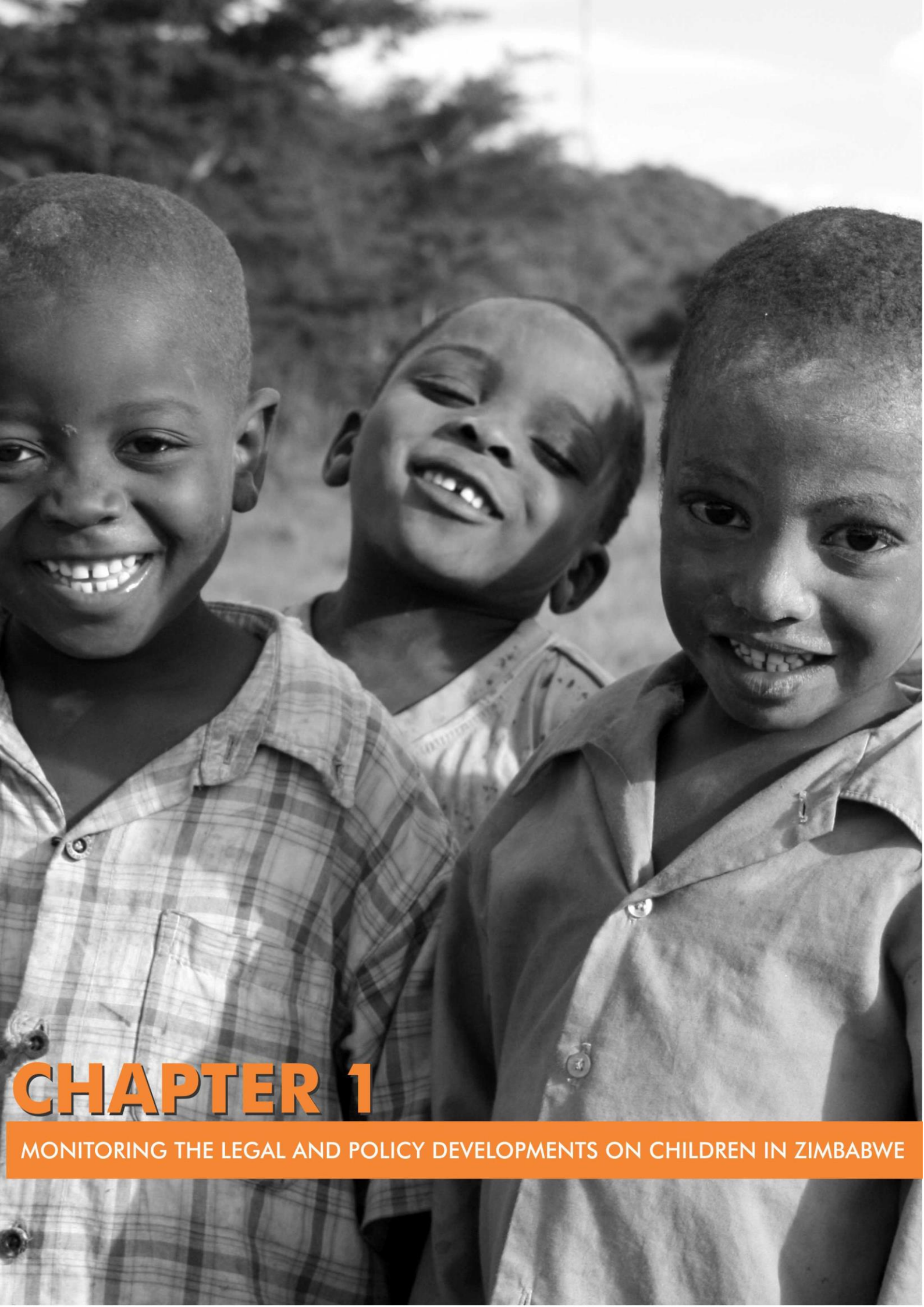
This section provides brief analyses of the 2015 budgetary allocation to the social welfare, education and health for children

### **Chapter 4: Monitoring the Rights of Children using Indicators**

This section demonstrates the power of statistical evidence through the utilisation of child indicators in monitoring child rights.

The CSSP Programme has aggressively embarked on a drive to produce evidence- based research and law and policy analyses which can feed into interventions for the welfare of children. Collaborative research work with local and regional bodies is given a premium to ensure that the concerns of children are given adequate exposure. Bodies of knowledge garnered through research concerning children are viewed as significant in informing advocacy work in the area of child rights. In this first publication, the tracking was conducted through multidisciplinary child-related research projects and papers on various themes on children in Zimbabwe.

Most of the research in this publication was conducted by teams allocated funding on a competitive basis under the CSSP Small Grants Research Initiative supported by UNICEF and the Swedish International Development Agency.



# CHAPTER 1

MONITORING THE LEGAL AND POLICY DEVELOPMENTS ON CHILDREN IN ZIMBABWE

# CHILDREN IN ZIMBABWE

## TC Nhenga-Chakarisa

### Overview

A number of international and regional legal instruments have been adopted in response to the growing concerns throughout the world to promote and protect the rights of children. There are several United Nations (UN), International Labour Organisation (ILO) and African Union (AU) treaties which together contain a comprehensive set of legally binding international standards on the right of the child, and provide a solid foundation for the enjoyment of human rights by all children without discrimination of any kind, while constituting a reference for promoting and monitoring progress in the realisation of the right of the child.

This framework of international and regional instruments informs the national policy and legislative developments and provides a yardstick for monitoring the implementation of child rights principles in countries. The following outlines the key international instruments which currently guide Zimbabwe's (and other state parties) responses to the wellbeing of children. These international instruments are discussed under the following three categories:



### Overarching international and regional instruments on the rights of the child

The overarching international and regional instruments on the rights of the child which Zimbabwe subscribes to include the **United National Convention on the Rights of the Child (CRC)** and the **African Charter on the Rights and Welfare of the Child (ACRWC)**. The UN Convention on the Rights of the Child is the most complete statement on children's rights ever made, and provides an internationally agreed framework of minimum standards necessary for the well-being of the child, to which every child and young person under 18 is entitled.<sup>1</sup> The wide variety of rights contained in the CRC reflects a broad international concern with the multi-dimensional development of children. It sets a new vision of the child, embodying a consensus that emerged in favour of the empowerment and the protection of children. The CRC has 54 articles, 40 of which provide substantive political, civil, economic, social and cultural rights for children.

Although it was inspired by trends evident in the UN, the regional African Charter on the Rights and Welfare of the Child (ACRWC) foregrounds the 'African perspective' of children's rights. The Charter acknowledges the critical situation facing most African children due to their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger.<sup>2</sup> Like the CRC, the ACRWC provides that in all matters concerning the welfare of the child the 'best

interests of the child' are to be given paramount consideration.<sup>3</sup> It also makes provision for the right of disabled children to take part in community life. The Charter takes its cue from its predecessor, the African Charter on Human and People's Rights, in imposing certain 'responsibilities' on children towards their family, society, the state and other legally recognised communities and the international community.<sup>4</sup>

As a consequence of protecting the full range of rights, both the CRC and the African Children's charter demonstrate the interdependence and indivisibility of children's rights. The instruments introduce a new categorisation of rights particular to children, namely the 3 'Ps' which stand for provision rights, protection rights and participation rights. The following shows the rights that fall within these three categories.

PROTECTION RIGHTS	PROVISION RIGHTS	PARTICIPATION RIGHTS
<ul style="list-style-type: none"> <li>• Right to dignity</li> <li>• Right to freedom from violence</li> <li>• Right to physical and psychological integrity</li> <li>• Right to protection from violence, abuse, maltreatment, neglect and exploitation</li> <li>• Right to protection from exploitative labour and work that is harmful to their health, well-being or education</li> <li>• Right not to be subjected to cruel, inhuman or degrading treatment or punishment</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life, survival and development</li> <li>• Right to adequate standard of living</li> <li>• Right to health and health care services</li> <li>• Right to social security, including social assistance</li> <li>• Right to water and sanitation</li> <li>• Right to housing and shelter</li> <li>• Right to food and nutrition</li> <li>• Right to education</li> <li>• Right to social (welfare) services</li> </ul>	<ul style="list-style-type: none"> <li>• Right to birth registration, name and nationality</li> <li>• Right to participation and to be heard and taken seriously</li> <li>• Right to information</li> <li>• Freedom of expression</li> <li>• Freedom of thought, belief, conscience, opinion and religion</li> <li>• Right to guidance in a manner that respects their evolving capacities</li> <li>• Right to play, rest and leisure</li> <li>• Right to assemble and protest peacefully and unarmed</li> </ul>
<ul style="list-style-type: none"> <li>• Right to protection from narcotic drugs</li> <li>• Right to protection from harmful cultural practices</li> <li>• Right to physical and psychological recovery and social re-integration after abuse or injury</li> <li>• Right to social (welfare) services</li> <li>• Right to special protection for children with disabilities</li> <li>• Right to special protection for children with chronic illnesses</li> <li>• Right to special protection within the criminal justice system for children in conflict with the law</li> <li>• Right to special protection for foreign and unaccompanied foreign children</li> <li>• Right not to be used in armed conflict and to be protected in times of armed conflict</li> </ul>		

The UN Committee on the Rights of the Child has identified four rights which also need to be understood as general principles of the rights of children. This means they must always be considered and applied in the implementation of all the other rights. The said rights include the Right to Survival and Development (*Article 6 – UN Convention Article 5 – African Children's Charter*), The Best interests of the Child (*Article 3 – UN*

<sup>3</sup>Article 4(1).

<sup>4</sup> This provision of duties has often been criticized by activists who argue that it reinforces a conservative approach to human rights. They say that it represents the most elaborate limitation on children's rights, particularly those concerned with labour, and they fear that the emphasis on the duty of the individual, rather than that of the state, undermines the force of children's rights. Activists contend that the preservation of African cultural norms may actually encourage child labour. As such, the Charter's provision of duties is often viewed as 'little more than the formulation, entrenchment and legitimating of adult and state rights and privileges against children'

<sup>1</sup>UN Convention on the Rights of the Child 'Children's Rights Alliance, available at <http://www.childrensrights.ie/Convention.php> [accessed on 17 September 2005].

<sup>2</sup> Lloyd A 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet' (2002) 10 *The International Journal of Children's Rights* 179 at 180.



Convention Article 4 - African Children's Charter Section 28(3)), the right to Equality and non-discrimination (Article 2 – UN Convention Article 3 – African Children's Charter) and the Right to participation/the right to be heard and taken seriously (Article 12 – UN Convention Article 4(2), 12, 13 and 17 – African Children's Charter Article 12 – UN Convention Article 4(2), 12, 13 and 17 – African Children's Charter ). These principles are also included in the African Children's Charter, and are found in the Constitution of Zimbabwe and the Children's Act either as express rights or as implied principles in other rights.

### Instruments containing special protections for children with specific vulnerabilities

There are several instruments which contain special protection for children with specific vulnerabilities which Zimbabwe subscribes to. These may be put into four subcategories i.e.:

CATEGORIES	INSTRUMENTS
Instruments addressing child labour, use of children in armed conflict, child trafficking and child sexual exploitation	<ul style="list-style-type: none"> <li>• ILO Minimum Age Convention 138 of 1973</li> <li>• ILO Worst Forms of Child Labour Convention 182 of 1999</li> <li>• UNCRC Optional Protocol on the involvement of children in armed conflict 2000</li> <li>• UNCRC Optional Protocol on the sale of children, child prostitution and child pornography of 2000</li> <li>• Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime</li> </ul>
Instruments addressing the vulnerabilities of the girl child	<ul style="list-style-type: none"> <li>• Convention on the Elimination of Discrimination against Women</li> <li>• Protocol on the Rights of Women in Africa 2000</li> </ul>
Instruments addressing the vulnerabilities of children with disabilities	<ul style="list-style-type: none"> <li>• Convention on the Rights of Persons with Disabilities 2006</li> </ul>
Instruments addressing the vulnerabilities of refugee and migrant children	<ul style="list-style-type: none"> <li>• The UN Convention relating to the Status of Refugees</li> </ul>
Human rights instruments of general application relevant to children	<ul style="list-style-type: none"> <li>• Universal Declaration of Human Rights</li> <li>• International Covenants on Civil and Political Rights</li> <li>• International Covenant on Economic, Social and Cultural Rights</li> <li>• African Charter on Human and People's Rights</li> </ul>

The following gives a brief overview of the instruments which fall under these categories:

- **Instruments addressing child labour, use of children in armed conflict, child trafficking and child sexual exploitation**

Child Labour, the conscription of children in armed conflict, child trafficking and child sexual exploitation are rampant in Africa and in other various parts of the world. It is for this reason that the international and the African regional community have come up with a number of instruments which address the various types of exploitation of children. Zimbabwe has ratified and committed itself to implementing the provisions of these instruments.

With regards to child labour most notable instrument is the **ILO Minimum Age for Admission to Employment Convention 138 of 1973** which calls for a total abolition of child labour. As a member state, Zimbabwe is obliged to institute national policies to progressively raise the minimum age for admission to work, 'consistent with the fullest physical and mental development of young persons'.<sup>5</sup> It sets the minimum age at 15.<sup>6</sup> Countries with relatively undeveloped economies (such as Zimbabwe) and educational facilities were temporarily allowed to adopt a lower standard of 14, as long as employers' and workers' organisations were in agreement.<sup>7</sup> It set the minimum age for light work at 13,<sup>8</sup> but that could be lowered to 12 in developing countries on condition that it did not impede schooling.<sup>9</sup> The instrument set a limit of 18 for hazardous work, and allowed children aged 16 to undertake such work only if their safety and morals were fully protected and they received sufficient specific instruction or professional training.<sup>10</sup>

The country has also ratified the **ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention) 182 of 1999**<sup>11</sup> which reflects a global consensus that there should be an immediate end to offensive forms of child labour. The Convention has two categories of unacceptable labour: the worst forms and work hazardous to the physical, emotional and moral wellbeing of the child, the former being illegal and unacceptable even for adults (slavery, debt bondage, prostitution, pornography, forced recruitment of children for use in armed conflict, use of children in drug trafficking and other illicit activities; and the latter being work harmful to the health, safety or morals of children.<sup>12</sup> The Convention recognises the need to provide for victims of worst forms of child labour their rehabilitation and integration and emphasises the importance of education in eliminating child labour.

The CRC is supplemented by two protocols which address two of the worst forms of child labour. The first is the **UNCRC Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000** which outlaws the involvement of children in armed conflict. The protocol compels State Parties to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities and prohibits non-state actors and guerrilla forces from recruiting anyone under the age of 18 for any purpose.<sup>13</sup> Zimbabwe has, however, not ratified this instrument.

The other CRC Protocol is the **Protocol on the sale of children, child prostitution and child pornography of 2000**, which prohibits the sale of children, child prostitution and child pornography. States are required to ensure the full coverage of certain acts and activities under its criminal or penal law, whether the offences are committed domestically or transnationally, or on an individual or organized basis. Despite its importance, Zimbabwe has signed but not ratified this instrument.

Zimbabwe has ratified the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**,

<sup>5</sup> Article 1.

<sup>6</sup> Article 2(3). The Convention was supplemented by Recommendation 146 which advocated for the raising of the minimum age to 16 years. In general, the recommendation provides the broad framework and essential policy measures for both the prevention of child labour and its elimination. It however recommends that the 'minimum age' should be fixed at the same level for all sectors of economic activity.

<sup>7</sup> Article 2(4).

<sup>8</sup> Article 7(1).

<sup>9</sup> Article 7(4).

<sup>10</sup> Article 3(1) and (3).

<sup>11</sup> ILO Convention 182.

<sup>12</sup> Article 3(a)-(c).

<sup>13</sup> Articles 1 and 2.

**Supplementing the United Nations Convention against Transnational Organized Crime.** The Protocol calls on states to develop legislation to establish the trafficking particularly of women and children as a criminal offence, to provide victims with access to the legal process and provide for their physical, psychological and social recovery. The Convention also provides for their deportation which should preferably be voluntary. The Convention emphasizes the need for states to develop programmes to prevent trafficking and to prevent re-victimisation of trafficking victims. The protocol states that law enforcement officials in different states should cooperate to track down on trafficking.

The country also subscribes to the **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others** under which it is obliged to “undertake, in connection with immigration and emigration, to... check the traffic in persons of either sex for the purpose of prostitution...in particular, women and children, both at the place of arrival and departure and while en route”.<sup>14</sup>

○ **Instruments addressing the vulnerabilities of the girl child**

The girl child often faces discrimination from the earliest stages of life, through childhood and into adulthood. Her low status is reflected in the denial of fundamental needs and rights and in such harmful attitudes and practices as a preference for sons, early marriage, female genital mutilation, domestic abuse, incest, sexual exploitation, discrimination, less food and less access to education (UN Women). Zimbabwe is one of the countries that have actively taken part in the adoption of various international and regional instruments intended to address these underlined vulnerabilities of the girl child.

Most notable is the **Convention on the Elimination of Discrimination Against Women (CEDAW) (1979)** which outlaws discrimination made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field”. Of most importance to children is that CEDAW stresses the importance of the best interests of the child principle and advocates for opportunities to be availed to girls which are equal to those offered to their male counterparts. The Convention also outlaws trafficking and forced marriages, a practice rampant in Africa with girl children making up the bulk of the victims. It further calls on states to modify cultural practices with a view to eliminating discrimination and to address discrimination in public and political life, education, labour rights, access to health facilities and access to financial and social services.

In 2005, Africa enforced the **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa**, marking a milestone in the protection and promotion of women and girls’ rights in Africa. The Protocol made many equality advances for women and afforded special protection for vulnerable groups of the female gender such as the girl child, the disabled and those from marginalised groups. The novelty of this Protocol lies in its provision which explicitly calls for the legal prohibition of female genital mutilation. The instrument calls upon states to “introduce a minimum age for work, and prohibit the employment of children below that age; and prohibit, combat and punish all forms of exploitation of children, especially the girl-child”, and “protect women, especially the girl-child, from all forms of abuse, including sexual harassment in schools and other educational institutions; and provide for sanctions against the perpetrators of such practices”.

The **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964**, which (apart from providing that all marriage be entered into only with the free and full consent of both parties), aims at eliminating forced marriages, child marriages and the betrothal of young girls.

○ **Instruments addressing the vulnerabilities of children with disabilities**

It is crucial to understand that children with disabilities are some of the most marginalised and excluded groups, experiencing widespread violations of their rights. Children with a disability encounter a higher vulnerability to physical and sexual abuse and neglect in all development settings; and they often find themselves unable to access education and health care, opportunities for play and culture, family life, protection from violence, an adequate standard of living and the right to be heard.

Zimbabwe is a party to the **Convention on the Rights of Persons with Disabilities 2006**, an instrument that aims to ensure that persons with disabilities enjoy all human rights on an equal basis with others. It covers, among others, civil and political rights, accessibility, participation and inclusion, the right to education, health, work and employment and social protection. With regards to disabled children who fall within the classification of vulnerable children, the Convention recognises that such children “should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children”,<sup>15</sup> and calls for respect to be accorded for the evolving capacities of children with disabilities.<sup>16</sup> The Convention also protects disabled children from exploitation, violence and abuse.<sup>17</sup>

○ **Instruments addressing the vulnerabilities of migrant children**

Zimbabwe is a host country to foreign migrants and also has a large number of children who have migrated with their parents, guardians or unaccompanied. To ensure the protection of such children, the country has therefore ratified the **Convention relating to the Status of Refugees**. The Convention takes, as one of its core principles, the unity of the family and recognises the family as the natural and fundamental group unit of society. In a unanimously adopted recommendation, it emphasises the family as a right, one which is threatened for refugees. Governments are required to take the necessary measures to protect the family with a view to:

- *Maintaining the unit of the family where household heads fulfil the conditions for admission to the country;*
- *Protecting refugees who are minors, especially unaccompanied minors and girls with special reference to guardianship and adoption.*

Article 3 states that the convention should be applied without discrimination and this would include discrimination on the basis of age. Similarly article 31 states that the country may not impose penalties because of illegal entry into the country nor can a refugee be expelled without due process of law. A person may not be returned to a place where their life is threatened due to race, religion, nationality or membership of a social group or political opinion. Beyond the abovementioned clauses on the family, there is little specific mention of the rights of children.

<sup>15</sup>Preamble and Article 7.

<sup>16</sup>Article 3

<sup>17</sup>Article 16.

<sup>14</sup>Article 17.



## Other Human Rights instruments of general application relevant to children

INSTRUMENT	PROVISIONS
<b>Universal Declaration of Human Rights (UDHR)</b>	<ul style="list-style-type: none"> <li>Contains 30 articles that outline people's universal rights which cover children</li> <li>Recognises that "Motherhood and childhood are entitled to special care and assistance",</li> <li>Provides that all children, whether born in or out of wedlock, shall enjoy the same social protection".<sup>18</sup></li> </ul>
<b>International Convention on Civil and Political Rights (ICCPR)</b>	<ul style="list-style-type: none"> <li>Details the basic civil and political rights of individuals</li> <li>Includes a clause specific to children which provides for freedom from discrimination of children; their right to such measures of protection as are required by their status as minors and their right to be registered immediately after birth, and to a name and nationality.<sup>19</sup></li> </ul>
<b>International Covenant of Economic, Social and Cultural Rights (ICESCR)</b>	<ul style="list-style-type: none"> <li>ICESCR refers to special measures of protection for children</li> <li>Calls upon states to take steps to reduce the rates of stillbirth and infant mortality and for the healthy development of the child.<sup>20</sup></li> <li>Outlaws the exploitation of children,<sup>21</sup> and requires all nations to cooperate in ending world hunger.<sup>22</sup></li> </ul>
<b>African Charter on Human and Peoples' Rights 1981</b>	<ul style="list-style-type: none"> <li>Impresses upon states the need to "ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions"</li> <li>Gives people with disabilities the right to special measures of protection in keeping with their physical or moral needs".<sup>23</sup></li> </ul>

## Zimbabwe's ratification of international instruments and associated obligations

As indicated above, Zimbabwe has ratified most of the abovementioned international and regional instruments (See table below).

Through the very act of ratifying these instruments, Zimbabwe has signified its commitment to implementing the rights and obligations contained therein and that it agreed to be held accountable to the supervisory committees of these treaties for its actions or lack of action.

According to international law, Zimbabwe, as a ratifying state, is obliged to give effect to international human rights agreements in its municipal law where those agreements provide that 'effect' must be given to their provisions. The CRC and the African children's Charter state the means by which State parties are required to satisfy this basic obligation. Zimbabwe must therefore, like all other States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. All domestic legislation must be compatible with the Convention and there must be appropriate coordination of policy affecting children within and between all levels of government.

INTERNATIONAL AND REGIONAL INSTRUMENTS	DATE OF RATIFICATION
<b>CHILD RIGHTS INSTRUMENTS</b>	
<b>United Nations Convention on the Rights of the Child</b>	1990
<b>African Charter on the Rights and Welfare of the Child</b>	1995
<b>INSTRUMENTS CONTAINING SPECIAL PROTECTIONS FOR CHILDREN WITH SPECIFIC VULNERABILITIES</b>	
<b>ILO Convention on the Minimum Age of Employment 138</b>	2000
<b>ILO Convention on the Worst Form of Child Labour 182</b>	2000
<b>CRC Protocol on the involvement of Children in Armed Conflict</b>	-
<b>CRC Protocol on the Sale of Children</b>	2012a
<b>Palermo Protocol on Trafficking- Women and Children</b>	2010
<b>Convention on the Elimination of Discrimination Against Women</b>	1991a
<b>Protocol on Rights of Women in Africa</b>	2008
<b>Convention on People with Disabilities</b>	2013
<b>Convention on the Status of Refugees</b>	1981a
<b>Trafficking Convention</b>	1995a
<b>GENERAL HUMAN RIGHTS INSTRUMENTS CONTAINING PROVISIONS FOR CHILDREN</b>	
<b>International Covenant on Civil and Political Rights</b>	1991a
<b>International Covenant on Economic, Social and Cultural Rights</b>	1991
<b>African Charter on Human and Peoples' Rights</b>	1986
<b>Convention on Consent and Minimum Age of Marriage</b>	1994a

<sup>18</sup>Article 25(1) and (2).

<sup>19</sup>Article 24(1).

<sup>20</sup>Article 12(2)(a).

<sup>21</sup>Article 10.

<sup>22</sup>Article 11.

<sup>23</sup>Article 18(3) and (4).

# NATIONAL LEGAL FRAMEWORK ON CHILDREN IN ZIMBABWE

## CR Hodzi, & TC Nhenga Chakarisa

### Introduction

According to international law, a state is obliged to give effect to international human rights agreements in its municipal law where those agreements provide that 'effect' must be given to their provisions. With regards to the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), State parties must respect and ensure the rights of the child within their jurisdiction. The two instruments provide that State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized. All domestic legislation must be compatible with the Conventions and that there should be appropriate coordination of policy affecting children within and between all levels of government. Zimbabwe has incorporated some aspects of these instruments into her domestic laws – the new Constitution (Amendment No 20 of 2013) and various statutes. While some of the laws criminalize acts such as violence against children by ensuring that perpetrators are prosecuted and punished, and that victims are empowered and supported, and prevention is strengthened, a few, however, condone violence against children by making provision for corporal punishment of children in the home, schools and in the justice system.

### Connecting the International, Regional and National Legal Frameworks

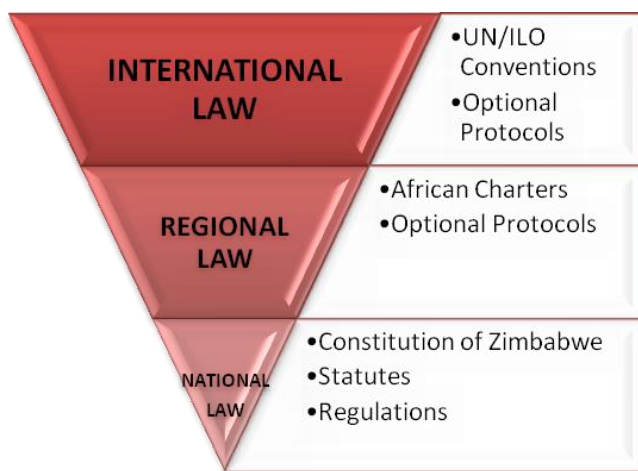


Figure 1: Linking International, Regional and National Frameworks

The ratification of both International and Regional Instruments/Conventions is supposed to cascade into domestication at national level. As stated above, Zimbabwe has ratified most of these Conventions which are critical to children's rights and has domesticated some aspects. The new Constitution has recently comprehensively domesticated many of the basic rights of the child for the first time in the country. However, children's socio-economic rights have not been adequately protected in the new Constitution.

### The Legal Framework on Children in Zimbabwe

The majority of laws and policies in Zimbabwe were drafted prior to the new Constitution. Both laws and policies have, as stated above; offered piecemeal responses towards children's issues with some of them being (claw???) drawback clauses that remove gains brought about by progressive ones. The lists below indicate both laws and policies that address the rights of the child in Zimbabwe. While some are wholly dedicated to children, others have sections which make provision for some of the rights of children. There are four main statutes (to be discussed in detail) which are solely dedicated to children's issues, and these are:

- The Children's Act
- The Child Abduction Act
- Children's Protection and Adoption Act
- Guardianship of Minors Act

NATIONAL LEGAL FRAMEWORK RELEVANT TO CHILDREN	Children's Act
	Domestic Violence Act (5:07) of 2007
	Maintenance Act (5:09)
	Matrimonial Causes Act
	Child Abduction Act (5:05)
	Guardianship of Minors Act (5:08)
	Criminal Codification and Reform Act (9:07) 2010
	Criminal Procedure and Evidence Act
	Administration of Estates Act
	Education Act Chapter
	Marriage Act Chapter
	Customary Marriages Act
	Children's Protection and Adoption Act of 2001
	Birth and Deaths Registration
	Public Health Act

Figure 2: Laws and Policies that are relevant to children's issues in Zimbabwe

The other acts have provisions that also address children's issues while also covering the rights and responsibilities of adults, for example the Maintenance Act and the Domestic Violence Act. The table below explains in greater detail the key statutory provisions from some of the main pieces of legislation which are directly relevant to children's issues. The different laws address important issues such as:

- Sexual abuse and violence
- Right to education
- Right to health
- Child marriages and pledging
- Right to identity
- Child labour

LEGISLATION	SUMMARY
Children's Act <sup>24</sup>	It protects against the ill-treatment or neglect of children and young persons. It's the primary legislation that protects the rights of children. The Act criminalises the assault, ill-treatment, neglect, abandonment of any child or young person by a parent, guardian or any other person. It deals with issues that include custody, guardianship, rape cases of children and young persons, sexual abuse, ill-treatment of minors and criminal offences perpetrated by a child or young person. It also establishes the children's court, provisions for the protection, welfare and supervision of children and juveniles as well as certain institutions and institutes for the reception and custody of children.
Guardianship of Minors Act <sup>25</sup>	The Act makes provision for the guardianship of minors where their parents are alive, divorced or dead. Custody in the Act is vested naturally in mothers, although it can also be granted to the father after taking into account the best interests of the child. The best interests of the child are paramount in all cases and in the event that it is not safe for them to leave with their parents, the high court acts as the upper guardian of the child. It denies the father of a non-marital child custody and access unless he has compelling reasons.
Child Abduction Act	It safeguards the removal of children when a custodian parent wants to leave for another country with the child. When parties fail to agree, the High Court of Zimbabwe makes that decision for the parents since it is the upper guardian of the minor child.
Children's Protection and Adoption Act <sup>26</sup>	The Act which has the same provisions as the Children's Act prohibits the involvement of children under 18 years in hazardous labour. It defines it as any work likely to interfere with their education; expose them to hazardous substances; involve underground mining; expose them to electronically-powered hand tools, cutting, or grinding blades; subject them to extreme conditions; or occur during a night shift. Child labour offenses are punishable by a fine, imprisonment of 2 years, or both.

These laws are then trickled down into policy. When it comes to policies, which will be discussed in greater detail in the preceding chapter, different pieces have been drafted by key ministries, such as the Ministry of Health and Child Care; Ministry of Primary and Secondary Education; Ministry of Public Service, Labour and Social Welfare, Ministry of Women, Gender and Community Development. These policies enable the ministries to carry out programmes that assist children.

<sup>24</sup>Children's Act [Chapter 5:06]

<sup>25</sup>Guardianship of Minors Act [Chapter 5:08]

<sup>26</sup>Children's Protection and Adoption Act (Chapter 5:06)

LEGISLATION	SUMMARY
Maintenance Act <sup>27</sup>	This law states that parents must provide for their children's financial needs, including food, school fees, clothing and so forth, and if one or both parents are not providing basic needs, the court can order them to do so. The mother of a child born out of wedlock is entitled to recover expenses from the father of the child. These include maternity, home and medical expenses, maternity clothing and clothes for the child as well as food. The expenses can only be claimed after the birth of the child.
Criminal Law (Codification and Reform) Act <sup>28</sup>	This is the main criminal law code that spells out the various types of crimes that are punishable in Zimbabwe including those against children. Among others, such crimes include sexual offences, child trafficking, pledging of females, including children, child abuse and neglect, etc. It brings together in one single statute all crimes of violence which children (and adults alike) find themselves subjected to. It codifies all the major aspects of the common law, Criminal Law and incorporates many of the crimes of violence that were previously contained in various statutes.
Education Act <sup>29</sup>	This Act promotes the fundamental right of every child to education in Zimbabwe. It prohibits discrimination in education on the basis of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender. The state has an obligation to respect that right and to fulfil it by taking all appropriate measures that include legislative, administrative, budgetary, and judicial.
Domestic Violence Act <sup>30</sup>	The legislation criminalizes domestic violence, and prescribes a punishment to perpetrators of physical or sexual abuse in the private sphere of a fine and/or imprisonment of up to ten years (Section 4(1)). It lists the types of violence children may be subjected to and that may hinder their progress and performance in school: these may be physical, verbal, economic and/or emotional. It also prohibits child marriages, a practice rampant in Zimbabwe.

<sup>27</sup>Maintenance Act (Chapter 5:09)

<sup>28</sup>Criminal Law (Codification and Reform) Act 23 of 2004; 2010

<sup>29</sup>Education Act

<sup>30</sup> Domestic Violence Act (Chapter

## Constitutional Overview

Children's rights are importantly enshrined in the Constitution of Zimbabwe, in which is the superior law of the land. They are set out in section 19 as part of national objectives, and 81 under the declaration of rights in the Constitution. Section 19 clearly sets out that the State must adopt policies and measures to ensure that in matters relating to children, the best interests of the children concerned are paramount. The state further undertakes to ensure that children enjoy family or parental care, or appropriate care when removed from the family environment, have shelter and basic nutrition, health care and social services, are protected from maltreatment, neglect or any form of abuse and have access to appropriate education and training.

Section 81 declares the various children rights available. Among others, it protects children from child labour. It compels the state to take appropriate legislative measures to protect children from exploitative labour practices and to ensure that children are not required or permitted to perform work or provide services that are inappropriate for the children's age; or place at risk the children's age, their children, education, physical or mental health or spiritual, moral and social development.

## Developments in Child Rights Post 2013

The new Constitution has declared various rights of the child and this has led to new progressive developments in both case law and setting precedence and legislation which enables enforcement. The following are the rights:

- **Child Labour**

Under child labour, the provisions of the Constitution have further been cemented by the enactment of the Labour Amendment Act Amendment no.5 of 2015. Before the Amendment anyone who was 13 years and below could not be employed in any capacity hence the minimum age for employment was 13. Those who were between 13 and 15 years of age could be employed as apprentices. The amendment has changed to put the minimum age for apprenticeship as 16 years of age. Apprenticeship is now the only form of employment that is permitted and employment for the purposes of training of children under the age of 18 is no longer permitted.

The new Amendment also increased the age for entering into a contract with the assistance of a guardian from 15 and 18 to between 16 and 18. This means that one can only enter into a contract of employment for purposes of apprenticeship with a child between the ages of 16 and 18, and such contract must be done within the presence of the minors' legal guardian. This protects children from unfair contracts. The Act is progressive and encourages children to stay in school and therefore delays their entry into formal employment.

- **Maintenance and Inheritance**

In Zimbabwe, under customary law, all children born either in or out of wedlock are treated in a non-discriminatory manner in any cases relating to their custody or guardianship. Their maintenance was not expressly addressed and therefore left a gap in terms of how children born out of wedlock were to be maintained. The civil law on the other hand, that is the Maintenance Act discussed earlier on in Table 1 above, discriminated against children when it came to inheritance.

Prior to the coming of the new Constitution, children born out of wedlock were only entitled to maintenance from their deceased father's estate and

not inheritance. This was clearly stated in the case **Zawaira Vs Nyamufukudza**<sup>31</sup> who were the only children born in the general law union, and were recognised as the only lawful intestate dependants; and the rest were only entitled to maintenance. The position of the law significantly changed after the decision of the High Court in **Bhila v Master of High Court and Others**<sup>32</sup>. In this case, the High Court Judge, Justice Hlekani Mwayera, ruled that children born outside wedlock under general law were entitled to inherit from their late father. The judgment in the Bhila case has set a precedent (a legal position) which will ensure in future that all children, whether they are born in or outside wedlock, will receive equal treatment before the law in inheritance cases.

- **Marriage and age of consent**

The laws on marriage do not adequately protect girls. The Marriages Act<sup>33</sup> allows girls aged 16 to marry while the minimum age for boys is 18. The Customary Marriages Act does not specify minimum age of marriage. The Constitution, however, stipulates that "no person may be compelled to enter marriage against their will," and calls on the state to ensure that no children are pledged into marriage. In 2014, Loveness Mudzuru and Ruvimbo Tsopodzi (former child brides) filed Constitutional Court application to have section 18 of the Customary Marriages Act<sup>34</sup> declared unconstitutional. They seek to ensure the protection of children's rights by barring children from entering into civil marriages as well as unregistered customary law unions before reaching the age of 18. The judgement in this case was reserved in January and is yet to be handed down.

Apart from the legislature that has not adequately protected girls, the judiciary has also played a role in lowering the bar of the age of consent. While the Constitution puts the age of consent at 18, courts have seemed to be very inappropriately lenient to those that have sexual intercourse with children below 16 with their consent. Sentences such as community service and fines have been common leading to the belief that our courts trivialise sexual abuse of girls where there is consent. As such some have argued that because of this, the age of consent in Zimbabwe is now effectively 12 years. Debates around this issue have however been going on in 2015 with concerted calls for stricter sentences for such perpetrators.

- **Corporal Punishment**

The new Constitution has outlawed corporal punishment on paper, although there is still a gap in implementation. Prior to its enactment, corporal punishment was permitted in the old Constitution in the home, school and justice system as a form of sentencing. The new Constitution however removed any limitations to the right to be free from torture or cruel, inhuman or degrading treatment or punishment in s 53 read together with s 86.

The debate on the unconstitutionality of corporal punishment came to a head in the case of **S v CHH 718-14** in which Justice Muremba ruled that corporal punishment was unconstitutional.

The learned judge stated that the imposition of corporal punishment on children is an example of an infringement of this basic human rights enshrined in the Constitution; and he invalidated sec 353 of the Criminal Code (which provided for corporal punishment) as being unconstitutional. Since the final determination of the unconstitutionality of an act of parliament is left to the Constitutional Court, an application against this decision was made to the court and Chief Justice Chidyausiku set aside

<sup>31</sup> Zawaira v Nyamufukudza [2011] ZWHHC 241

<sup>32</sup> Bhila v Master of High Court and Others [2015] ZWHHC 549

<sup>33</sup> Marriages Act [Chapter 5:11]

<sup>34</sup> Customary Marriages Act (Chapter 5:07)

the decision pending a full deliberation on the matter by the court after hearing arguments for the upholding of the judgment by Justice Muremba. This has had the effect of retrogression although there is a glimmer of hope since the Constitution is after all the supreme law of the land and any law that is invalid in its inconsistency.

## Challenges and Recommendations

The following are key challenges on the national legal framework on children:

- There is still a huge challenge with both the legislation and policy as they still need to be realigned with the Constitution. The delays in realignment brings confusion regarding the law; which leads to lack of uniformity and inconsistency in application of laws regarding children, including in sentencing perpetrators. Stricter sentences are imperative for child sex offenders. It cannot be acceptable that stock theft carries harsher penalties than sexual offences against children such as child marriages. It leads to children feeling discouraged to report since the offender usually comes back to the community due to light sentencing. There is therefore need to align the laws and policies to ensure judgments that support the new progressive Constitutional provisions that strongly support child rights. This requires training of legal drafters in the Ministry of Justice by child rights practitioners, such as those in civil society so that they develop laws that are properly aligned and which do not leave further gaps.
- Another obstacle is that the country is still legally pluralistic in nature. There are both codified civil law and uncoded customary law; customary law and common law. This is a serious challenge since, as stated above, the two systems are parallel and sometimes conflict and confuse. . Many communities in the rural areas rely on customary law to resolve their issues. Hence there is a need to train traditional leaders on the law and to ensure that customary law is in line with the Constitution at implementation level. Customary law, which is progressive, should also feedback into the civil system so as to ensure maximum flexibility for the children.
- The other main issue is the lack of coordinated efforts among Ministries that deal with children's issues. This results in fragmented laws and policies that do not holistically tackle the protection, prevention and participatory mechanisms. This can be addressed by having multi- sectoral efforts that take place among line ministries when new laws and policies are being passed that affect children, as was done in the Protocol on the Management of Sexual Abuse and Violence in Zimbabwe,<sup>35</sup> which will be discussed in greater detail in the policy section.
- There is also a community development challenge due to lack of awareness on the laws and policies relating to children. This makes it difficult to report certain violations against children due to limited knowledge. Awareness results in communities being empowered enough to start instituting change. There is therefore a need for advocacy and awareness raising at local level; and this can be done by civil society in coordination with the Ministry of Justice.

## Conclusion

There are numerous pieces of legislation and policies in Zimbabwe that relate to children. Many of these came into place before the new Constitution. While some have been very progressive in advancing child rights, others are regressive and have ended up negatively affecting the same children that they sought to protect. The State plays a pivotal role in the protection of children's rights and hence the new Constitution has been a welcome development which, as evidenced above, has led to progressive legislation and case law which support the rights of the child.

However, although the State has made some progress, key challenges still remain in terms of full domestication of international laws, coupled with the alignment of laws and policies with the new Constitution. Implementation also remains a challenge. Therefore concerted efforts are needed for the full realisation of children's rights in Zimbabwe.

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<sup>35</sup> Protocol on the Management of Sexual Abuse and Violence in Zimbabwe (2012)



# MONITORING THE DOMESTICATION OF INTERNATIONAL REGIONAL CHILD RIGHTS INSTRUMENTS IN ZIMBABWE

## TC Nhenga-Chakariša

### Introduction

The following table illustrates the extent to which Zimbabwe has domesticated the rights contained in the international and African regional instruments on children. Each right has been colour-coded to indicate the level of domestication that has happened. The table also cites the exact provisions in the international and regional instruments, the National Constitution and various statutes which contain the rights.

#### KEY

Undomesticated



Constitutional domestication only



Fairly Domesticated



Sufficiently Domesticated



#### RIGHT TO LIFE SURVIVAL AND DEVELOPMENT

##### International and regional law

UNCRC (1989) article 6  
ACRWC (1990) article 5

##### National Law

Constitution of Zimbabwe of 2013, Part 2, Section 48 (1)

#### RIGHT TO BIRTH REGISTRATION, NAME AND NATIONALITY

##### International and regional law

UNCRC (1989) article 7 and 8  
ACRWC (1990) article 6

##### National law

Constitution of Zimbabwe (2013) Chapter 3 section 3(c); chapter 4 section 81(b,c)  
Births and Deaths Registration Act [Cap 5:02], Part 3 section 10 and 11

#### BEST INTERESTS OF THE CHILD IS OF PARAMOUNT IMPORTANCE

##### International and regional law

UNCRC, (1989) article 3 (1); 9, 18(1), 20(1) and 21  
ACRWC, (1990) article 4; 9(2), 19(1), 20(1)(a), 24, 25(2)(a) and (3)

##### National law

Constitution of Zimbabwe (2013) chapter 2 section 19(1); chapter 4 section 81(2)  
Guardianship of Minors Act (2002) section 4(1), 2(4)

#### RIGHT TO FAMILY OR ALTERNATIVE CARE

##### International and regional law

UNCRC (1989) article 5, 8, 9, 10, 18, 20, 21 and 22(2)  
ACRWC (1990) article 18, 19, 20, 23(2), 24 and 25

##### National law

Constitution of Zimbabwe (2013) chapter 2 section 2(a); section 1(a)  
Children's Act (Chapter 5:06), 2001 part 4, 5, 7

#### RIGHT TO EQUALITY AND PROTECTION FROM NON-DISCRIMINATION

##### International and regional law

UNCRC (1989) article 2  
ACRWC (1990) article 3; 26(2) and (3)

##### National law

Constitution of Zimbabwe (2013) chapter 4 part 2 section 56(1,3)

#### RIGHT TO AN ADEQUATE STANDARD OF LIVING

##### International and regional law

UNCRC (1989) article 27  
ACRWC (1990) – no specific reference to 'adequate standard of living', but see articles 13, 14(2) and 20(1)(b)

##### National law

Maintenance Act, Part 2 section 4(1)

#### RIGHT TO DIGNITY

##### International and regional law

UNCRC (1989) article 23(1), 28(2), 37(c), 39 and 40(1)  
ACRWC (1990) article 11(5), 13(1), 17(1), 20(1)(c) and 21(1)

##### National law

Constitution of Zimbabwe, (2013) chapter 4 part 2 section 51

#### RIGHT TO SOCIAL SECURITY, INCLUDING SOCIAL GRANTS

##### International and regional law

UNCRC (1989) article 26  
ACRWC (1990); no express reference to social security but see article 20(2)

##### National law

#### RIGHT TO SOCIAL WELFARE SERVICES

##### International and regional law

UNCRC (1989) article 24(2)(c) and (e) and 27(3)  
ACRWC (1990) article 14(2)(c), (d) and (h) and 20(2)(a)

##### National law

Constitution of Zimbabwe (2013) chapter 2 section 2(b); chapter 4 section 77(b); 81(f)

#### RIGHT TO FOOD AND NUTRITION

##### International and regional law

UNCRC, (1989) article 18 and 19  
ACRWC, (1990) article 16, 20(2) and 26(3)

##### National law

Constitution of Zimbabwe (2013) Chapter 2, section 30  
Social Welfare Assistance Act, 2001, does not specify children; see section 3; section 5(b); section 6(1)(d)(e)

## RIGHT TO HEALTH AND HEALTH CARE SERVICES

### International and regional law

UNCRC (1989) article 24  
ACRWC (1990)article 14

### National law

Constitution of Zimbabwe, (2013) chapter 2, part 2 section 2(b) and 29; chapter 4, section 76 (1) and 81

## RIGHT TO HOUSING

### International and regional law

UNCRC (1989) article 27(3)  
ACRWC (1990)article 20(2)(a)

### National law

Constitution of Zimbabwe (2013) chapter 2 part 2 section 2(b),28; chapter 4 section 81

## RIGHT TO WATER AND SANITATION

### International and regional law

UNCRC (1989) article 24(2)(c) and (e )  
ACRWC (1990)article 14 (2)(c ) and (h)

### National law

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## RIGHT TO EDUCATION

### International and regional law

UNCRC (1989) article 28 and 29; 23(1)  
ACRWC (1990)article 11 and 20(2)(a)

### National law

Constitution of Zimbabwe (2013) chapter 2 section 2(d) and 27(1)(a)(2); chapter 4 section 75 (1)( a) and 81 (f)  
Children's Act (Chapter 5:06), 2001, part 3 section 10A(1)

## RIGHT TO CLEAN, UNPOLLUTED ENVIRONMENT

### International and regional law

UNCRC (1989) article 24 (2)(c ) and (e)  
ACRWC (1990)article 14 (2)(h)

### National law

Constitution of Zimbabwe (2013) chapter 4 section 73(1)(a)(b)

## RIGHT TO REST, LEISURE, RECREATION AND PLAY

### International and regional law

UNCRC (1989) article 31  
ACRWC (1990)article 12

### National law

## RIGHT TO PARTICIPATE AND THE RIGHT TO BE HEARD AND TAKEN SERIOUSLY

### International and regional law

UNCRC (1989) article 12; 9(2), 23(1) and 31(1)  
ACRWC (1990)article 4(2); 12, 13(1) and 14(2)(i)

### National law

Constitution of Zimbabwe (2013) chapter 4 section 1(a)

## RIGHT TO GUIDANCE CONSISTENT WITH THEIR EVOLVING CAPACITIES AND BEST INTERESTS

### International and regional law

UNCRC (1989) article 5 and 14(2)  
ACRWC (1990)article 9 (2) and 11(4)

### National law

## RIGHT TO INFORMATION

### International and regional law

UNCRC (1989) article 13; 9(4), 17, 24(2)(e), 28(1)(d) and 40(2)(b)(ii)  
ACRWC (1990)no express right but see articles7, 4(2), 17(2)(c )(iii) and 19(3)

### National law

Constitution of Zimbabwe (2013) chapter 4 section 61

## FREEDOM OF THOUGHT, BELIEF, CONSCIENCE, OPINION AND RELIGION

### International and regional law

UNCRC (1989) article14; 30  
ACRWC (1990)article 9; 3

### National law

Constitution of Zimbabwe (2013) chapter 4 section 60(3)

## FREEDOM OF EXPRESSION

### International and regional law

UNCRC (1989) article 13 and 12  
ACRWC (1990)article 7

### National law

Constitution of Zimbabwe (2013) chapter 4 section 61(1)

## RIGHT TO PRIVACY AND CONFIDENTIALITY

### International and regional law

UNCRC (1989) article 16; 40(2) (b)(vii)  
ACRWC (1990)article 10

### National law

Constitution of Zimbabwe (2013) chapter 4 section 57

## RIGHT TO PRACTICE OWN LANGUAGE, CULTURE AND RELIGION

### International and regional law

UNCRC (1989) article 30; 29 (1)(c )  
ACRWC (1990)article 11 (2)(c)

### National law

Constitution of Zimbabwe (2013) chapter 4 section 63

## RIGHT TO PHYSICAL AND PSYCHOLOGICAL INTEGRITY

### International and regional law

UNCRC (1989) article 19, 32, 33, 34 and 36  
ACRWC (1990)article 15, 16, 27, 28 and 29

### National law

Constitution of Zimbabwe (2013) chapter 4 section 73(1)(a)(b)

## RIGHT TO PROTECTION FROM VIOLENCE, ABUSE, MALTREATMENT, NEGLECT AND EXPLOITATION

### International and regional law

UNCRC (1989) article19, 32, 33, 34 and 36  
ACRWC (1990)article 15, 16, 27, 28 and 29

### National law

## RIGHT NOT TO BE TREATED OR PUNISHED IN A CRUEL, INHUMAN OR DEGRADING WAY

### International and regional law

UNCRC (1989) article 37(a )  
ACRWC (1990)article 16 (1) and 17(1)

### National law

Constitution of Zimbabwe (2013) chapter 2 section 2(c); chapter 4 section 81(e) Children's Act (2001) part 3 Domestic Violence Act, part 1 (3); part 2 7(c) Maintenance Act, part 2 4(1) Criminal Protection, part 14 section 247(2); part 12 section 195 (1)	Constitution of Zimbabwe (2013) chapter 4 section 53
<b>RIGHT TO PHYSICAL AND PSYCHOLOGICAL RECOVERY AND SOCIAL RE-INTEGRATION AFTER ABUSE OR INJURY</b>  <b>International and regional law</b> UNCRC (1989) article 39  <b>National law</b>	<b>RIGHT TO PROTECTION FROM HARMFUL CULTURAL PRACTICES</b>  <b>International and regional law</b> UNCRC (1989) article 24(3) ACRWC (1990) article 1 (3) and 21  <b>National law</b>
<b>RIGHT TO PROTECTION FROM EXPLOITATIVE LABOUR PRACTICES AND WORK THAT PLACES THEIR HEALTH, EDUCATION AND WELLBEING AT RISK</b>  <b>International and regional law</b> UNCRC (1989) article 32 ACRWC (1990) article 15  <b>National law</b> Constitution of Zimbabwe (2013) chapter 2 section 3(a)(b); chapter 4 section 81(e) Children' Act, 2001, part 3 10A Labour Act, part 4, section 11(1); section 2; section 3 and section 4	<b>RIGHT TO PROTECTION FROM NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES</b>  <b>International and regional law</b> UNCRC, (1989) article 33 ACRWC, (1990) article 28  <b>National law</b> Children' Act, 2001, part 8, section 78
<b>SPECIAL PROTECTION FOR CHILDREN WITH DISABILITIES</b>  <b>International and regional law</b> UNCRC (1989) article 23 ACRWC (1990) article 13  <b>National law</b> Constitution of Zimbabwe (2013) does not specify children section 22; section 83(c)(d)(e)(f) Disabled Person's Act, 2000 section 3 (2)(c); section 5(1)(b) and section 8 Social Welfare Assistance Act, 2001 section 6(b)	<b>SPECIAL PROTECTION FOR CHILDREN WITH CHRONIC ILLNESSES</b>  <b>International and regional law</b>   <b>National law</b>  <i>*Note: This is an area that is yet to be provided for at international, regional and national levels.</i>
<b>RIGHTS OF REFUGEE CHILDREN AND UNACCOMPANIED FOREIGN CHILDREN</b>  <b>International and regional law</b> UNCRC (1989) article 22 ACRWC (1990) article 23  <b>National law</b>	<b>RIGHT NOT TO BE USED IN ARMED CONFLICT AND TO BE PROTECTED IN TIMES OF ARMED CONFLICT</b>  <b>International and regional law</b> UNCRC (1989) article 38 ACRWC (1990) article 22  <b>National law</b> Constitution of Zimbabwe (2013) chapter 2 section 3(a)(b); chapter 4 section 81(g)
<b>RIGHT OF ACCESS TO COURTS</b>  <b>International and regional law</b> UNCRC (1989) article 12(2) and 40(2)(b)(iii)  <b>National law</b> Constitution of Zimbabwe (2013) chapter 4 section 69(3) Children's Act, 2001 part 2	<b>RIGHT TO SPECIAL PROTECTION WITHIN THE CRIMINAL JUSTICE SYSTEM FOR CHILDREN IN CONFLICT WITH THE LAW</b>  <b>International and regional law</b> UNCRC (1989) article 37 and 40 ACRWC (1990) article 17  <b>National law</b> Constitution of Zimbabwe (2013) chapter 4 section 81(1)(i) and (3) Children's Act, 2001 Part 2; part 4 section 19 and 20 Criminal Procedure Act, part 18 c section 351/352; part 9 section 135 (1)

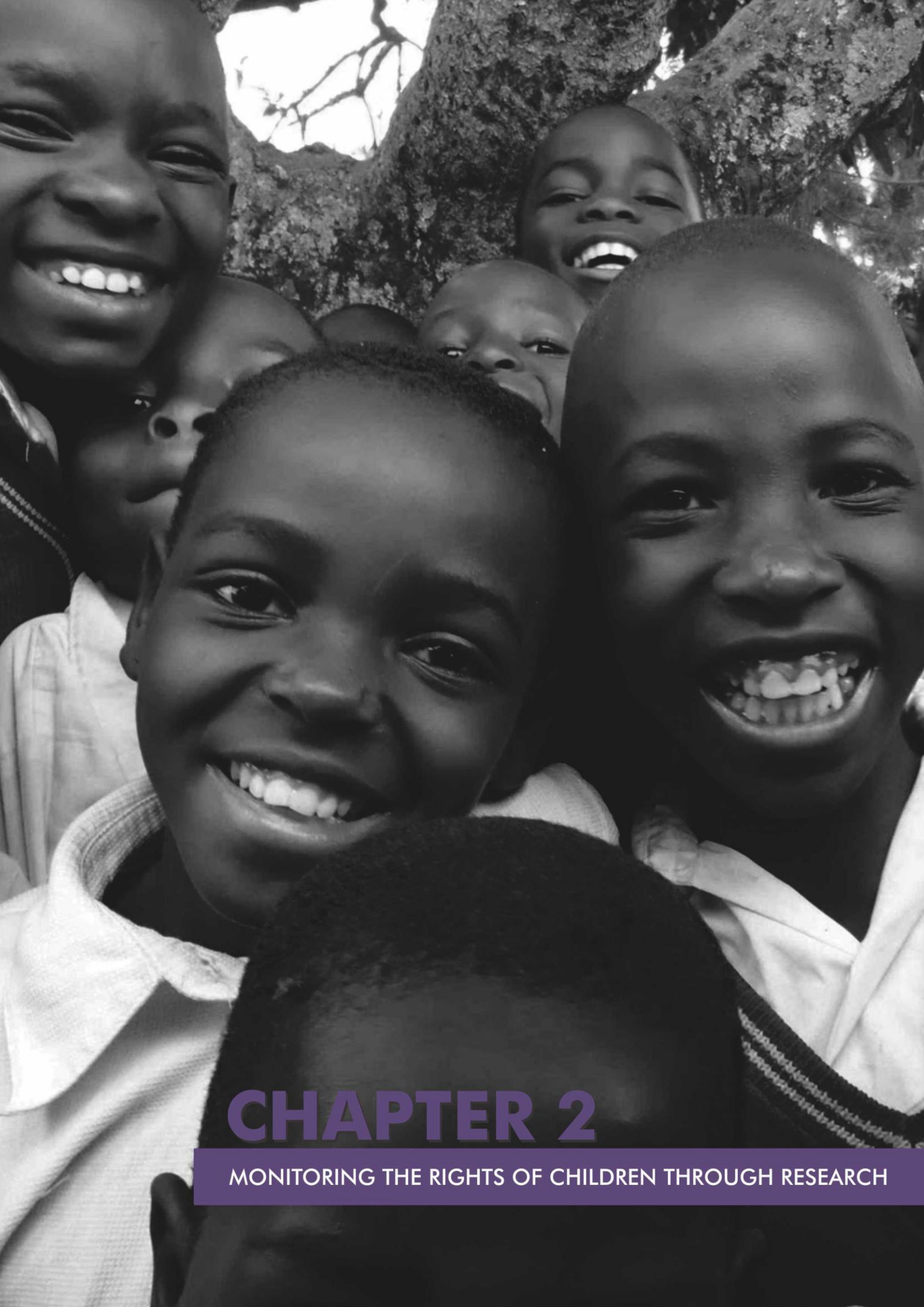
### Summary

The table summarises the levels of domestication of the rights as contained in international and regional instruments:

#### LEVELS OF DOMESTICATION

Undomesticated	10	Constitutional incorporation only	16	Fairly Domesticated in constitution and statutes	10	Sufficiently Domesticated in Constitution and Statutes	2
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## CHAPTER 2

MONITORING THE RIGHTS OF CHILDREN THROUGH RESEARCH

# **USING EVIDENCE BASED RESEARCH TO MONITOR CHILD RIGHTS IN ZIMBABWE**

**EK Musvosvi-Chandaengerwa**

It is evident that Africa as a whole and Zimbabwe in particular have witnessed, and continue to witness, rapid socio-economic changes, epidemics, food insecurity and health-care provision challenges which are increasingly affecting children. These changes have also been associated with changes in policy, legal and budgetary responses and overall social provisions for children. Although globally there has also been an increased focus on child rights issues, there is a general upsurge of problems in society, such as violence against children, poverty, stunting and challenges in children's access to health care and social services. In response to the urgency of child rights violations and exclusions, countries have thus begun presenting strategies intended to protect children, increase their participation in matters that affect them, address child hunger, violence, disease and malnutrition. Hence the growing need for evidence-based research on emerging, critical social problems due to overwhelming levels of child poverty, increasing deprivations, child rights violations and exclusion of children.

The research-based commentary in this section is therefore critical and timely as it represents one of the responses to the increasingly precarious situation of children in the country and region. Evidence based context specific research on children is essential to inform country responses to the situation of children. The papers therefore relate to the future direction of child-sensitive social policy in Zimbabwe and the region. This is a critical initiative at a stage where research has shown the contradictory and complex policy formulation context in Zimbabwe (Maphosa et al, 2007). The Zimbabwean context is characterized by laws and policies which are long overdue for alignment with the new Constitution of Zimbabwe (2013); yet also the collaboration of government with developmental agencies in providing for social services for children. There is increasing visibility of NGOs and civil society as key actors in the provision of children's rights; the growing challenges of coordinating child protection structures, policies and provisions. Such a context therefore requires continuous evidence from research that may be used to monitor and evaluate the national progress of Zimbabwe towards children's rights and overall developmental goals.

Most of the research in this publication was conducted by teams allocated funding on a competitive basis under the CSSP Small Grants Research Initiative. One of these research teams focused on the challenges and current interventions available in addressing the problematic access to birth registration services and child protection in the Bindura District, in Mashonaland Central Province.

Another team examined the "Perceived risks of social-media on children", basing their research on four schools in the capital city of Harare. A third team explored the topic on disciplining of children; the law and the practical alternatives available in Zimbabwe on children. The last CSSP funded research team looked at the realities of "child prostitution" and child trafficking in the border towns of Beitbridge and Plumtree in Zimbabwe.

Apart from papers based on actual fieldwork conducted on children in Zimbabwe, there are also papers that are desk top reviews and critical analysis on the progress made towards fulfilling child rights in Zimbabwe. Two of these papers utilize policy and legal analysis from the international level to assessing the national progress of Zimbabwe in the domestication of child rights instruments. Another article is research on the legal age limits used in Zimbabwe, so as to come up with a legal age guide for all stakeholders engaged in the policy making process for children in Zimbabwe.

# STRENGTHENING OUR LAW ON CHILD SEXUAL ABUSE

G Feltoe

## Introduction

It is difficult to conceive of a worse form of depravity than the conduct of a father who rapes his baby girl or a person in charge of an orphanage who sodomises a young boy in his care or a Gumbura-like pastor who distorts religion to manipulate and sexually groom his young female parishioner into having sexual relations with him.

Yet on almost a daily basis we read about such outrages in our newspapers, with the offenders often being the very persons who are supposed to care for and protect the children. The girl child has been the primary target of these sexual predators but paedophiles have also sexually attacked the boy child.

Sexual abuse of children is a terrible social evil. It blights the lives of the child victims and debases our society. It has long-term devastating effects on children. Victims often feel significant distress and display a wide range of psychological symptoms, both short and long-term. They may feel powerless, ashamed, and distrustful of others. The abuse may disrupt victims' development and increase the likelihood that they will experience other sexual assaults in the future or become abusers themselves. Sexual abuse can result in HIV infection and other medical problems. Girls may become pregnant with all the health risks arising from early pregnancy and the social consequences for young girls who give birth.

Children are especially vulnerable to sexual abuse and exploitation and we need to take all possible steps to protect children against sexual predators who prey upon them. Under our Constitution every child the right to be protected against sexual exploitation<sup>36</sup> and the State is obliged to adopt reasonable measures to ensure that children are protected against all forms of abuse.<sup>37</sup> The Constitution defines "a child" as a boy or a girl under the age of 18 years.<sup>38</sup>

Zimbabwe has also ratified various international conventions which the State to take all possible measure to protect children against child sexual exploitation and abuse. These include the United Nations Convention on the Rights of the Child<sup>39</sup> and the African Charter on the Rights and Welfare of the Child.<sup>40</sup>

In Zimbabwe there has been an alarming increase in the number of reported cases of child sexual abuse.<sup>41</sup> Economic decline has undermined family structures and conditions of poverty have made children more exposed to sexual abuse. Certain practices that are occurring in cultural

society and amongst certain religious groups have also contributed to the high rate of child sexual abuse, especially the practice of child marriage which UNICEF has said "represents perhaps the most prevalent form of sexual abuse and exploitation of girls."

Our law on sexual abuse certainly needs to be fortified and child sex abusers must be severely punished. But we must also address the social and economic conditions and the practices that are leading to a high rate of child sexual abuse in our country. The law alone cannot stop child sexual abuse; we also need to deal with its underlying social causes.

## The main issues

This paper will do the following:

- Suggest ways to strengthen the sexual offences needed to combat child sexual abuse;
- Comment upon the adequacy of the punishments for existing offences;
- Examine the much-debated issue of the age of consent in respect of sexual crimes;
- Propose the creation of new specific offences to deal with the worst types of child exploitation and abuse, offences that should attract very harsh penalties;
- Suggest that we make it compulsory for persons having knowledge of child abuse to report such abuse to the authorities;
- Emphasise the need for vigorous detection and enforcement of these laws, using child-friendly investigation and trial techniques, and utilising DNA evidence;
- Recommend that we establish a register of sex offenders to allow the monitoring of such offenders after their release from custody;
- Allude to social and cultural practices that can lead to child sexual abuse.

## The current law - The two-stage system

Before we can propose changes to the law, we need to know what the current law says. Our law presently has a two-stage system for dealing with sexual abuse in which, essentially, it makes a distinction between rape and what is commonly referred to as "statutory rape".

### *Rape, aggravated indecent assault and indecent assault*

Where the victim did not consent to the sexual act the perpetrator will be charged with crimes of rape<sup>42</sup>, aggravated indecent assault,<sup>43</sup> or indecent

<sup>36</sup>Section 81

<sup>37</sup>Section 19

<sup>38</sup>Section 81(1) of the Constitution

<sup>39</sup>Article 19

<sup>40</sup>Article 27

<sup>41</sup>Hidden in plain sight: Child sexual abuse in Zimbabwe  
[http://www.unicef.org/zimbabwe/resources\\_15420.htm](http://www.unicef.org/zimbabwe/resources_15420.htm)

<sup>42</sup>Section 65 of the Criminal Law Codification and Reform Act [Chapter 9:23]

<sup>43</sup>Section 66 of the Criminal Law Codification and Reform Act [Chapter 9:23]

assault. Consent will be absent if the perpetrator uses force to overpower a resisting victim or uses threats of violence, coercion or drugs to obtain the submission of the victim.<sup>44</sup>

- (i) Rape involves sexual intercourse by a male with female.
- (ii) Aggravated indecent assault consists of a penetrative sex act, other than sexual intercourse, with a girl, or a penetrative sex act with a boy, such as where a male sodomises a boy or a female forces a boy to have sexual intercourse with her.
- (iii) Indecent assault involved indecent touching of the victim.

For the purposes of all these crimes the law has laid down that a child under 12 is irrefutably incapable of consenting to sexual activity.<sup>45</sup> Thus, for instance, if a man has sexual relations with a girl under the age of 12 years, he is automatically guilty of rape. The maximum sentence for rape and aggravated indecent assault is life imprisonment and for indecent assault it is imprisonment for 2 years.

### Statutory rape

There is a separate crime commonly known as “statutory rape”, also called “defilement” in some countries. This crime<sup>46</sup> seeks to protect children between 12 and 15. It considers that these children are too immature to make informed decisions about their sexual behaviour and therefore they must be given protection against sexual exploitation. The law therefore provides that any person who engages in sexual activity with a willing child in this age group is guilty of this crime and provides that the consent of the child is no defence to this charge.

However, the offence of statutory rape is not committed if a person has sexual intercourse with a person under 16 to whom the person is married. This in effect amounts to a condonation of child marriages.<sup>47</sup> The maximum sentence for this offence is imprisonment for 10 years.

### The position in other countries

This two-tier approach is followed in many countries but the age group covered by these separate crimes varies from country to country. For instance, Britain has set 13 as the age below which a child is deemed to lack the capacity to consent. In Uganda the crime of defilement protects girls up to the age of 18.

Additionally, in some countries the penalties for statutory rape or defilement are far more severe than in Zimbabwe. For example, the sentence for child defilement in Zambia is a minimum term of 15 years imprisonment and a maximum sentence of life imprisonment.<sup>48</sup> In Uganda, the penalty is even more severe as the death sentence<sup>49</sup> may be imposed for defilement of a girl under the age of 18.

<sup>44</sup>Section 67 of the Criminal Law Codification and Reform Act [Chapter 9:23]. Rape can also be committed if the accused deceives a girl into believing that what is taking place is something other than sexual intercourse.

<sup>45</sup>There is in fact an inconsistency in the Criminal Law Codification and Reform Act relating to the age of consent. Section 64 provides that the crimes of rape, aggravated indecent assault or indecent assault are committed if the victim is of or under the age of 12 whereas section 70 says that these crimes are committed if the victim is below the age of 12.

<sup>46</sup>Section 70 of the Criminal Law Codification and Reform Act [Chapter 9:23]

<sup>47</sup>Section 70(1) of the Criminal Law Codification and Reform Act [Chapter 9:23] makes it an offence to have extra-marital sexual intercourse with a young person.

<sup>48</sup>Section 138 of the Penal Code of Zambia [Chapter 87]

<sup>49</sup>Section 129 of the Penal Code of Uganda [Chapter 120]

### Sentencing for rape and aggravated indecent assault

The most serious sexual offences that can be committed against children are rape and aggravated indecent assault. The sentence for rape or aggravated indecent assault upon a girl or a boy must fully reflect the depravity and seriousness of the crime. In a series of cases, our courts have laid down that a person who rapes a young girl must be sentenced to imprisonment for a period of at least 10 to 15 years. In one case in Bulawayo, a child of 3 years was raped by a man in whose care the child was left and the child was infected with syphilis. The man was sentenced to an effective sentence of 15 years and the appeal court commented that the sentence was on the lenient side.<sup>50</sup> In another case, a 45-year-old father who raped his 3-year-old daughter was sentenced to 20 years in prison.

Long prison terms will always be imposed for rape and aggravated indecent assault; no court would ever impose a suspended sentence or a sentence of community service for these crimes. Even longer prison terms are appropriate in situations such as where a father rapes his very young daughter.

Vice-President Mhangagwa has come out in favour of minimum mandatory sentences for rape but has said that such sentences should not be applicable where there are special circumstances. The alternative to imposing a mandatory sentence would be to establish clear sentencing guidelines to ensure that severe sentences are imposed for rape and aggravated indecent assault.

The First Lady has even suggested that we should consider castrating rapists. It is of interest to note that in some countries such as Poland, South Korea and Russia chemical castration is mandatory for sex offenders and in countries such as Britain sex offenders, particularly repeat offenders, can volunteer to undergo chemical castration. Chemical castration involves an offender taking a course of drugs that will drastically decrease the testosterone levels to reduce their sex drive.

### Sentencing for statutory rape or defilement

The maximum sentence for statutory rape is imprisonment for up to 10 years. It is submitted that the maximum sentence for this offence should be increased to be able to punish more severely the worst forms of sexual exploitation. The problem of sentencing in cases of statutory rape is that it covers a range of situations which vary in seriousness. The offence covers both the following situations—

- (i) A 60 year old man persuades a 13 year old girl to have sex with him by offering her money or a gift;
- (ii) A boy of 17 and a girl of 15 fall in love and they mutually agree to have sexual relations.

Thus the courts take into account various factors when assessing the seriousness of the case in question.<sup>51</sup> The courts have treated the matter as less serious where, for instance, the girl who is nearly 16 who is in love with a boy of 17 agreed to have sexual relations with the boy. On the other hand, it will impose a far more serious punishment where the girl is only just above the age of consent (currently 12) and the male is very much older than her and he enticed her to have sexual relations with him.

Community service is never appropriate for the first case, but the courts have said it may sometimes be appropriate in the second type of case.

<sup>50</sup>*S v Mpande* HB-43-11

<sup>51</sup>See cases such as *SvNare*1983 (2) ZLR 135 (H); *SvMutowo*1997 (1) ZLR 87 (H); *S v Tshuma* HB-70-13



There are thus a number of court cases where community service has been imposed in situations similar to the second case.<sup>52</sup>

Where both the parties who are involved in voluntary sexual activity are children under the age of 16, the question arises as to whether it is appropriate to criminalise these teenagers. The General Laws Amendment Bill, 2015<sup>53</sup> provides that if both the parties involved are over 12 but below 16 neither party will be charged with this offence unless a probation officer reports that it is appropriate to charge one of them with the offence, obviously the older of the two. South Africa has a different approach to this matter and recently amended its legislation on sexual offences to provide that if both parties are children they are not criminally liable.

## Age of consent in Zimbabwe

It has been strongly argued that the age of consent for the purposes of the offences of rape and aggravated indecent assault is far too low set as it is presently at 12 years of age.

### Proposal 1

One proposal is to raise minimum age of consent from 12 to 14. Already under the Criminal Law Code there is a rebuttable presumption that a girl between 12 and 14 does not have the capacity to consent to sexual activity.<sup>54</sup> This rebuttable presumption could be made an irrebuttable presumption. In addition the present age of 16 could be raised to 18.

### Proposal 2

Another proposal is to that the age of consent should simply be set at 18. The proponents of this approach argue that this is appropriate because, in terms of the Constitution, persons under 18 are children and the Constitution says children have to be protected against sexual exploitation or any form of abuse.<sup>55</sup> This was the approach strongly favoured by participants at recent workshops dealing with the alignment of the Children's Act with the Constitution.

It would obviously be possible to adopt this approach but we need to be aware of its legal implications. The legal consequence of raising the age of consent to 18 would be that any person who engages in sexual activity with a girl or boy below 18 would automatically be guilty of the crime of rape or aggravated indecent assault as the law would have deemed a child under 18 to be irrefutably incapable of giving consent to the sexual activity.

This would mean that the criminal offence of statutory rape would fall away as all cases of sexual activity with children under 18 would be encompassed in the composite offences of rape or aggravated indecent assault.

However, for the purposes of punishment, the courts would still need to distinguish between different types of cases. For instance, there is a considerable difference in seriousness between a case in which a 40-year-old man brutally assaults and violently rapes a girl of 13, and a case in which a 19-year-old male has sexual intercourse with a girl of 17 who is a willing party. The latter situation falls more into the category of teenage

sexual experimentation but the maximum sentence of life imprisonment for this case may lead to a disproportionately high sentence being imposed in this type of case.

The differentiation between these cases for the purposes of punishment would be more difficult if we introduce mandatory minimum sentences for rape, even if leeway is given not to impose the mandatory sentence where there are special circumstances. The desirability of sending a 19-year-old to prison for a long time for what he has done needs to be considered.

## Specific crimes on sexual exploitation<sup>56</sup>

One way of approaching the problem of sexual exploitation could be to create separate crimes to deal with most serious forms of sexual predation and to provide extremely severe penalties for these offences.<sup>57</sup> In countries like South Africa and England they have such separate offences.

The types of offences which we need to incorporate in our law include the following—

- (i) A specific offence to deal with cases where a person who induces or influences a child to agree to engage in the sexual act by paying or promising to pay the child money or provide the child with some other gift or reward or benefit.<sup>58</sup> This is the archetypal “sugar daddy” situation.
- (ii) The offence of sexual grooming of a child, which offence will punish a paedophile who uses the Internet or other communication methods to befriend a child and entice or persuade a child to engage in a sexual act with him.
- (iii) A specific offence to deal with the situation where a person in a position of authority or trust has consensual sexual activity with a person in his or her care, such as where a teacher engages in sexual activity with his or her pupil.
- (iv) The offence of causing a child to become a prostitute;<sup>59</sup> (this is currently an offence but the maximum punishment is inadequate and does not deal comprehensively with this matter).
- (v) The offence of involving a child in the production of child pornography.
- (vi) The offence of producing and distributing child pornography material.

As regards trafficking in children for the purposes of engaging a child in prostitution or in the production of child pornography, the current law in this regard is already strong. Under the Trafficking in Persons Act<sup>60</sup> the offence of trafficking includes trafficking for the purposes of prostitution or sexual exploitation. In terms of section 3(3) of the Act it is an aggravating circumstance that the person being trafficked is a child and where the offence is committed in aggravating circumstances and in terms of section

<sup>52</sup> See, for instance, *S v Tirivanhu* HH 219-2010; *S v S v Matsiga* HH 227-2011; *S v Ginandi*-HB 55-2012; *S v Everson* HH-461-2012. However, in *S v Dlodlo and Ors* HB-124-2006 the court severely criticised the trial court for sentencing the accused, aged 20, to perform community service at the same school where he had had illegal sexual relations with a 14-year-old girl.

<sup>53</sup> Part XX Item 12.

<sup>54</sup> Section 64(2) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]

<sup>55</sup> Section 81(1)(e) of the Constitution

<sup>56</sup> I wish to acknowledge that much of what follows on sexual offences is based on ongoing research which I am conducting for the Harare Office of United Nations Women. This research is ongoing and the intention is to develop draft legislation to deal with sexual offences against both adults and children.

<sup>57</sup> South African Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. No. 32 of 2007 and English Sexual Offences Act, 2003 (England).

<sup>58</sup> This offence is to be found in both the South African and English legislation on sexual offences. See Section 17(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32, 2007 (South Africa) and section 47 of the

<sup>59</sup> It is an offence for a parent or guardian to allow a child to be employed as a prostitute but this offence attracts only a maximum sentence of imprisonment for 10 years. See section 87 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]

<sup>60</sup> [Chapter 9:25]

2(2) the offender is liable to imprisonment for life or any definite period of not less than ten years.

### Persons in position of authority over the child

If the distinction between rape and statutory rape is to remain, the current law on rape or aggravated indecent assault in relation to child victims could be strengthened by creating a presumption that consent is absent whenever the person charged stands in a position of trust or authority in relation to the child. In such situations the child would usually be inhibited from indicating his or her unwillingness or resistance to the sexual act.

"A position of authority or trust" would include the following relationships—

- (i) a parent, step parent or a foster parent, and a child;
- (ii) a school headmaster, headmistress or a teacher, and a child pupil;
- (iii) a head or staff member in a children's home, and a child in the home;
- (iv) a member of staff of a hospital and a child patient;
- (v) a traditional healer and a child patient;
- (vi) a minister of religion and a child parishioner.

### Compulsory reporting of sex abuse

Child abuse is often hidden away within the home and, because of this, many cases go undetected. We need to take all possible steps to uncover cases of abuse and protect the abused children. Children themselves must continue to be educated on their rights and be encouraged to come forward to report abuses to the authorities. Organisations such as Childline provide a free counselling service for distressed children.<sup>61</sup>

We also need to adopt measures to increase the reporting of child abuse. We should adopt measures similar to those in South Africa<sup>62</sup> where it is a criminal offence for a person who has direct knowledge of the occurrence of abuse not to report this to the authorities. Additionally, persons such as doctors and nurses who have reasonable grounds for believing that child sexual abuse is taking place must report this to the authorities. Similarly, school teachers should be trained about the behavioural warning signs of child abuse so that they can take appropriate action when they see these signs.

The law should provide that any person who makes a report of child sexual abuse in good faith on reasonable grounds must be exempt from any civil or criminal liability.

### Improving conviction rates in child sex abuse cases

We need to maximise conviction rates in child sexual abuse cases. Allegations of child sexual abuse need to be carefully and sensitively investigated and the vulnerable witness provisions must be used when offenders are being tried. The use of DNA evidence would greatly help in the identification and conviction of culprits, as well as exonerating the innocent. We need to have the capacity within Zimbabwe to carry out DNA testing in such cases and we also need to have in place legislative provisions that will regulate the extraction, preservation and production in court of such evidence. There are some provision on the production of

DNA evidence in the Criminal Procedure and Evidence Amendment Bill that has not yet been passed by Parliament.<sup>63</sup>

### National register of sex offenders

A national register of sex offenders should be established, which will contain details of all sex offenders against children. This register will be used to monitor sex offenders upon release from prison to try to prevent them from re-offending. The register should also be used ensure that child sex offenders are not employed in any institutions where there are children, such as schools. Institutions in which children are housed should be obliged to check in the register to ensure that they do not employ child abusers.

### Practices that can lead to child sexual abuse

#### *Child marriages as form of child sexual abuse*

Zimbabwe has a high rate of child marriages.<sup>64</sup> Both in traditional society and amongst some religious sects, such as in the Apostolic faith, girls get married at a very young age, often to much older men. The young girls are frequently forced to enter into these marriages, although the law criminalises forced marriage and pledging in marriage.

After such marriages, the girls will be under pressure to produce children although pregnancy at a young age carries considerable health risks. The pregnant adolescent is at increased risk of pregnancy complications such as eclampsia<sup>65</sup>, premature labour, prolonged labour, obstructed labour, vaginal fistula<sup>66</sup>, anaemia, and death.<sup>67</sup> The married young girls are unlikely to be able to continue with their education and, without education, they may be condemned to a life of poverty and subjugation.

No minimum age is set for marriages under the Customary Marriages Act<sup>68</sup> whereas under the Marriage Act girls under the age of 16 cannot get married without the written permission of the Minister of Justice.<sup>69</sup> Poor parents, who are unable to support all their children, often marry off their daughters as soon as possible in order to relieve themselves of the burden of maintaining them and also to receive the bride price for their daughters.

The Constitution does not directly prohibit child marriages but it does provide that the State must take appropriate steps to ensure that marriages are only entered into with the free and full consent of the

<sup>63</sup> Criminal Procedure and Evidence Bill HB 2 of 2015. Clause 14 inserting a new section 41B.

<sup>64</sup> UNICEF has pointed out that according to the 2014 Multiple Indicator Cluster Survey, 32,8 percent of women aged between 20 and 49 reported that they were married before they were 18 while 24,5 percent of girls between 15 and 19 years are currently married. According to a 2012 survey by the United Nations Population Fund, the country's prevalence of child marriages stood at 31% and Zimbabwe was among 41 nations with the highest rates of child marriages. The Zimbabwe Demographic Health Survey (2010-2011) found that 33 percent of women aged 20-49 were married before reaching 18 years of age.

<sup>65</sup> A condition in which one or more convulsions occur in a pregnant woman suffering from high blood pressure, often followed by coma and posing a threat to the health of mother and baby.

<sup>66</sup> A medical condition in which a fistula (hole) develops between either the rectum and vagina or between the bladder and vagina after severe or failed childbirth, when adequate medical care is not available

<sup>67</sup> For the pregnant adolescent under 15 years of age, these risks increase substantially. The younger the mother is, the greater the risk to her and her baby. The pregnant adolescent faces a high risk of "immature uterine muscles and mucous membranes that pose serious danger and a high risk of a ruptured uterus in cases of prolonged labour". [UNFPA]. There is also a greater risk of premature birth, low birth weight, health problems and infant death.

<sup>68</sup> [Chapter 7:05]

<sup>69</sup> [Chapter 5:11] Section 22

<sup>61</sup> See [www.childline.org.zw](http://www.childline.org.zw)

<sup>62</sup> See section 54 of the South African Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. No. 32 of 2007

intending spouses to ensure that children are not pledged in marriage.<sup>70</sup> It also gives every child the right to be protected against sexual exploitation<sup>71</sup> and, undoubtedly, child marriage is a form of sexual exploitation and abuse.

The Constitution further provides that youths must be protected by the State against harmful cultural practices<sup>72</sup> and that all laws, customs, traditions and cultural practices that infringe on the constitutional rights of women are void to the extent of the infringement.<sup>73</sup> It is a criminal offence to force a girl child to marry against her will and it is a criminal offence to pledge in marriage a girl under 18.<sup>74</sup>

There is case presently before the Constitutional Court challenging the constitutionality of child marriages, namely *Loveness Mudzuru and Anor v The Minister of Justice, Legal and Parliament Affairs & Ors* Constitutional Court of Zimbabwe Case Number 7 of 2014.

There is increasing pressure for child marriage to be prohibited. Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides that State Parties must enact appropriate national legislative measures to set the minimum age for marriage for women at 18 years. SADC is in the process of drawing up a model law that will outlaw child marriages.

Recently the Minister of Women Affairs, Gender and Community Development launched a campaign to end child marriages.<sup>75</sup> President Mugabe addressing child parliamentarians said that child marriages caused irreparable damage to girls and denied them the right to personal development such as through education. He said that government was considering aligning our laws relating to marriage to forbid marriage to a person under 18.<sup>76</sup> The President of the Zimbabwe National Chiefs Council, Fortune Charumbira, said as advocates of cultural heritage, chiefs have noted with concern the increasing cases of child marriages in Zimbabwe's eight provinces. He said that the council would take a leading role in interventions aimed at ending early marriages.<sup>77</sup>

If finally child marriages are outlawed we will need to embark on an extensive public awareness campaign to ensure that everyone is made aware of the new law and the reasons for it. This awareness campaign should involve government agencies, non-governmental organizations traditional leaders and heads of religious institutions.

### Other customary practices

The Constitution provides that any customary practices that violate fundamental rights are void.<sup>78</sup>

For instance, the Domestic Violence Act<sup>79</sup> already has provisions criminalising the following customary practices:

- sexual intercourse between fathers-in-law and newly married daughters-in-law;
- forced virginity testing;
- female circumcision.

## Conclusions

We have an obligation to do all in our power to protect our children against sexual predators. Our criminal laws dealing with the evil of child abuse must be strengthened, and these laws must be rigorously enforced. Convicted offenders must be incarcerated for long periods both to keep them away from children and to deter other would-be offenders from committing these dreadful crimes.

The criminal law should have specific offences to deal with the worst types of sexual exploitation of children and these offences must attract either mandatory minimum prison sentences or there must at least be clear sentencing guidelines to ensure that very severe sentences are imposed in such cases.

However, the law alone will not prevent child sexual abuse. We need also to confront the societal factors that are contributing to the upsurge in cases of child sexual abuse. A good starting point in Zimbabwe would be to set the minimum age for marriage at 18, thereby prohibiting child marriages which are a major contributor to sexual abuse of the girl child.

<sup>70</sup> Section 26

<sup>71</sup> Section 80

<sup>72</sup> Section 20. Under this section "youths" are persons between 15 and 35.

<sup>73</sup> Section 80

<sup>74</sup> Section 94 of the Criminal Law (Codification and Reform) Act makes it a criminal offence for a lawful custodian to enter into an arrangement promising in marriage to a man a girl under 18 and the same section makes it an offence by force or intimidation to compel a female person to enter into a marriage against her will. Section 4 read with section 3 of the Domestic Violence Act also makes it a criminal offence to use cultural or customary rites or practices that discriminate against or degrade women to force a woman to marry.

<sup>75</sup> *The Herald* <http://www.herald.co.zw/govt-to-launch-campaign-against-child-marriages/>

<sup>76</sup> <http://www.sundaynews.co.zw/president-speaks-on-child-marriages/>

<sup>77</sup> <https://www.newsday.co.zw/2015/04/27/chiefs-castigate-child-marriages>

<sup>78</sup> Section 2 and section 80(3) explicitly provides that all customs, traditions, and cultural practices that infringe upon the rights of women conferred by this Constitution are void to the extent of the infringement.

<sup>79</sup> [Chapter 5:16] Section 3(1)(l)

# PERCEIVED RISKS OF SOCIAL MEDIA ON CHILDREN: THE CASE OF PUPILS FROM FOUR SELECTED HARARE SCHOOLS

E Mtetwa, K Nyikahadzoi, AB Matsika, N Shava, BK Chikwaiwa

## Abstract

The advent of social media brought forth mixed feelings within both academia and the mainstream society, with many hailing it for easing communication and interaction. In developing countries, like Zimbabwe, however, access to social media remains largely unsecured, leaving citizens, especially children exposed to the vagaries of social, emotional and cognitive abuse. This paper set out to examine the risks associated with the use of social media among school-going children. The paper further examined the perceptions of parents on the same issue. Using mixed methods, the paper benefited from a combination of a structured interviewer-administered questionnaire with pupils as well as focus group discussions with pupils and parents. The study revealed that social media exposes children to a variety of social, cognitive and emotional risks. These include pornography, lowered concentration during school lessons, Facebook depression and social isolation among others. Children themselves are aware of the risks associated with their use of social media; nevertheless, they continue to access various forms of gadgets, including cellular phones and tablets, through legal and illicit means, including stealing from parents. The paper also noted some positive benefits associated with children's use of social media, such as sourcing useful educational information. In view of the foregoing, the paper recommended the review of relevant legislation to be responsive to the contemporary social and technological environment. It also recommended that Government promulgate a national policy on the use of and access to social media by children.

## Introduction

Social media is computer-mediated tools that allow people to create, share or exchange information, ideas, and pictures/videos in virtual communities and networks (Kaplan and Haenlein, 2010). Social media technologies take different forms, including blogs, business networks, enterprise social networks, forums, micro-blogs, photo sharing, products/services review, social bookmarking, social gaming, social networks, video sharing and virtual worlds (Aichner and Jacob, 2015). This paper interrogates the risks associated with the use of social media by pupils from 4 selected Harare Schools. The paper is a synthesis of views from sampled pupils and their parents. Discussions with both parents and children revealed that the technology has brought a myriad of social, cognitive and emotional challenges that have an adverse effect on children.

For the purposes of this paper, social media is conceptualized as any website that allows social interaction, including but not limited to social networking sites such as Facebook, WhatsApp, Myspace, and Twitter; gaming sites and video sites such as YouTube; and blogs. Currently, the use

of social media by children in Zimbabwe is largely unsecured; and the current policy framework is inadequate to avert the risks likely to befall children.

## Background to the study

The advent of social media has elicited a variety of views from a wide spectrum of audience. In conservative societies like those in most parts of Africa (Zimbabwe included), social media has largely been viewed as a social menace bent on alienating children from parental socialization, values and control. At the same time, in most liberal societies, the same has been viewed as a progressive development meant to enable children to navigate the world and discover its social, cultural, and economic parameters at the same time encouraging self-discovery, intellectual development and greater autonomy (Nyasani, 1997). While there has been a long-standing interest in the role and impact of the media on children, the focus on technology as such and how it is used by children represent a new direction in recent academic research (Downey, 2012). However, what emerges time and again is the need for more information and more data about children's access to technology, how they use the technology available to them and what technology use means to them.

Be that as it may, it is generally acknowledged that the internet and other forms of internet-based social media have come to stay. Boyd (2014: 22) noted: "Along with planes, running water, electricity, and motorized transportation, the internet is now a fundamental fact of modern life." Social media has an influence and effect on many children and young people and has the potential to generate differing forms of need and risk. It is therefore important that social workers are aware of how these factors work and how they can have a cumulative and compound effect on child protection (Hothersall, 2010). This paper interrogates these perspectives using information collected from both parents and children in Harare.

## Statement of the problem

A growing number of children are spending much of their time interacting through Facebook, Skype, WhatsApp, Viber, Myspace, and Twitter; video sites such as YouTube. While the internet brings major benefits to children in terms of education, self-expression, and social development, its use also carries a spectrum of risks to which children are more susceptible as compared to adults. The internet has brought forth a myriad of child protection risks, including bullying, unrestricted exposure to pornographic materials, sexting, child trafficking, among other technological ills. It is in view of these risks and the policy inadequacies to address them that this study seeks to investigate and interrogate the negative effects of social media on



children.

## Methodology

This paper is a product of a mixed methods study conducted in four schools in Harare. The schools comprised two primary and two secondary schools. Using a mixed methods approach, the paper also benefited from the views and perceptions of parents on the risks associated with access to social media by their children as well as from focus group discussions with children themselves on the same issue. The two primary and two secondary schools were sampled from the lower and upper socio-economic categories, public and private owned schools. Studies on social media suggest that children start to use social media as early as primary school. To this effect, the study targeted 1000 primary and secondary pupils. From these, 248 were sampled to participate in the study. In keeping with the above age threshold, primary school pupils were sampled from grade 6 level while for secondary level sampling, it was done across all forms. Self-administered questionnaires were distributed to pupils and completed with the guidance from the research team. Self-administered questionnaires were distributed to parents of children from the respective schools. Focus group discussions were conducted with school pupils from all the schools and parents of children from one of the primary schools. Headmasters, teachers, and school development committee members from the respective schools served as key participants.

## Presentation and discussion of findings

As per the above discussion, the study's main focus was on the use of social media by school-going age children. To this effect, it became all the more important to first understand the forms of social media frequently used by children. The table below illustrates the frequently used forms of social media.

**Table 1: Distribution by social media type and mean number of followers**  
N=248

SOCIAL MEDIA PLATFORM	PROPORTION USING SOCIAL MEDIA PLATFORM	MEAN NUMBER OF FOLLOWERS/FRIENDS ON PLATFORM
Facebook	43.5%	231.67
Twitter	21.4%	51.44
Instagram	32.7%	70.91
Google+	39.1%	11.40
Kik message	3.2%	0.71
OoVoo	1.2%	0.49
Tumblr	4%	3.18
Vine	6%	1.46
Burn out	1.6%	1.42
Snapchat	10.5%	6.09
Whisper	1.6%	0.57
YikYik	1.2%	0.25
MeetMe	8%	0.20
Skout	1.6%	0.53
Skype text/call	36.3%	18.66
Tinder	1.2%	0.09
WhatsApp	84.3%	146.44
YouTube	54.4%	24.56

It is from the information presented above that this discussion on social media is largely based.

## Perceived risks associated with the use of social media

Findings of this study revealed that parents are sceptical of what they perceive to be 'unguided use of social media' by their children. Various reasons and beliefs tended to influence that state of being, with many parents intimating that social media is likely to breed disobedience among their children. (See table 2 below).

**TABLE 2: Perceived social media risks on social development**

PERCEIVED RISKS	CHILDREN N=248			PARENTS N=100		
	% Agree	% Not Sure	% Disagree	% Agree	% Not Sure	% Disagree
Developing bad habits i.e. drinking, smoking, foul language	50.5	25	24.5	67.4	15.2	15.2
Pornography which influences risky sexual behavior	65.7	19.2	15.1	84.8	4.3	8.6
Unethical content on social media negatively affects social values and norms	47.1	37.7	15.2	84.8	6.5	8.7
Anti-religious posts on social media create hatred among students of different beliefs	49.4	35	15.6	73.9	17.4	8.7
Cyber bullying causes altercation and hatred among school children	56	31.3	12.7	60.9	19.6	19.5
Students spend more time on social media at the expense of family time	63.6	21	15.5	91.3	6.5	2.2
Visiting hate and satanic sites is associated with violent behaviour among students	55.6	30.4	14.1	80.4	8.7	10.8
Social media enables students to divulge personal information to people they do not know	57.1	29.3	13.6	84.8	8.7	6.5

As per the table presented above, the use of social media was perceived by parents as posing various social risks. Of prime concern is the risk associated with children's access and exposure to pornographic material as well as to other religious and value systems without the necessary parental consent and control. This is buttressed by recent research, which indicates that there are frequent online expressions of offline behaviours, such as bullying, clique-forming, and sexual experimentation (Lenhart, 2009). Results from focus group discussions with children revealed that children are so attracted to pictures and videos of their naked intimate partners (a phenomenon referred to as 'sexting', Lenhart, 2009) to an extent that they are likely to spend much of their time on a mobile phone rather than engaging in productive tasks such as school work. Confirming the same scenario, pupils at a local high school contended that there is a group of girls from their school specializing in going for parties, stripping themselves naked and producing videos of themselves before sharing the same with other schoolmates. Pupils confirmed that such pictures 'go viral' without the notice of school authorities who are usually evaded at every turn to prevent jeopardizing "free entertainment". To worsen the situation, in the event of relationship break-ups, the boys tend to share their former lover's intimate pictures with a huge enough audience to discredit and shame the girl. This has been reported to contribute towards the school dropout rate, especially on the part of the aggrieved party who feels too embarrassed to appear in public. This finding concurs with Boyd (2014) who warned that when people are chatting and sharing photos with friends via social media, it is often hard to remember that viewers who might not be commenting might as well be watching.

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*"On one occasion, a certain girl landed herself in deep trouble that culminated in her prematurely ending her life. The issue was that people continuously sent her rude and frustrating messages to her simply because she had immersed herself in pornographic materials. As a result, people started sending her harsh messages on Facebook. This continued for a while. The problem being that on Facebook one can just post even funny material on someone else's wall. There are no restrictions at all. The girl made repeated attempts to report the matter to the Facebook Company but for some reason the company did not attend to her query. The girl unfortunately resorted to committing suicide" said a focus group participant.*

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The issue of pictures was emphasized in yet another focus group discussion with high school pupils who indicated that pictures, especially those sent in bad faith, usually attract ridicule among peers, and sometimes, if not properly handled, can result in suicide. The story box below presents an incident that was referred to in the focus group discussion.

The focus group participants also noted that even on WhatsApp one might put a picture that one likes but, incidentally, people may start passing unpleasant remarks on it, and can even go on to spreading the picture around. Inevitably, the public is likely to pass negative comments about the physical appearance of that individual. Such remarks as "look at how ugly and dark she is, ah, look at this funny girl, look at the shape of her head". The

same picture goes viral and can be viewed the world over since WhatsApp can send messages even abroad. As a result, the girl who innocently shared the nice pictures of herself ends up being known as that 'ugly girl' with the 'funny head'. This has the likely effect of degrading, demeaning and even depressing the person concerned.

The internet has provided a new medium with which people can commit inappropriate, harmful activity. The damaging activities include, but are not limited to, cyber-hacking, cyber-stalking, and other forms of harmful behaviour, including bullying (Kowalski et al, 2012).

In addition, children enjoy taking pictures, especially of bad events such as fights at school. Pupils felt this has the likely effect of tarnishing the image of the school. "The likelihood of us pupils exchanging inappropriate information is very high these days. This affects our school work. It distracts us. In addition, not everyone has the type of self-control that other people could have, let's say something dramatic was to happen here let's say a fight. If I have my cell- phone, then I take a video and it spreads all over. Now I'm tarnishing the image of the school, simply because I could not control myself, I could not just switch off my phone and keep it in my bag", remarked another focus group participant. Children themselves, therefore, see the loosely regulated use and access to social media as distractive and disruptive to important aspects of their life, such as school work.

Downey et al (2012) observed that children are likely to grow up disconnected from adults, teachers and parents alike due to social media. The negative aspects of social media, particularly during adolescence, which is one of the most critical stages in the development of emotional and cognitive schemes, is likely to have far reaching effects because of its tendency to shape and evolve into the "adult personality" (Ortega et al., 2012).

Results from focus group discussions revealed that the use of social media, especially the internet and mobile phones, motivates pupils to indulge in anti-social behaviours. These behaviours include misusing money meant for school fees by converting the same towards the procurement of mobile phones. In addition, the same need tempts children to engage in what could be construed as child labour. This is a situation where children engage in paid work in a bid to raise funds towards the purchase of a mobile phone. Given the infrastructural decay that has resulted in erratic water supplies in most of Harare's residential areas, the major undertaking is to fetch water from boreholes dotted around the high density residential areas and sell it to residents. Participants revealed that parents are not informed of these 'income generating' activities, simply because they would never approve of them. Money obtained through stealing or misrepresenting prices of household domestic requirements, such as meat and electricity tokens, is usually kept a secret to parents through banking it away in mobile phone-based bank accounts. The focus group participants noted that while boys usually resort to stealing and fetching water for sell to other residents to raise money to buy internet enabled gadgets, girls usually resort to prostitution and transactional sex. The study noted that social media has negative consequences for children as further corroborated by literature (Downey et al, 2012; Barbovschi, 2013; Boyd, 2014).

## Risks associated with cognitive and educational development

Engaging in various forms of social media is a routine activity that research has shown to benefit children and adolescents by enhancing communication, social connection, and even technical skills (Ito et al, 2008). There is currently a rift in scholarly opinion regarding the value of social media to the development of children. While some argue that it enhances intellectual development and fine-tunes a wide range of skills, others are more sceptical and are concerned that it limits social and linguistic interactions, constraints brain development by prescribing the parameters within which children operate and directly influence negative behaviours (Downey et al, 2004: 10). In the same vein, findings of this study revealed that both parents and children believed that social media has got negative cognitive and educational effects on children. For instance, 84, 8% of parents and 57, 1% of children felt that social media waste precious school time for children. While 82, 6 of parents and 51, 4% of children felt that social media had negative effects on school performance. (See table 2 below)

**TABLE 3: Perceived risks associated with cognitive development**

PERCEIVED RISKS	CHILDREN N=248			PARENTS N=100		
	% Agree	% Not Sure	% Disagree	% Agree	% Not Sure	% Disagree
Social Media is a time waster that negatively affects students' schoolwork	57.1	16.6	26.3	84.8	4.3	10.8
Chatting, sending links has become a hobby that affects academic performance	51.4	27.8	20.8	82.6	8.7	8.6
Social media is full of useless, confusing information confusing to students	26.4	33.8	40.2	45.7	21.7	32.6
Social media increases carelessness and procrastination regarding schoolwork	56.8	25.4	17.7	84.8	10.9	4.3
Social media lowers attachment to school and attention span of students when in class	58	29.1	12.8	87	8.7	4.4

From the table above, it is clear that both parents and children see social media as risky for the cognitive and educational development of children. Findings show that the majority of parents (87%) perceive social media as having the effect of lowered attachment and attention span in class. Coincidentally, this was not so much disputed by children who also felt that use of social media obstructs their attention on school and other academic tasks. Related views from a focus group discussion with school pupils indicated that the use of mobile phones poses a risk to children. The major risks being those related to loss of concentration on school work as well as conflicts arising from the need to show off. This breeds a sense of inferiority complex in those less privileged who cannot afford posh phones. This

therefore becomes a source of hatred and disunity among pupils. The end result is likely to be theft and other anti-social behaviours to keep up appearances.

In addition, the use of mobile phones has the effect of disturbing progress when it comes to learning. If a phone rings during a lesson, attention of the whole class suddenly shifts towards the phone at the expense of the lesson being conducted. More so, if a partner sends a message during a lesson, the attention of the one at the receiving end automatically diverts towards the more 'interesting affectionate' message at the expense of the educational lesson.

Other studies have, however, suggested that although social media may be a distraction from school, they are often not a distraction from learning (Boyd, 2014).

## Emotional risks associated with social media

Closely tied to cognitive and educational risks of social media are the emotional effects of the same. Findings revealed that, in a big way, the use of social media is a highly emotional process. Children tend to measure themselves against their peers in relation to social competences, beauty, intellectual abilities as well as general popularity, the sense of dignity and self-worth in society. During a focus group discussion with pupils, it was revealed that social media can be a source of emotional torture to some, especially if one has too few followers.

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*One participant remarked that “when people don’t talk to you on WhatsApp, you begin to think a lot about yourself. You begin to self-introspect. Why are people not interested in me? Is it that I am not beautiful and attractive to them? Is it that I am backwards and lack the requisite social competences and etiquette?”*

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The negative emotional effects are commonly referred to as “Facebook depression,” which is defined as depression that develops when preteens and teens spend a great deal of time on social media sites, such as Facebook, and then begin to exhibit classic symptoms of depression. Facebook Depression also includes anxiety, other psychiatric disorders, and a range of unhealthy behaviours (American Academy of paediatrics, 2011).

**TABLE 4: Perceived social media risks associated with emotional development**

PERCEIVED RISKS	CHILDREN N=248			PARENTS N=100		
	% Agree	% Not Sure	% Disagree	% Agree	% Not Sure	% Disagree
Cyber bullying makes students aggressive, violent, antisocial and depressed	52.9	30.4	16.7	73.9	15.2	10.9
Social media is addictive	59.7	20.1	20.2	78.3	10.9	10.8
Social media leads to social isolation and loneliness	46.5	34.2	19.3	63.0	19.6	17.4
Social media can be a source of information about self-harm, suicide or anorexia	50.6	33.8	15.8	63	26.1	11.9

The above table illustrates some of the emotional risks associated with unguided use of social media. From the above table, it is clear that the issue of ‘generational gap’ reigns supreme, with parents mostly concerned and sceptical about what their children do on line in the absence of parental guidance. Such social vices as violent behaviours, social isolation, and loneliness, as well as feelings of wanting to commit suicide, are all blemishes on unguided use of social media by children. Parents may find it difficult to relate to their digitally savvy youngsters online for several reasons which may include lack of technical abilities or time needed to keep pace with their children in the ever-changing internet landscape (Palfrey et al, 2010). A large part of the contemporary young generation’s social and emotional development is occurring while on the internet and on cell- phones (Hinduja et al, 2007).

The children themselves are not passive when it comes to perceiving emotional dangers associated with social media. However, unlike their parents, their risk perception is lower, which may be attributable to the parenting styles employed. To this effect, parents tend to be authoritative and paternalistic in conformity with the dictates of most African cultures. This has the likely effect of constricting any areas children might want to explore

that are independent of parental scrutiny.

It is, however, important to note that in spite of the risks associated with the use of social media discussed above, findings revealed some positive effects of the same. For instance, during a focus group discussion with children, it was remarked that social media has become a critical tool in school work-related research.

## Conclusion

In conclusion, this paper has reflected on the risks of unguided use of social media by children. The risks discussed revolve around social, cognitive, educational as well as emotional aspects. Findings have revealed that the social implications of social media relate to the promotion of socially undesirable behaviours, including exposure and use of foul language, access to pornographic material leading to sexually inappropriate behaviours, as well as the risk of negative religious and social influence. The parents did register their mistrust of social media as an agent of socialization, accusing it of fostering foreign and anti-social behaviours.

On the cognitive and educational front, the paper revealed that even though conventional wisdom has it that social media has drastically improved the learning processes of children, dangers still abound. These dangers relate to reduced time for school work, lowered attachment to schooling, carelessness and procrastination, all of which result in reduced academic and intellectual performance.

Social media have been blamed for causing unnecessary emotional torture and insecurity among children. The risks include loneliness, violent behavior, addiction and social isolation among others. However, the use of social media has some positive achievements, including its utility as a good information hub for educational purposes, as well as its potential to cultivate a sense of self-esteem.

## Recommendations

The paper recommends that Government, through the Ministries responsible for information, communication and technology, child protection, education, together with internet and telecommunications service providers, need to come up with a national policy on the use of social media by children.

Considering the evolution and widespread access and use of social media by children, Government needs to revisit the existing legislation. Such pieces of legislation include the Children's Act (Chapter 5:07), Criminal Law Codification and Reform Act (Chapter 9:23), Censorship and Entertainment Control Act (Chapter 10:04); as well as the Postal and Telecommunications Act (Chapter 12:05). This should be done with a view to extending the provisions to protect minors from the risks associated with access to social media.

The paper recommends that the Guardianship of Minors Act (Chapter 5:08) be amended to empower parents to supervise their children's use of social media by fostering an authoritative parenting style that is firm but fair.

There is need for a consultative process that includes key stakeholders, including children, parents, school authorities, internet and telecommunications providers and civil society, with a view to amending the Education Act. Such amendments should provide for the circumstances and parameters under which social media may be used for educational purposes. The amendments should clearly define use considered to be inappropriate for children.

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# BIRTH REGISTRATION IN ZIMBABWE: CHALLENGES & CURRENT INTERVENTIONS

A Chereni, T Masuka, J Chitereka, EK Musvovi-Chandaengerwa

## Abstract

This policy brief reports findings of a survey which was conducted in randomly selected areas in Bindura District to (i) establish the extent of birth registration and underlying social and economic household factors, and (ii) account for deficient birth registration. A questionnaire which themes relevant to birth registration and child protection among other issues, was administered to 105 respondents from 105 randomly selected households. Approximately 47 percent of the households had at least one child who had no birth certificate issued at birth or after. A key finding is that birth registration is intricately connected to possession of other vital documents such as national identity card, passport and death certificate. Birth registration is an integral aspect of the entire civil registrations systems. Birth registration will likely improve when the entire civil registration system improves. This means that both personal (and household) characteristics as well as structural factors are implicated in birth registration.

## Key Words

Children, incompleteness of birth registration, birth certificate, birth notification, vital registration system, Zimbabwe

## The challenge of birth registration

*Convention on the Rights of the Child (CRC) Article 7(1) provides that, "The child shall be registered immediately after birth and shall have the right to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents".*

*The Constitution of Zimbabwe, section 81(1) states, "...child has a right to a prompt provision of birth certificate".*

*According to the Birth and Deaths Registration Act, section 10, "notification and registration of the birth, still-birth or death of any person which occurs in Zimbabwe after the 20th June, 1986, shall be compulsory".*

Children's access to birth registration and a birth certificate is a right that is recognised in international and national level legislation, as shown by the quotes above. Birth registration is a fundamental right since it ensures that a child as a name, nationality and citizenship – the foundations upon which other social, economic and political rights are premised. The Multi Indicator Cluster Survey (MICS) of 2014 acknowledges that, lack of birth registration has implications on the realisation of other rights (ZIMSTATS, 2015). In the early years of the life cycle, a lack of birth registration can deny the rights to health care and education. Later in life the child's rights can be violated through entering into marriage, the labour market or be conscripted into the armed forces, before the legal age. It is further observed that in adulthood, children who grew without birth certificates can be denied access to social

protection, right to inherit property, right to vote, freedom of movement (lack of passport) and exclusion from the formal labour market.

Despite these known consequences of the lack of birth registration, a significant number of children remain unregistered, world-wide. Globally, the birth of one in four children has never been recorded.

Existing estimates suggest that over 230 million children under the age of five have never been registered (UNICEF, 2013; UNICEF, 2015). Some conservative estimates suggest that birth registration of children in Zimbabwe remains as low as 31 percent (UNICEF, 2015). In Zimbabwe, as in other countries, children under five years of age bear the brunt of incomplete registration (UNICEF, 2013). According to the Zimbabwe National Statics Agency (ZIMSTAT) (2015), only 38 per cent of children under five years of age are registered.

Whilst it indisputable that birth registration among children under five years old is significantly low, the estimations of the completeness of birth registration tend to vary from study to study. For example, the measure of the incompleteness of birth registration which includes children under the age of five years, vary from 38.8 per cent (ZIMSTAT, 2015) to 49 per cent (Factsheet, 2011). Furthermore, a few studies of birth registration have been conducted in Zimbabwe thus far, suggesting the need for more research to establish the extent of the challenge of birth registration. The need for more research cannot be overestimated. While the consequences of a lack of birth certificate are the subject of most writings on birth registration, carers' knowledge of the importance of birth registration have remained largely hidden. And so are the social and economic dynamics which underpin birth registration at the household level.

The study on which this policy brief draws set out to establish the extent of the challenge of birth registration using survey methods. Taking the household as the unit of analysis, the study sought to reveal the social and economic dynamics which underlie birth registration outcomes. From the onset, an overriding objective was to document current practice, especially the innovative solutions that has been designed in recent years to address the challenge of birth registration.

## Materials and methods used

This policy brief reports findings of a survey which targeted 105 households in Bindura District. Random sampling methods which ensure that each household has an equal chance of was used to select the households in enumeration areas (EAs) that had the highest occurrence of incomplete birth registration in Bindura, based on the MICS 2014 (ZIMSTATS, 2015). Table 1 below presents information about the EA and the number of households selected in the EA.

This section has shown that the sample included households located in areas with different land use and settlement patterns. For example, Table 1

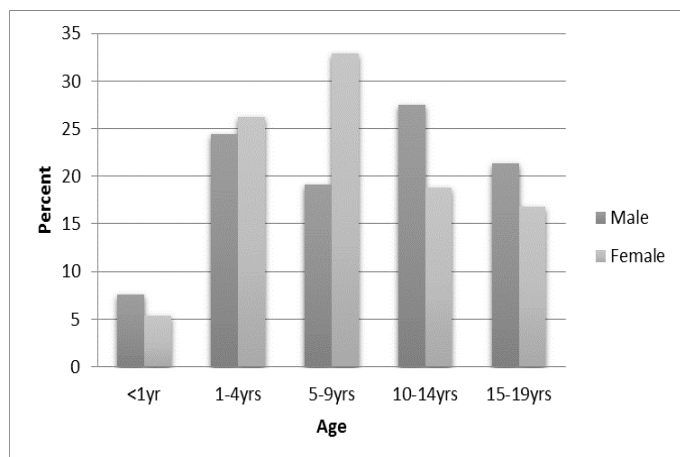


shows that households from urban and non-urban locations, farm and non-farm locations as well as mining and resettlement areas were included. The questionnaire was administered by researchers and research assistants and it explored themes relevant to birth registration and child protection, among others.

### A snapshot of outstanding work in birth registration

The study included 105 households and collected information about 270 children as shown in Figure 1 below.

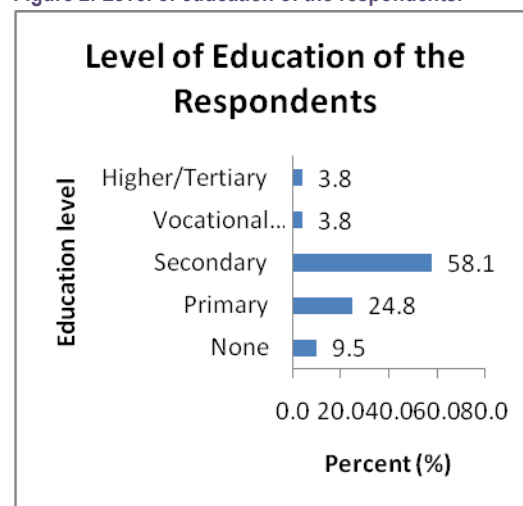
**Figure 1: Distribution of children by age and sex**



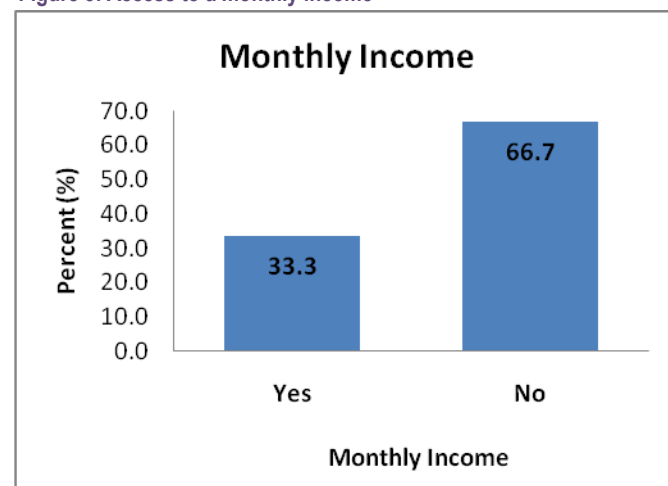
### Characteristics of Respondents

Respondents largely identified themselves as Zimbabwean nationals (96.2 per cent). Only 3.8 per cent or four households identified themselves as non-nationals. The self-identification of respondents as non-nationals was largely based on possession of a national identity card inscribed with an "A" to represent alien. Respondents were typically female (70.5 per cent of the sample), as compared to male participants (29.5 per cent). Furthermore, both male and female respondents were typically parents who provide care to children and shoulder the responsibility of acquiring birth certificates for children. As expected, the largest portion of respondents were in a marriage at the time of the survey (81.9 per cent), followed by those who were widowed (7.6 per cent) and those who never married. In terms of education, the largest number of respondents had attained secondary school education (Figure 2). As shown from Fig 3 below, approximately a third of respondents had access to a regular income.

**Figure 2: Level of education of the respondents.**



**Figure 3: Access to a monthly income**



The following section explores the link between birth registration vis-à-vis these and other characteristics and respondents and households.

### Birth registration in Zimbabwe: how big is the outstanding work?

In response to the question, "Is there any person under the age of 18 years who does not have a birth certificate", 47 per cent of the respondents answered yes. In other words, in 47 per cent of the households that were randomly selected for the study, at least one child had no birth certificate. However, one should not interpret this to mean that in the households in question, all children lacked birth certificates.

**Table 2: The percentage of households in terms of children's possession of a birth notification paper and a birth certificate**

Birth Notification issued		Registered birth and birth certificate issued	
Birth notification issued (%)	No birth notification (%)	Birth certificate issued (%)	No birth certificate issued (%)
64	36	53	47

EA	WARD	SETTLEMENT & MAJOR LAND USE CHARACTERISTICS	HOUSE HOLDS
110	08	Post-2000 resettlement area, rural, farming	15
060	10	Communal area, rural, farming	13
050	09	Urban, high-to-medium density	27
010	01	Urban, low-density, mining	25
061	04	Urban, high density	25
TOTAL NUMBER OF HOUSEHOLDS			105

The possession of birth notification papers that were issued at birth or after was higher than the figure for birth certificates. To the question, “Is there any person under the age of 18 years who does not have a birth notification issued at birth or later”, 36 per cent of respondents answered “yes”. This means that the carers possessed some of the critical documentation required to apply for a birth certificate. The findings suggests that a significant number of households (nearly half) have yet to comply with the requirement to register the birth of a child and acquire a birth certificate for every child. A focus on households that have one or more children in need of birth certificates enables us to make sense of the social and economic household dynamics which influence birth registration. For example, interrogating how households keep children in school from through primary and secondary school provides a more nuanced view of the problem of birth registration. Table 3 below shows that 21 percent of the participants each knew a child who failed to sit for Grade 7 examinations on account of a lack of a birth certificate, as shown in Table 3 below. This suggests that birth registration remains considerably incomplete for a significantly large population of children older than five years old.

**Table 3: Knowledge of children denied to the right to sit for Grade 7 exams.**

	FREQUENCY	PERCENTAGE
Yes	22	21
No	82	78
	104	100

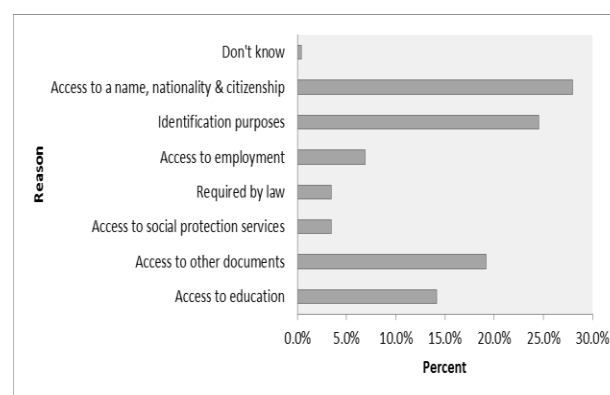
To further interrogate the social and economic household dynamics which influence birth registration, parents’ knowledge of the need for a birth certificate require a closer look.

### Carers’ knowledge of the importance of birth certificates

In order to account for the significantly high percentage of households that do not comply with the requirements to register the birth of a child, it is necessary to reveal carers’ knowledge of the necessity of acquiring a birth certificate for a child. Of the 105 respondents included, the majority (104 respondents) who responded to the question knew about the importance of possessing a birth certificate.

As shown in Fig 4 below, participants’ responses generated a rich catalogue of the importance of possessing a birth certificate. The role of a birth certificate as a vehicle to a name, nationality and citizenship was the most prominent. This was followed by the use of a birth certificate for identification purposes and as a requirement for accessing other vital documents. The requirement of a birth certificate for accessing education was also mentioned. However, schooling and educational factors were the fourth prominent reason why carers consider acquiring a birth certificate for a child. It seems as if carers recognise the importance of identity, nationality and citizenship as fundamental rights upon which social, cultural and economic reasons are premised.

**Figure 4: Importance of Birth Certificate Possession**



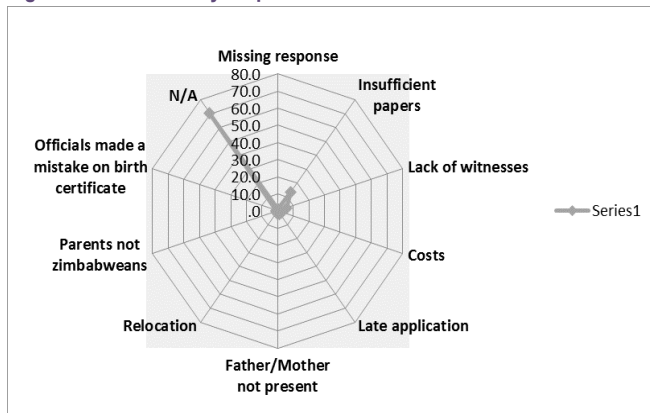
If carers knew the importance of acquiring a birth certificate for a child, the question remains why a large number of households have not complied with the requirements to acquire a birth certificate for a child. Carers who looked after children without birth certificates identified the following reasons as impediments of birth registration (Table 4).

**Table 4: Reasons for the child’s lack of a birth certificate**

Reason	Percent
Lack of information	1.9
Parents divorced	7.6
Officials declined	2.9
Delivered at home	4.8
Costs	12.4
Insufficient papers	2.9
Born out of the country	1
Parent(s) deceased/Whereabouts unknown	7.6
Not interested	2.9
Distance and mistake on birth certificate	1
Procrastination	3.8
Not Applicable	50.5
Total	100

From Table 4 above, one finds that the transactional costs and fees involved when a carer acquires his or her child’s birth certificate are in some cases prohibitive. This is particularly true in rural areas and in cases where vital documents of parents and grandparents are missing. In such cases, those applying for a child’s birth certificate are often turned back by officials at the Registrar General’s Office for lack of sufficient documentation. Figure 5 below presents reasons that account for respondents’ failure to successfully lodge a birth registration application when they visited the Registrar General’s Office. It shows that for those respondents who were, at some point turned back, a lack of sufficient documentation was cited by officials.

**Figure 5: Reasons why respondents were turned back**



The issue of insufficient documents required to facilitate birth registration and the issuance of a birth certificate cannot be overemphasized. Our findings demonstrate that a parent's (carer's) lack of documents that are considered useful for birth registration was strongly related to a child's lack of a birth certificate. There was a significant relationship between the carer's possession of a national identity card and the child's lack of a birth certificate ( $p = .050$ ). Similarly, a carer's possession of a passport was significantly connected to the child's possession of a birth certificate ( $p = .003$ ). Interestingly, there was no significant relationship between a parent's possession (and lack thereof) of a birth certificate and the child's possession of a birth certificate. From the study, it emerged that a considerable number of parents acquired national identity cards prior to the issuance of the birth certificate. In fact, for such persons, the birth certificate becomes necessary when one intends to apply for a passport. Parents who possess passports are most likely to facilitate the birth registration of their children. When the parent decides to travel abroad with a child, the child's birth certificate becomes necessary.

Apart from the parents' possession of requisite documents, other personal and household characteristics are significantly linked to birth registration. The study found that there was a significant relationship between access to a regular income and possession of birth certificate ( $p=0.037$ ). Furthermore, there is a significant relationship between the level of education and possession of a birth certificate ( $p=0.022$ ).

## Discussion of key findings

At the local level, acquiring a child's birth certificate is a household arrangement, which is influenced by an interplay of household characteristics including adult members' knowledge, attitudes towards birth registration, as well as the availability of resources. Whereas birth registration increased as the child's age increases (ZIMSTATS, 2015), a significant number of children are forced to exit the education system before they sit for Grade 7 public examinations due to a lack of a birth certificate. Thus, while the requirement of a birth certificate for Grade 7 compels parents, carers and guardians to facilitate the birth registration and acquisition of a birth certificate for a child, a considerable number of children remain unregistered.

A key preliminary finding of the study is that carers have knowledge of the importance of birth certificates and the consequences of the lack of birth registration. Furthermore, there seems to be a significant connection between certain key personal characteristics and birth registration. For example, there is a strong relationship between access to a monthly income and birth

registration. This finding resonates well with existing studies (ZIMSTATS, 2015) which observe that the likelihood of birth registration increases with the level of education and household wealth.

A key finding of the study is that birth registration and issuance of a birth certificate is an integral element of the civil registration system. Birth registration and possession of a birth certificate were both intricately connected to other vital registration including registration of deaths and marriages. What came out is that parents' possession of vital documents, including the national identity card and passport was significantly related to a child's possession of a birth certificate. For instance, respondents reported cited difficulties around accessing a deceased parent's death certificate as one of the major factors impeding registration, in the sense that parents often have to do many trips to the Registrar General's office to secure a death certificate before they begin birth registration. Given that the distance between the Registrar General's office and rural settlements is, in some cases long, the transactional costs of acquiring a birth certificate were significantly high for rural participants.

And yet the government, and not necessarily ordinary citizens, has the ultimate responsibility of maintaining this system. Arguably, personal characteristics of carers and households alone do not sufficiently explain the lack of birth registration. While respondents articulate more clearly how their personal characteristics, including lack of money, impede birth registration, one can argue that irresponsible institutions that are responsible for issuing vital documents including death certificates, national identity cards indirectly influence the social and economic household dynamics which, in turn, affect birth registration.

The prevailing official discourses around birth registration tend to place a larger burden of the registration on the households and parents in the sense that factors that impede birth registration, such as lack of sufficient requisite documents including death certificates, are cast as limitations of households and parents. In fact, although access to birth registration documents is a right on paper, this is not the case on the ground. In practice, it appears that parents and carers shoulder a larger burden of the realisation of the rights of citizens to access vital registrations.

In conclusion, one should underscore that while the link between key personal and household characteristics and possession of a birth certificate was strong, structural factors for which carers and households have no control are equally important in explaining the failure of households to comply with the requirements to acquire birth certificates for children.

## What is being done to address the challenge of birth registration?

The researchers encountered challenges in getting clearance to interview officials at the Registrar General's office. For that reason, the Registrar General's Office is experimenting with innovative solutions to address the challenge of birth registration but these remain unknown to researcher.

- In response to the above challenges, the government has removed application fees for children whose births are registered in the first six years. However, the transactional costs including travel costs and the costs of acquiring requisite documents such as a death certificate remain high. Such costs continue to deter households.

- The government occasionally carries out mobile registrations to target households in remote areas. However, such arrangements do not effectively address the challenges of parents' lack of awareness of the documents required to successfully lodge an application for birth registration.
- The Registrar General's office is already experimenting with the use of technology to address the challenge of birth registration. For example, the experiences of researchers is that the procedures Registrar General's office is increasingly becoming computerised. Furthermore, the use of cell phones for notification purposes has become common practice. Again, these innovative solutions do not effectively tackle the key impediments to birth registration namely, lack of awareness and deterrent transactional costs.
- The Registrar General has significantly decentralised some of its key operations thereby reducing transactional costs. However, it seems that parents are not aware of the birth registration office that is situated closer to them and continue to use offices located further away.
- For a long time now, the Registrar General's office provide birth notification papers free of charge through hospitals and clinics where children are born. However, the health institution continue to withhold birth notification papers in cases where parents have not paid medical fees in full.

Public service organisations and non-governmental organisations that provide social protection benefits can incorporate birth registration in their social protection programmes. Already, UNICEF-funded cash transfer programmes have a birth registration component which increases households' awareness of birth registration while reducing transactional costs. Such models can be considered by other providers of social protection programmes.

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## What more needs to be done?

The following recommendations are suggested:

- It is recommended that, relevant government departments including the Ministry of Health and Registrar General's office simplify procedures of acquiring vital documents such as notification of birth, immunization cards, death certificates and birth certificates. The requirement for witnesses – in some cases two or more – should be adjusted.
- There is need to make the Registrar General's offices more accessible, especially to those people who live in non-urban areas. This can be done by making mobile birth registrations more regularly, for instance, quarterly.
- The government need to consider removing fees for all children acquiring birth certificates regardless of age through an amendment to the Birth and Deaths Registration Act. This is because households continue to struggle to acquire birth registration for children older than six years. Furthermore, such failure to obtain the birth certificates can be explained by compounding socio-economic factors.
- There is need to strengthen collaboration with the Ministry of Health and Child Care so that birth certificates can be issued for free at birth. Moreover, there is need to sensitize health officials to need to issue birth notifications at birth regardless of outstanding maternal fees.
- The Registrar General's office should assume the responsibility of and take the lead in designing and implementing multi-stakeholder programmes for raising awareness around vital registrations. Such programmes could benefit from public-private partnerships and similar arrangements.
- Finally, there is need to increase the integration of birth registration and basic social services provision programmes.

# DISCIPLINE, THE LAW AND PRACTICAL ALTERNATIVES

E Makura, E Chikwiri, J Musiyiwa, J Mandewo, CR Hodzi

## Abstract

This article is based on a study whose primary objective was to investigate attitudes of stakeholders towards discipline, focusing on two Hatcliffe Primary Schools in Harare, Zimbabwe. Literature on discipline was reviewed. The study was conducted using a mixed methods approach. Data was collected using questionnaires, key informant interviews, Focus Group Discussions and document analysis. The study revealed that the participants' understanding of discipline centred on the infliction of pain through mainly beating as a mechanism for control of bad behaviour, and is administered by school heads. However, teachers, parents and pupils expressed ignorance on the existence of laws and policies that relate to discipline. The study recommended that teachers be capacitated on child rights and policies. Policies should be developed indicating alternative forms of punishment, outlining their application at different levels of misbehaving. Formulation of school rules should include pupils and the community and should be clearly communicated to pupils. Pupils should be made aware of their rights and responsibilities and there should be equity in disciplinary measures for both girls and boys to avoid perpetuation of gender stereotypes.

## Introduction

Discipline is considered as practices that adults use to teach children rules of conduct and to enforce these rules (Ylvisaker, Hibbard and Feeney, 2006). It is all about guiding and helping children learn what is expected of them. Children learn best when good behaviour is encouraged, and it makes them feel safe and secure. Discipline is a form of training in order to establish desired habits. It is about helping children learn the values that are important, yet for parents it often means punishment.

There are various forms of disciplining children and in Zimbabwe one such mechanism that is used is corporal punishment. There is a belief that corporal punishment is indispensable and effective in 'disciplining' children. This belief has become engrained and uncritically putative in the country's society (Shumba, 2003). It is this belief that has been used as a justification for the kind of disciplinary modalities found in schools (Shumba, 2003a,b& 2 2001; Shumba & Moorad, 2000; ). According to the National Baseline Survey on Life Experiences of Adolescents, which is the most comprehensive and up to date empirical research in Zimbabwe on violence against children, among children who were physically abused by an authoritative figure, 99 percent of females and 95 percent of males were physically abused by teachers and 1 in 10 of the males were physically abused by a school head (ZIMSTAT, 2013). Therefore the use of corporal punishment is predominant in schools and, as will be shown, is harmful to the growth of children and society.

Discipline in Zimbabwe has tended to be viewed in the stricter sense of corporal punishment. As such, from a legal perspective, corporal punishment is permitted in three scenarios. It is allowed to take place in the home, at the school and in the justice system as sentencing for children in conflict with the law. This permitting of corporal punishment as a disciplining method in the Zimbabwean context is contrary to the international and regional conventions that the nation is party to, as well as the new Zimbabwe constitutional provisions which shall be discussed

later. It is on this controversial basis of differing domestic laws versus the international and regional conventions that this article is written.

The issue of child rights in reference to discipline is incontestable; what is debatable are determined efforts by Advocates and Lawyers for children's rights to universalise it, for societal contexts tend to differ from country to country. The objectives of the study were to:

1. Determine the extent to which discipline affects the rights of the child and the effects it has on them;
2. Establish attitudes of parents, pupils, teachers and other stakeholders towards discipline in schools;
3. Establish the legal and policy provisions regarding discipline in schools;
4. Suggest possible practical alternatives to discipline in schools and to give legal and policy recommendations.

## Theoretical Framework

The overall framework that was used is the Human Rights Based Approach (HRBA) which centered on the differences between what has been ratified, domesticated and what is taking place in reality in Zimbabwe. The reality of discipline and its different forms was measured against the standard set in these. Engraved in the HRBA framework was the sex and gender analysis (Proctor, Lavanya and Murali, 2015) to compare how sex and gender stereotypes are used in corporal punishment in schools. This study is also based on utilitarian theories which focus on how punishment has consequences for the offender and society. It upholds the total good produced by punishment should exceed the evil. The retributive theories were also used which contend that punishment is justified if it is deserved. In this study one cannot turn to theories on corporal punishment for answers to whether punishment is effective or harmful but can use them to explain how they operate in the mindset of those who give corporal punishment and the children who experience it (Benator, 2005).

Last but not least was the classical conditioning theory. According to classical conditioning theory based on Pavlov's work on dogs and other animals and the social learning theory by Bandura which focuses on learning by imitation, punishment encourages the reoccurrence of the behaviour that may be either acceptable or unacceptable (Mamwenda 2004). As the child is beaten or sees someone beaten regularly for wrong doing, he/she is conditioned to repeat that same behaviour on others (Makwanya, Moyo and Nyenya, 2012). Widom (1989), cited in Wood et al (2005), regards punishment as leading to aggression, and those administering it may become models of aggressive behaviour by demonstrating punishment as a way of solving problems and discharging anger.

## Methodology

The research followed the cross-sectional analysis. Both document analysis as evidenced above and fieldwork study were employed to collect data. The researchers employed both qualitative and quantitative methods. The quantitative approach was used to collect statistical data on



the participants. The qualitative approach elicited the attitude of parents, teachers, pupils, educationists and other stakeholders. Qualitative data was collected through focus group discussions, interviews, including in-depth interviews for key participants, and desk review methods, which focused on discipline.

### **1. Focus Group Discussions**

Participatory Reflective Analysis (PRA) techniques focused on Focus Group Discussions (FGDs) were employed with key participants. In this study, FGDs with pupils and parents were carried out to gather in-depth information, views and opinions about discipline in schools.

### **2. Key participants interviews**

Key participant interviews were conducted with the school heads and teachers in charge as well as with prosecutors at regional level. They were interviewed as part of the knowledgeable individuals to provide the required information. Based on their knowledge, purposive and random sampling techniques were used to identify the appropriate interviewees. Some of the participants were identified for in-depth interviews to get deeper insights into the problem under study.

### **3. Questionnaires**

Questionnaires were used to gather information from teachers on attitude towards discipline in the schools. Questionnaires were also administered to the Provincial Education Director (PED) and District Education Officer (DEO) due to their limited time for in-depth interviews. These were considered to be the most suitable participants for providing the reliable information needed about the use of discipline in schools.

### **4. Document review**

The research involved the review of legal and policy frameworks which regulate discipline, which include The Constitution of Zimbabwe and other laws. The review also focused on the international and regional conventions which focus on the protection of children, such as the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Policy documents reviewed include those of the Ministry of Primary and Secondary Education (MoPSE), for example Circular P35, and the Acts of Misconduct, Statutory Instrument 1 of 2000. Other pieces of literature on discipline were also reviewed such as newspaper articles and case law.

## **Literature Review**

When some children exhibit challenging behaviours, there appears to be a common tendency among parents, teachers, care givers, and others, the world over, to label such children as problematic, forgetting to focus more on the causes of such behaviours. Quite often, the tendency is to resort to taking disciplinary measures. However, such measures have not been shown to teach 'problematic' children anything, but rather make them worse and performing poorly in their learning. Trocme (2013) has observed that what may be resorted to as discipline tends to end up as blatant physical abuse.

Discipline has already been defined as the process of teaching children the values and normative behaviours of their society (Wissow, 2002), cited in Halpenny and Watson (2010)5. In the context of child development and school policy, Ylvisaker et al (2006) point out that discipline refers to the practices that adults use to teach children rules of conduct and to enforce those rules. He further goes on to say that those rules include creation and discussion of rules and expectations, reminders of rules, positive consequences for adhering to rules and negative consequences for breaking them.

There are two objectives for discipline in the school; firstly there is the safety of staff and students and the creation of a conducive environment for learning. (Gaustad (2005), cited in Ikoya (2009).

In order for the objectives of discipline to be realised, certain disciplining techniques need to be effected. In the African society certain techniques are more prevalent than others. A study by Alhassan (2013), showed that caning, as a form of disciplining, was prevalent in traditional African society where parents were beating their children at home. Zimbabwe has the culture of effecting discipline through corporal punishment. Hence in the school system, teachers who were beaten by their parents and by their teachers at school have become themselves parents who beat their children at home and at school. In support of this are Makwanya, Moyo and Nyenya (2012) who point out that if teachers beat their children at home, they will continue with the same practice at school. They argue further that if children experience violence at home they will be conditioned to the ways that promote violence even at school, as violence begets violence.

Humphreys (2008) argues that corporal punishment is a gendered practice where female and male teachers and students relate to and experience corporal punishment differently. As observed by Leach and Humphreys (2007), there are some girls who have rationalised corporal punishment as a way of socialising them to become obedient mothers and wives. They will have internalized violence as a normal part of life. When they experience violence they maintain a culture of silence. The cost of violence against women and girls is borne by society economically and socially. Economically the women become a burden to the already stretched health budget, as they seek treatment for injuries sustained. Resources that could have been used for other medical resources are used on them. They also use the time of the health personnel who could have attended to other patients. Employed women become an expense to the employer as they take time off to tend to the injuries or fail to report for work because of embarrassment and not wanting to explain their injuries. Resources meant for other things are also channelled to deal with the perpetrators of violence in the police and judiciary systems. Socially the women withdraw from participation in society. Children reared in violent situations are more likely to suffer violence themselves later, or they can become perpetrators of violence. The harsh beating of male students by male teachers is interpreted as the dominant male asserting authority over the younger male, and a toughening up process as rite of passage into male adulthood. This is a discriminatory practice that perpetuates gender stereotypes, and it implies that girls are weaker than boys. According to Gershoff (2015), physical discipline is cyclical – children who are hit are more likely to use the action to solve problems with peers and siblings. This view is supported by the Social Learning Theory which argues that children who constantly experience violence or witness it themselves are more likely to use it; they learn to control others through fear like teachers do. Such children are at a higher risk for delinquency and criminal behavior and are likely to come into conflict with the law.

## **Legal and Policy Framework**

In Zimbabwe there is no law or policy in its broad sense which addresses discipline of children. The statutes and policies which are there look at discipline in the strict sense of corporal punishment and how it is supposed to be meted out in the school and as a sentence. It is permitted in the home environment as a disciplining tool, but is not regulated on how it is to take place. According to the Child Protection Society (CPS;2009), corporal punishment involves the use of physical force with the intention of causing a child to experience pain but not injury for the purpose of correction or control of the child's behaviour. In some cases it is meted out

to children by some teachers, prefects and regulatory authorities within schools.

Corporal punishment was outlawed by the Supreme Court in respect of adult males in the case of *S v Ncube* (1987). The Court stated that corporal punishment on adult males was a violation of s. 15(1) of the old Constitution, which prohibited torture, cruel, inhuman and degrading treatment or punishment. In coming to the decision the Court had stated as follows:

*The manner in which it is administered ... is somewhat reminiscent of flogging at the whipping post, a barbaric occurrence particularly prevalent a century or so past. It is a punishment, not only inherently brutal and cruel, for its infliction is attended by acute pain and much physical suffering, but one that strips the recipient of all dignity and self-respect. It is relentless in its severity and is contrary to the traditional humanity practiced by almost the whole of the civilized world, being incompatible with evolving standards of decency.*

In a further case, *S v A Juvenile* (1989), the Supreme Court came to the same conclusion, maintaining that corporal punishment of juveniles was unconstitutional. However, the Government disagreed with the court on this point, and decided to swiftly amend the Constitution in order to specifically permit corporal punishment of male juveniles and children as a whole. It is because of this amendment, in response to the Supreme Court decision in *S v A Juvenile*, that s. 15(3) of the old Constitution states t:

*No moderate corporal punishment inflicted – (a) in appropriate circumstances upon a person under the age of eighteen years by his parent or guardian or by someone in loco parentis or in whom are vested any of the powers of his parent or guardian; or (b) in execution of the judgment or order of a court, upon a male person under the age of eighteen years as a penalty for breach of any law; shall be held to be in contravention of sub-Section (1) on the ground that it is inhuman or degrading.*

This regression was based on cultural and traditional norms which have been highlighted above. The need for protection of the child strengthens the case that if it is dehumanizing treatment and is considered cruel and degrading for an adult, then children who require more protection from the State should not be subjected to it. This old Constitutional Provision was then brought into effect at both statutory and policy levels. At policy level, since teachers and head teachers act in loco-parentis, the Secretary for Education Circular P.35 of 3 May 1993 on Corporal Punishment in Schools states that boys should be beaten on their buttocks with a light cane; girls should be beaten on their palms. There is already a gender disparity since boys seem to get the harder end of the stick on a private section of their anatomy. From a statutory perspective, according to the Statutory Instrument 1 of (2000), only the school head or a teacher to whom authority has been delegated by the head, or any other teacher in the presence of the head, can inflict corporal punishment on boys on the buttocks with a suitable strap, cane or smooth light switch. The Children's Act, Education Act as well as the Criminal Codification (Reform) Act (2004) all came together to reinforce this provision of corporal punishment at home, school and in the justice system.

However, in 2013, the passing of the new Constitution outlawed any form of corporal punishment. Since it was a provision under exceptions that could limit the right not to be treated in a cruel, inhuman and degrading manner, the new provision of this right in Section 53 of the Constitution of Zimbabwe is not limited; and this is clearly outlined in s86(3) which states:

*No law may limit the following rights enshrined in this Chapter, and no person may violate them-*

*(c.) the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.*

In layman's terms, it means that no law, policy or code may limit the rights provided for in s. 53. This is a progressive step which ensures the protection of children from corporal punishment in any form and any environment. According to Magaisa (2015), it was argued during the drafting of the new Constitution that permitting corporal punishment on boys but not on girls in sentencing was a violation of s. 81(1) of the Constitution, which states: ,

*Every child, that is to say every boy and girl under the age of eighteen years, has the right(a) to equal treatment before the law*

From the above, the normal transition would have been to have the provisions given in the Constitution automatically translated to statutes and policies. This would result in the alignment of laws and policies, and corporal punishment would have been abolished. This end process was unfortunately stalled after the case of *Sv C* (2015) HH 718-14.

The accused, a 15 year old juvenile, was charged with and convicted of rape as defined in s 65(1) of the Criminal Law (Codification and Reform) Act [Cap 9:23]. The accused had raped a 14 year old neighbour during the night as they were both sleeping in the same hut. The accused denied the charge and was convicted after a full trial. The accused was sentenced to receive a moderate corporal punishment of 3 strokes with a rattan cane.

He was sentenced on 26 September 2014 on the strength of s 353 (1) of the Criminal Procedure and Evidence Act [Cap 9:07] which allows for the imposition of corporal punishment. According to Justice Muremba, if the legislature had intended corporal punishment to remain as part of law it would have limited the right by categorically stating that moderate corporal punishment inflicted in execution of the judgment or order of a court shall not be held to be in contravention of that right as was the case under the old Constitution. Although she declared s 353 (1) of the Criminal Procedure and Evidence Act [Cap 9:07] to be constitutionally invalid, in terms of s 167 (3) and s 175 (1) of the new Constitution, it is the Constitutional court which makes the final decision on whether an Act of Parliament is constitutional. This judgment was then unfortunately set aside by Chief Justice Chidyausiku in the Constitutional Court after the judgment had been challenged. The new case before the court has had the effect of suspending the decision in the Justice Muremba judgement. No decision has yet been reached as the Chief Justice Chidyausiku and the full bench of the Constitutional court have decided that they need to hear more arguments before a decision is reached.

The challenge with the current dispensation is that corporal punishment for children in conflict with the law is administered in terms of a prescribed manner, e.g. a medical report has to be produced by a medical doctor that they are fit to undergo the punishment as well as a doctor also attending on the day that the punishment is administered. In homes and schools there are no tests done nor is there a prescribed method. It is therefore very difficult to control and ensure that punishment is meted out correctly and in a way that is not harmful to the child. Its continuation in all three cases is not progressive as a form of discipline and there is need to align the new constitution with other laws and policies.

## Key Findings and Discussion

In light of the above literature review and legal and policy issues, the research conducted show- cased the gaps that need to be addressed in the area of discipline. The understanding of discipline as highlighted

together with the disadvantages of the use of corporal punishment came out strongly in the research. At home the parents enforce discipline on their children and at school teachers who act in loco-parentis do the same. The enforcement of discipline takes place when children disobey adults both at home and at school, make noise at school, disrespect adults, steal, among others. These are considered unacceptable behaviours both at home and at school. Participants viewed physical discipline as a 'quick fix' for a problem at hand. Thus a slap or spanking, among other forms of physical discipline among the participants, provided immediate

"feedback" to the child that the behaviour is unacceptable. The following are the key findings which came out of the research.

## 1. Understanding of Discipline



Figure 3: Participants' and Respondents' understanding of discipline

The study revealed that the participants understood discipline as practices that adults use to teach children rules of conduct as a way of establishing desired habits. It is also a way of enforcing those rules. Figure 1 above outlines in more detail what discipline meant to them. They understood discipline as a way of guiding children and helping them to understand what is expected between right and wrong. Some parents interpreted discipline as correcting or punishing children in order to stop the reoccurrence of unacceptable behaviour. Discipline was understood as having positive effects on children such as good behaviour, respect of adults, among others, as well as negative effects which include stifling of the child's holistic development.

## 2. The use of corporal punishment

Aside from their understanding of discipline and even though the reasoning for it was broad, there was a strict practice when it came to how it was effected. Both educators and parents take physical discipline as an important disciplinary measure which is used to regulate behaviour and facilitate learning. Parents condoned its use in schools because their own parents used it on them and it is enshrined in their traditional norms.

School heads justified the use of physical discipline by referring to its common use in the home. Discipline is enforced in various ways, such as beating, digging, kicking, pinching, clapping, spanking and caning. The school head is invested with the powers to administer corporal punishment on a child, or the school head can delegate the senior teacher to do it in the presence of a witness. Other educators as well as some parents are of the opinion that if used in moderation physical discipline such as spankings or slapping can be effective. Some of the children shared this idea because they felt that corporal punishment abuses them, it made them fail in school and injures them, especially the boy child. However, other children felt that corporal punishment does not violet their rights. Beating was the most common way of enforcing rules of conduct in children both at home and at school. For the parents, child beating was topical. Other ways that are used to enforce discipline both at home and at school are cleaning, digging, clapping, caning, spanking and pinching, among others. Children revealed that one of the most registered ways used to enforce discipline by parents and teachers is cleaning, especially the home, schoolyard and classrooms. (Refer to Figure 2).



The parents were not very welcoming on the idea of the involvement of the law on the protection of the child from corporal punishment. Generally, parents felt that corporal punishment is good hence parents and teachers should be given freedom to use it. Parents insisted on the non-involvement of the law as they continue to support the use of corporal punishment in schools and at home. Parents felt that the teachers are more justified to use corporal punishment since they are the ones who stay with the children most of the time. Parents were so determined that the whip is the best way to train a child. .

However, it was found that corporal punishment reduces the self-esteem of the children and makes them rebellious. It decreased performance and de-motivated the children as it aroused feelings of exclusion and unworthiness. This shows that corporal punishment really violates the rights of the child.

### 3. Gender biases

It was also revealed that the enforcement of discipline in the form of corporal punishment was used more on boys than on girls. The boys are beaten on the buttocks. This practice is commonly practised in the schools and in the Judiciary system. Legally the law perpetuates gender stereotypes since this discriminatory tendency seems to portray the girl child as weak and vulnerable. Both at home and in the classroom, boys and girls are beaten. Boys are beaten on the buttocks while girls are beaten on the palms. Parents and teachers consider this beating a measure taken to enforce discipline and not as corporal punishment. This explains why most beatings that take place at home and at school are not reported, unless the beating is so severe that the child is hurt or killed. This is evidenced by very few cases of child beating that are recorded at the courts, except in exceptional circumstances where there is serious grievous bodily harm or death.

#### 4. Legal and Policy Articulation

Participants' understanding of policy on corporal punishment in Zimbabwe revealed that they had some understanding of the effect of the Justice Muremba judgment on the banishing of corporal punishment. The District Education Officers (DEOs) revealed that the Constitution of Zimbabwe forbids infliction of physical pain on anyone. On the question of the law and protection of children from being disciplined, especially using corporal punishment, a few of the educationists felt that children should not be protected by the law, while the majority of the educationists felt that children should be protected. Parents, teachers, and pupils expressed ignorance on the existence of laws and policies in general that relate to corporal punishment. The study found that new teachers joining schools

from teachers' colleges are never given an induction package with crucial policies. In fact, they only come to know about them once a problem has arisen. Their understanding of the policies and laws about corporal punishment was based more on hearsay than on an actual interface with the law. Only school heads, education officials and officials in the Judiciary system were aware of the laws and policies that regulate the administration of corporal punishment. According to one head teacher, ineffective policy frameworks which do not deter perpetrators in schools are sustaining the problem. Poor, inadequate or inconsistent enforcement of existing policies were found to be serious impediments to the implementation of policies. School heads are not monitoring the compliance of policies. Hence, lack of policy clarity, inadequate policy coordination, culture-based resistance, weak accountability mechanisms and training inadequacies inhibit effective policy implementation.

## 5. Possible alternatives

On the other hand, some parents felt that corporal punishment does not violate the child's right. They argued that the advocacy for children's rights is misleading the children and giving them immunity from punishment for misbehaviours. These parents revealed that corporal punishment might deprive a child's right to freedom, education and emotional expression. Both parents and educators expressed the view that although physical discipline was generally accepted worldwide and considered an appropriate method of eliciting behavioural compliance, its continuous use usually escalates into physical abuse. The children are ready for the alternatives to corporal punishment but there is none. Participants came up with a number of practical alternatives to physical discipline such as rehabilitation services, detention and denial of privileges among others

## Practical alternatives

Corporal punishment, as highlighted earlier, is a cruel and medieval method of disciplining a child in the classroom. Its use is based on a strict understanding of discipline which does not benefit the child in a positive manner. There are numerous advantages of learning alternative techniques of maintaining discipline, such as the ones discussed below:

i. **Guidance and Counselling:**

The school should conduct guidance and counselling sessions with all pupils, and also pay special attention to those who display consistent unacceptable behaviour. Parents or a relative with whom a child has a special relationship, or an older person in the family or community for whom the child really has respect for, should be part of these sessions. This person, together with the school counsellor, are supposed to discuss



the negative effects of the child's behaviour and provide guidance on what the expectations from and of the child are. Together they can negotiate and assist in tackling and addressing the root causes.

#### ii. Use of other forms of punishment

Other forms of punishment can be used to instil discipline, such as pupils being made to pick up litter around the school premises. These should be regulated and be age appropriate. This should be done both at home and at school. The child can be given a non-abusive task to perform, preferably one that is related to what the child has done wrong in. For example, the child may fix or clean and tidy something that he or she has broken or made dirty. With this kind of approach the child will be less likely to repeat that behaviour in future. Detention of children with unbecoming behaviour may be an effective strategy to maintain discipline. For example if children arrive late for lessons and then become a nuisance, they can be detained for an hour when others go home. The hour can then be used for something productive, such as finishing off their homework.

#### iii. Denial of certain privileges at home and school

Every child, no matter how tough an economy is, has a few privileges that they have access to which when denied for purposes of discipline can drive the point home. Denying pupils certain privileges both at home and at school can result in the reinforcement of positive behaviour. Examples of withdrawal of pleasurable activities and treats such as school trips, playing for the school team on away matches, watching television and playing games with other children may be effective as discipline for unacceptable behaviour. These denials can help reinforce acceptable behaviour as the child will know that unacceptable behaviour can lead to exclusion in certain circumstances.

#### iv. Rehabilitation

There is need for rehabilitation of delinquent pupils where the school, parents and the probation officer work together in carrying out guidance and counselling sessions and ensuring accountability for the desired change over a period of time, such as six months to a year. This will ensure that the root of the matter is tackled and the child monitored to ensure positive results. A multi-sectoral approach will need to be adopted to achieve this. Rehabilitation should be used in exceptional cases where other forms of discipline have failed.

### Recommendations

A number of recommendations listed below will assist the key stakeholders in bringing an end to corporal punishment as a form of discipline. These stakeholders using these recommendations can ensure that discipline is defined in its broad sense and regulated at the local and national levels through sound laws and policies. The following are key recommendations.

#### i. Capacity building of teachers and educationists

Teachers and educationists should be capacitated on child rights and policies that regulate the use of corporal punishment in schools and psychosocial effects. This can be done by the Ministry of Higher Education and Tertiary and Science Technology through mainstreaming children's rights in the curriculum of student teachers.

#### ii. Inculcating cultural values

Parents need to inculcate in their children the cultural values and norms that are acceptable in society for moulding an upright citizen (*Hunhuism/Ubuntuism*). There is therefore need to have targeted advocacy on parents to ensure that they are sensitised on how to instill these values. The school should adopt and implement the philosophy of *Hunhuism/Ubuntuism* in order to help pupils learn the values that are

important in bringing about desired habits. This should start from Early Childhood Development years.

#### iii. Communication on rights and responsibilities

Clear and explicit rules with reasons both at home and school should be clearly communicated to pupils, after consultations with the parents and community to assist pupils appreciate them. Children need to know that the rights of the child apply to them too in all their relationships. Therefore the responsibilities, rules, limits and consequences for breaking the rules should be simple and clearly discussed with children.

#### iv. Addressing legal and policy challenges

Bills should be crafted by the Ministry of Justice which are in line with the conventions that have been ratified to ensure that there is full domestication. Parliamentarians should be sensitised on such bills before they are passed as laws so that they understand the pros and cons of having discipline in the broad sense versus the strict understanding. This will result in the closing of the gap between international and national standards. The Constitutional provisions need to be aligned with statutes and policies to ensure that corporal punishment as a form of discipline is done away with. Policies should be developed by the Ministry of Primary and Secondary Education which indicate alternative forms of punishment and outline in detail how they are to be applied and for which level of misbehaving, just as in the legal system where the punishment must fit the crime. This will help in ensuring uniformity in the application of the practical alternatives listed above.

### Conclusion

It can be concluded that discipline in the form of corporal punishment is rife in primary schools. Parents, teachers and pupils seem to condone it. The use of discipline appears to be passed on from one generation to another and has been accepted as an effective way of moulding good behaviour in pupils. Parents, teachers and pupils are ignorant of policies which regulate the use of discipline, hence the need for capacity building. Physical discipline affects the holistic development and wellbeing of the child, that is, socially, emotionally, physically and mentally. If one area of the child's development is affected then the rest are affected, for example, if the child is physically affected, it is likely that he/ she is affected socially, emotionally and intellectually.

Guidance and counselling, rehabilitation, use of other forms of punishment were found to be effective practical alternatives to discipline. Laws and policies should therefore be put in place to ensure that there is equality in treatment of boys and girls, and that there are no loopholes which give too much discretion to parents and teachers thus resulting in negative discipline which adversely affects the child.

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# CHILD TRAFFICKING AND CHILD SMUGGLING: LEGISLATION AND POLICY GAPS IN ZIMBABWE

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## Abstract

*Child trafficking and child smuggling are part of the globe's most outrageous crimes perpetrated against children. In most cases girls are the most affected as they are exploited for profit. This study examined the processes and policies around child trafficking in Zimbabwe. The study was conducted in Beitbridge and Plumtree border towns. Due to the evasive nature of the participants under study, it adopted a qualitative approach. A sample of 39 participants was purposefully recruited for the study. While there were no ascertained cases of child trafficking, it cannot be concluded that it does not exist. The phenomenon of 'child smuggling' was mainly reported as children smuggled across the borders mainly for the purposes of reunification with families among migrant families in working in South Africa. As children cross the borders with strangers they are at risk of being exploited and sexually abused. Though Zimbabwe enacted a trafficking in persons act in 2014, the act may fail to achieve its intended purpose as it views trafficking as a crime of transportation rather than exploitation.*

## Introduction and problem formulation

Does the dearth of information on human trafficking in Zimbabwe suggest she is immune to trafficking cases? The answer is most likely NO as Zimbabwe has inadequate legislation to prevent and criminalise trafficking. As noted by Dodo and Dodo (2012), though there has been media reports of trafficking in Zimbabwe, the cases have always fizzled away without proper prosecution of offenders. There is thus a lot of hearsay and tittle-tattle around trafficking in Zimbabwe. The International Organization for Migration (IOM, 2006), the U S Department of States (2009) and UNODC (2006) observe that Zimbabwe is a source, transit and destination for women and children who are trafficked internally or into countries such as South Africa, China, Egypt, Mozambique, United Kingdom, Canada and Zambia. One of the challenges facing the African continent in general and Zimbabwe in particular has been the lack of national expertise in the area of child trafficking, policies and development research and practice. However, information pertaining to child trafficking; its nature and profile of offenders in Zimbabwe, is scarce and remains elusive. Up until 2014 when the Trafficking in Persons Act (Chapter 9:25) was enacted, Zimbabwe did not have an express legal provision tackling trafficking. Trafficking was also not specifically provided for in the various pieces of national legislation (Gumbo, 2008). Whilst there is vast international literature on child trafficking, literature on child trafficking in Zimbabwe is scarce, scattered and inadequate. There are no official statistics of internal child trafficking or children trafficked from Zimbabwe to other countries. Despite this, the literature that is available provides useful insights into the methods and purposes of child trafficking. Though people are reported to be trafficked mainly through Zimbabwe's porous borders, Dodo and Dodo (2012) argue that even at airports like the Harare International Airport and Buffalo Range trafficking takes place and officials from The Immigration Department, Police and Intelligence are cited as accomplices involved in the scams.

The United Nations Office on Drugs and Crime (UNDOC, 2014) notes that globally children comprise nearly one third of all detected trafficking victims. Child trafficking is a gendered issue with more women and girls than their male counterparts. Regionally, shares of children and adults

among detected victims of trafficking in person by region (Africa and Middle East), in 2010-2012 indicate that 62% of human trafficking composes of children (UNDOC, 2014). Some trafficked children are lured to other parts of the world through the promise of school, work and an opportunity to send money back to their families. Human trafficking in general is argued to be one of the largest and profitable forms of organised crimes in Africa (Allais, 2006). Children constitute one third of all known victims of trafficking in persons, and the proportion of children among the detected victims is increasing (UNODC, 2014). According to UNICEF (2002), children and their families are ensnared into the complex web of trafficking by the empty promises of trafficking networks, of a better life, an escape route from poverty and an entry into a rewarding life style. Once the victims arrive at the destination, their documents are confiscated.

Another underreported aim of trafficking is for ritual purposes. Sub-Saharan Africa reports the highest share of child trafficking in the world, especially for ritual killing (UNODC, 2014).

According to the South National Prosecuting Authority (2010), a number of 'enablers' are involved in the illegal human movement of persons from Zimbabwe into neighbouring countries such as Botswana, South Africa, Mozambique and Zambia. Malaichas (drivers who help people cross the borders illegally either through designated entry points or undesignated entry points) or gumagumas (gangs which facilitate illegal migrants trying to cross the border on foot) are notorious as smugglers and are also involved in trafficking activities, especially the trafficking of children. South Africa has been known as a recipient and destiny country for trafficked children from a number of African countries (Zimbabwe Youth Council, 2014).

Research indicating actual contact or communication with victims of child trafficking is extremely limited. A number of studies (Gumbo, 2008; UNODC, 2006; IOM, 2010) highlight difficulties in finding the actual victims of child trafficking so that accurate data are collected. The practice of child trafficking is subtle and this makes it difficult to explore further into the intricacies of child trafficking to determine its prevalence and nature since victims of trafficking usually are not willing to come forward and report as they fear re-victimisation by the traffickers (Gumbo, 2008). However, Dodo and Dodo (2012) estimate that around 10 Zimbabweans are trafficked to South Africa through Beitbridge border area every month.

## Aim of the study

The study sought to examine some policy issues and processes about child trafficking in Zimbabwe.

## Specific objectives

The specific objectives were:

- To examine the strengths and weaknesses of existing trafficking laws and policies in Zimbabwe;
- To describe the causes, prevalence, mechanisms and processes employed to traffic persons in Zimbabwe;

- To expose the phenomena of child smuggling and child trafficking;

## Theoretical Framework

According to Bruckett and Parent (2007), there has been a lack of consistency regarding theoretical framework for understanding human trafficking. However, the rational choice theory has been the most preferred theory for understanding child trafficking. The rational choice theory argues that criminals are rational human beings who make decisions to commit crimes based on the costs and benefits involved in the process of crime perpetration. In relation to human trafficking, rational decision making involves the choice of the victims, *modus operandi*, where and when to commit it and what to do afterwards (Brown, Esbensen & Geis, 2008). The manner in which human traffickers select their victims is based on the gains they can get from the crime and the vulnerability of the victim. There are many factors which expose children and women to vulnerability and these make them easy prey to human traffickers.

## Methodology

The study adopted a qualitative case study approach. The case study approach best fits when explaining a topic about which little is known, especially from an outsider perspective and where an in-depth understanding is sought. Child trafficking is criminal in nature and a qualitative approach gives many advantages compared to the quantitative approach. The case study gives the researcher an understanding of the particular context within which the participants act and the influence that this context has on their actions. Both primary and secondary sources were used to gather data. All the secondary sources were internet based drawn from Google search. A sample of 39 participants participated in the study as shown in Table 1 below.

Table 1: Description of study participants.

Respondents	Number
Social Workers	4
Public prosecutor	1
Immigration officers	3
Gumagumas	4
Taxi drivers	5
Childline official	1
Police officers	3
Truck drivers	4
Bus drivers	3
Malaichas	4
Plumtree Reception Centre official	1
Beitbridge Reception Centre official	1
Ordinary community residents	5
<b>Total</b>	<b>39</b>

Purposive sampling was used for selecting participants and secondary sources. Purposive sampling is a deliberate process of selecting participants based on their ability to provide the needed information. Primary data were gathered through face to face interviews. Various interview guides were used for the different participants. Thematic Content Analysis (TCA) was used to analyse the data.

## Results of the study

### Legal frameworks in Zimbabwe

Zimbabwe signed the United Nations Convention against Transnational Organised Crime and the United Nations Protocol to Prevent, Suppress

and Punish Trafficking in Persons, Especially Women and Children in 2000 (Parlemo Protocol). According to the Parlemo Protocol, trafficking shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. This definition has three key elements, that is: **ACTS**-recruitment, transportation, transfer, harbouring or receipt of persons, **MEANS OF COMMITTING THE ACTS**- use of force, coercion, threats etc, **PURPOSE**- mainly exploitation.

In June 2014, Zimbabwe for the first time passed a trafficking law, The Trafficking in Persons Act Chapter 9:25, which does not define trafficking but rather gives a shopping list of transportation strategies associated with trafficking. According to the act, the crime of trafficking in persons shall mean any person who traffics any individual by **transporting** him or her into or outside or within Zimbabwe involuntarily by or of the following means: force, violence or threats, administering drugs to subdue the victim or causing the victim to be addicted to drugs, abduction or detention of the victim, fraud, extortion or deception, abuse of power over him, or giving of inducements to the victim or a person having control over the victim for the purpose of facilitating **the transportation** of the victim or voluntarily for an unlawful purpose shall be guilty of the crime of trafficking. The Parlemo Protocol defines trafficking as a crime of exploitation while the Zimbabwe's Trafficking in Persons Act defines trafficking as a crime of transportation<sup>80</sup>. A triumph of the Act in terms of child protection is that trafficking of children is considered a crime committed under aggravating circumstances. According to the Trafficking in Persons Act, the crime of trafficking shall be considered to be committed under aggravating circumstances if the trafficked person is a child, and if the child adoption laws of any country or territory are abused to facilitate the trafficking of a child. The Act also criminalises all actors and agencies involved in the transportation of victims. Prior to the trafficking in Persons Act, trafficking issues were partially criminalised by the Child Abduction Act Chapter 5:05, The Immigration Act and the Criminal Law Codification and Reform Act Chapter 9:23 and the Immigration Act Chapter 4:02. Few programmes have been launched in Zimbabwe to prevent trafficking and child trafficking in particular. In 2011, for example, the Government of Zimbabwe and the International Organisation for Migration launched a programme called Building National Response Capacity to Combat Human Trafficking in Zimbabwe<sup>81</sup>. Despite having enacted a Trafficking in Persons Act, Zimbabwe remains in Tier 3<sup>82</sup> as provided by the Department of State (United States of America).

### Child trafficking prevalence

Cases of child trafficking were very difficult to ascertain. The study established that there are a number of factors confounding child trafficking, chief among them border jumping, child smuggling and corruption. However, most participants, including police officers, could not differentiate between trafficking and smuggling. It was learnt that trafficking is usually done at night and people, including children, are transported through illegal transporting points. Most participants confirmed rampant child smuggling and not trafficking. In Beitbridge, child traffickers' bases include the Lutumba and Mtetengwe areas where the *malaichas* load and transport the people to the river bed south and north of the border. There is close co-operation between *malaichas* on the

<sup>80</sup>US Embassy in Harare, 2015 Trafficking in Persons Report for Zimbabwe

<sup>81</sup>Abbreviated as (BNRCCHTZ).

<sup>82</sup>Comprises of Countries whose governments do not fully comply with the minimum standards of the Trafficking Victims Protection Act and are not making significant efforts to do so.

Zimbabwean side of the border and their South African counterparts signalling a well-knit practice. However, as noted by IOM (2010), most cases of smuggling become trafficking if further information is obtained and if law enforcement agencies are equipped to investigate the phenomenon. An immigration officer in Plumtree said, *"Here we can confirm child smuggling as one of our major problems and not child trafficking"*. A public prosecutor in Plumtree indicated that they had never dealt with a case of child trafficking in the past three years. The police indicated that they did not have any statistics of child trafficking. Social welfare officers also concurred that there were many cases of child smuggling and not child trafficking. However, this is not to suggest that there are no cases of child trafficking; but with child smuggling and porous borders it is not easy to ascertain the prevalence of child trafficking. Cases might be going unnoticed. Undocumented migrants were reported to cross the Limpopo<sup>83</sup> river into South Africa during the night and also in broad day light. Both Zimbabwe-South Africa and Zimbabwe-Botswana borders were reported to be very porous. Whilst patrols were undertaken by border guards they were reported to be ineffective as traffickers and border jumpers are able to evade them. A self-professed *gumaguma* indicated that they paid the border guards ZAR50 whenever they wanted to assist someone jump into South Africa.

## The phenomenon of child smuggling

Many Zimbabwean children are smuggled in and out of the country to visit their parents or relatives staying illegally in neighbouring countries. This is usually done during school holidays. It seemed that with money anything was possible to take a child out of the country. Unlike trafficking, smuggling is the illegal transportation of people across a transnational border; it does not involve coercion or exploitation. Parents make arrangements and pay the *malaichas*, *gumagumas*, bus or truck drivers to facilitate the smuggling process. Child smuggling was attested by a *gumaguma* who said: *"Sometimes we assist people with as many as thirteen to fifteen children, where they will be going we don't care so long money"*.

The *gumaguma* indicated that they worked closely with truck and bus drivers as well as the *malaichas*. Whenever someone wants to smuggle many children they first phone the *gumagumas* who will assess the situation at the border and tell them to proceed or wait. The syndicate is so organized that it can evade police operations and blitz so easily. People use a stretch of more than 200km from Maitengwe border post through Plumtree to Mphoeng border post for border jumping and it was possible that children were among the border jumpers. Most people in Zimbabwe are willing to go abroad due to economic hardships prevailing in the country and this exposes them to trafficking. A similar observation was made by Dodo and Dodo (2012) who note that as long as going abroad remains a milestone achievement for Zimbabweans, they remain at risk of trafficking.

In Zimbabwe, child smuggling is criminalised by the Immigration Act and trafficking is criminalised by the Trafficking in Persons Act Chapter. The two phenomena are intertwined and trafficking cases may only emerge when someone reaches the destination. While in transit, the aim of the smuggler is not known and it may be difficult to qualify a case as trafficking rather than smuggling. This complexity was brought to light by a social worker who said, *"These children will always tell you that it's my aunt or uncle, and it is only when you further quiz them that you discover there may be no relationship"*. If thus a child says the trafficker is my relative, as they are coached to always say, traffickers are likely to be charged with smuggling. The complexity of the issue is worsened by the

Trafficking in Persons Act which fails to define the term trafficking. Even with the trafficking act, prosecution of traffickers may remain a dream pipe in Zimbabwe. The US Embassy in Harare has criticised the Trafficking in Persons Act for treating trafficking as a crime of transportation rather than exploitation. Cases of internal trafficking may still remain shrouded and with legal representation, perpetrators may be charged for minor offenses like kidnapping.

## Strategies used to smuggle children

A number of strategies were reported to be used to smuggle children out of the country. Common was the use of *malaichas*. There are small truck or minibus drivers called *malaichas* who are in the business of smuggling children to Botswana and South Africa. The drivers have over the years fostered a strategic network with various border control agents and they arrange the bribes making it easy for child smuggling and or trafficking to take place. Their charges range from ZAR 1500 to ZAR 2000 to take a child to South Africa through Botswana and USD80 to 100 to smuggle a child into Botswana. The *malaichas* were reported to sometimes request additional money for transporting migrants and if not paid they detain the people until payment is made. A social worker in Plumtree indicated that, *"In most cases smuggled children are intercepted by Botswana police and they are deported to Plumtree Reception Centre, and in most cases the malaichas are left to proceed with their journeys as they will be having proper travelling documents. People are no longer worried about the interceptions as they may bribe the police or always know that they can pick up their children from social welfare without any hustle."* The *malaichas* in Zimbabwe were reported to work in cohort with other agents across the border who would take-over the clients once they are in another country. In Beitbridge it was reported that children could be smuggled by truck drivers who would hide them under car seats, or by some women who stay in the town specifically for smuggling children. Some buses and trucks were reported to be used for smuggling/trafficking children. The clients agree on a figure with the bus crew. Once the money is paid or promised to be paid it is the driver who ensures safe travelling including dealing with the police. One international truck driver said, *"Yes we ferry people including children across the border. Most of them will be going to Johannesburg and it's not my duty to ask the relationship between the adults and the children. Once I get my money all is well...."* Another driver said, *"We pay the immigration officials and police, so that they won't bother us. They know the systems, who doesn't want money"*. These women get a payment of R400 or R500 to cross the border through the use of bribe.

Another system that was reported to be easily manipulated by illegal migrants and traffickers was the use of affidavits when travelling with a minor. These are the affidavits required when an adult is travelling with a child. When a child is travelling in the company of an adult/guardian, the person is required to provide an affidavit from both parents of the child indicating that the parents have given this person consent to travel with their child. These affidavits were said to be not enough protection for children as they can easily be obtained. There is no guarantee that the affidavit was written by the real parent of the child. *"Given the corruption level in our country, some people forge stamps and signatures on those affidavits..."*, said a resident in Beitbridge. It was also echoed that sometimes commissioners of oath are bribed to certify the affidavits. This is despite the fact that the Trafficking in Persons Act states that anyone who assists any person to obtain false documents or tampering with travel documents shall be guilty of the crime of trafficking.

People can also easily cross the border if they have access to resources. Those who have money simply pay their way out of the country by leaving money at each check point on both the South African and Zimbabwean,

<sup>83</sup>A river which separates Zimbabwe and South Africa at Beitbridge point



and Botswana borders. People in both towns were reported to cross the borders through the bush. They could break the security fence and elude the border guards. Some children were also reported to provide border jumping services to other children. It was not clear whether these children were working under the instruction of adults or not. *"Children provide border jumpers for a fee with directions on how to navigate the area"*, said a resident in Plumtree. These children are familiar with the territory and crossing points along the border and have found an opportunity to make money by providing this service to border jumpers. A taxi driver indicated that usually the border guards ignored them thinking they are local children herding cattle. The smuggled children are then met by some adults across the border.

Villagers who stay along the border were reported to be a problem as they also assist in child smuggling. They can harbour the smugglers during the day and take them across the frontier at night. This was attested by a resident who said, *"There are many players in child smuggling, even those rural villagers along Zimbabwe- Botswana border are active actors. They know better the police operations than strangers to the area. Some pretend as if they are herding goats with children when actually the children are going"*. A similar strategy was reported for Beitbridge where local women could carry children on their backs and walked with them across the border in broad day light. *"They hand the children back to their owners after the South African entry point. I think they work closely with the police"*, said a resident in Beitbridge. If some cases of child smuggling can be confirmed to be trafficking, a number of enablers such as police, immigration officials, *malaichas*, *gumagumas*, truck and bus drivers may be guilty of the crime of trafficking.

## Risks associated with child smuggling and child trafficking

Trafficked/smuggled children were reported to be exposed to several risk factors. Some were reported to be raped or beaten in bushes while trying to evade border guards. Killing for ritual purposes was also reported. Some *malaichas* were believed to work together with *gumagumas* to robe people. This was attested by a taxi driver who said, *"Why is it that the malaicha is never robbed or arrested by the police? This is organized crime...."*

Another challenge noted was drowning whilst trying to cross the often flooded Limpopo river to South Africa. Some children were even reported to be exposed to attack by crocodiles in the river.

Smuggled children were said to be exposed to debt bondage where their parents/ guardians or owners failed to pay for the transportation services to the *malaichas*. It was noted that whenever a parent failed to pay the *malaichas*, the *malaicha* would keep the child until the total sum was paid. Sometimes it was reported that *malaichas* often hiked the fare/charge. Where and how the children are kept remains a deep mystery. It is not even clear what will happen to the child if the parent totally fails to pay the required money. This was because most participants and secondary sources confirmed that the enablers usually shifted goal posts in terms of their charges to smuggle children to either South Africa or Botswana.

## Recommendations

The following recommendations are proffered.

- There is need to amend Zimbabwe's Trafficking in Persons Act so that it criminalises trafficking as a crime of exploitation rather than transportation in line with the Palermo Protocol.

- The Government of Zimbabwe through the Ministry of Justice and development partners should sensitise citizens on the new trafficking law so that the public knows activities associated with trafficking.
- There is also need to set up a transfrontier task force on trafficking between Zimbabwe, South Africa and Botswana. This may help to ascertain whether smuggling cases are not turning into trafficking and to investigate cases in destination cities.

## Conclusion

Child smuggling and trafficking are a reality in Zimbabwe. Child smuggling to South Africa and Botswana will always happen as long as Zimbabweans feel that they may get better opportunities in the neighbouring countries. A number of players, chief among them *malaichas*, bus and truck drivers, and immigration officials, are involved in smuggling children to neighbouring countries. The existing anti-trafficking laws have loopholes and criminalisation may be a challenge as they define trafficking as a crime of transportation rather than exploitation. There is therefore need to harmonise Zimbabwe's trafficking law with international protocols and conventions it signed.

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# THE REALITIES OF CHILDREN IN PROSTITUTION IN ZIMBABWE: A CASE OF BEITBRIDGE AND PLUMTREE BORDER TOWNS

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## Abstract

*Prostitution of children is amongst one of the globe's most outrageous crimes since it is perpetrated against children. In most cases girls are the most affected as they are exploited for profit. The study was conducted in the border towns of Beitbridge and Plumtree. It aimed at establishing the causes and prevalence of prostitution of children in Zimbabwe. Due to the evasive nature of the area under study, qualitative method such as face to face interviews, questionnaires and observation techniques were employed. Quantitative methods were also used to assess the prevalence rates of children in prostitution. Findings of the study indicated that there is a myriad of factors that lead children into prostitution mainly poverty, absentee parenting, peer pressure and exposure to risky lifestyles. Child prostitution prevalence rates were reported to be at least 20%. The study concluded that child prostitution is common and may increase due to the deepening poverty levels in Zimbabwe. As children cross the borders with strangers they are at risk of being exploited and sexually abused.*

**Key words:** prostituted children, child exploitation, organised crime, strain theory, gendered pathways

## Introduction and Formulation of the Problem

Prostitution of children is an old tradition that has remained subtle and underreported in most parts of the world. Prostitution of children exposes innocent children to all forms of exploitation, abuse and various risk factors. Prostitution of children is a gendered issue with more girls affected than their male counterparts. It may come as a result of trafficking or may be due to poverty, truancy or peer pressure which forces mainly the girl child into the practice. According to Montgomery (2011), it is not clear whether children enter into selling sex by consent or coercion and whether they would venture into it even if they had valid alternatives. An important question yet to be answered is; can children voluntarily enter into sex work when they are well provided for?

One of the challenges facing the African continent and Zimbabwe in particular has been the lack of national expertise in the area of child prostitution, policies development, research and practice. Prostitution of children is linked to child trafficking in that in most cases the trafficked children are used for sexual exploitation. However information pertaining to child prostitution; its nature and factors surrounding it in Zimbabwe are scarce and remain elusive.

## Aims and Research Questions

- To examine the causes and prevalence of children in prostitution in Zimbabwe.

The study sought to answer the following questions:

- What are the push and pull factors of prostitution of children?
- What are the prevalence rates of prostituted children in Zimbabwe?
- What are the risks associated with prostituted children?

- How is the profile of the socio-economic statuses of children in prostitution in Zimbabwe?

## Theoretical Framework

Two criminological theories, General Strain Theory (GST) by Agnew (1997) and the Gendered Pathways Theory (GPT) (1998), formed the theoretical framework of this study and their application on the victimisation of prostituted children was considered. The General Strain Theory was developed from the work of Emile Durkheim and Robert Merton on anomie. According to the strain theory individual deviance comes as a result of negative treatment from others resulting in anger and frustration leading to maladaptive behaviour in this case sex work. The theory also highlights that there are three major types of strain, firstly, failure to achieve positively valued goals for example money, disjunction between expectations and actual achievements; secondly, the loss of positive stimuli for example death or a broken relationship with a friend or romantic partner and thirdly presentation of a negative stimuli for example child abuse, neglect, adverse relations with parents and teachers, negative school experiences, adverse relations with peers, neighbourhood problems and homelessness (Agnew, 1997). Gendered pathways theory is a feminist theory centred on understanding the common contexts and causes of female delinquency and may be useful in explaining pathways into exploitation of prostituted children. Feminist theories have frequently offered explanations of the high prevalence of entrapment of women and girls in sex trafficking based on the devaluation of females and the global industrialisation of prostitution (Clawson, 2009; Jeffreys, 2009, 2010). Basing on the detrimental effects arising from familial abuse, gender pathways theory reflects a pathway of stepping-stones leading from initial childhood victimisation to successive and escalating victimisations, terminating with entrapment in prostitution. The two theories help in portraying the root causes of prostituting children.

## Literature Review

Prostitution of children and child trafficking are related forms of child exploitation. In many instances prostitution of children comes as a result of child trafficking. Prostitution can be defined in various ways thus it becomes important to include the political, social, economic and cultural context of the particular setting when defining it. Kembo and Nhongo (2002) define prostitution of children as the sexual exploitation of a child for remuneration in cash or in kind frequently but not always organised by an intermediary who maybe a parent, family member, procurer or teacher. Prostitution of children and commercial sexual exploitation are some of the most powerful discourses that influence debate on children's issues today and they have led to greater awareness of child abuse issues and the need to provide standardised information in countries (Montgomery, 2011). There is a very thin line between prostitution of children and child sexual exploitation. In a country that criminalises sex with minors like Zimbabwe, it is difficult to define prostitution of children due to the unclear

distinctions between prostitution of children, child sexual exploitation and even rape. There is also a lack of clear distinction between sexual abuse, sexual exploitation and commercial sexual exploitation which also emanates from cultural differences in different African contexts thus making prostitution of children seem as though it does not apply in these contexts.

There are numerous reasons and causes of prostitution of children around the globe. The majority of prostituted children are home run away, thrown away or homeless children who survive on engaging in commercial sex work. Kembo and Nhongo (2002), reiterate that there is a correlation between poverty and commercial sexual exploitation of children. This was buttressed by Montgomery (2011) who notes that prostitution of children may occur as a family trade where children live with their parents or guardians and sell sex as part of the household economy.

The Global Estimate states that 10 million children below the age of eighteen participated in prostitution related activities and the majority of them are forced (Zimbabwe Youth Council, 2014). A notable number reflects that most of these child victims enter the profession before the age of fifteen. A significant number of children are prostituted in Southern Africa (Kembo & Nhongo, 2002), as commercial sexual exploitation of children is now a reality and it is no longer a question of taboo or denial. According to Bourdillon (2000), though there is little accurate information about prostituted children, both boys and girls earn money through prostitution in the cities and many girls in the rural areas engage in sex for material rewards. In Zimbabwe, children under 15 years have been reported to participate in prostitution (Zimbabwe Youth Council, 2014).

## **Legal Frameworks and Policies which Address Prostitution of Children in Zimbabwe**

Zimbabwe has ratified and committed itself to some international legal instruments which contain special protection for children. These instruments include the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of Children (ACRWC). They portray children's rights under three categories namely protection rights, provision rights and participation rights. In support of these international instruments, Zimbabwe has local legal frameworks which also address the rights of children including sexual rights. These include the Children's Act (Chapter 5:06), Marriage Act (Chapter 5:11) and the Criminal Law (Codification and Reform Act) (Chapter 9:23). However there are certain sections within these Acts which are not in line with the international legal framework and national constitution which then make children vulnerable to sexual exploitation. For instance section 2 of the Children's Act (Chapter 5:06) defines a child as a person below the age of sixteen which is not in line with the international legal framework and national constitution which state that a child is a person under the age of eighteen. Despite Zimbabwe's efforts in ratifying a number of international instruments which form international and regional framework on children, the country is still lagging behind in undertaking comprehensive legal reforms with a view to ensure that national legislation fully conforms to such treaties. The country also has policies targeting and addressing children's sexual rights. ZIM Asset (2013-2018) provides the framework through which all policies are being implemented. The policies that address children's rights include the National Orphan Care Policy, Zimbabwe National Strategic Plan for the Education of Girls, Orphans and other Vulnerable Children (OVC) (2005-2010), National Action Plan for OVC 11 (2011-2015), Protocol on the Multi-sectoral Management of Sexual Abuse and Violence in Zimbabwe (2012), Indigenisation and Economic Empowerment Policy, Fiscal Policy and Gender Policy. Despite the desire to cultivate good, the national policies are sometimes marred by gaps and discrepancies between policy

objectives and policy actions. There is need for consolidation of these policies that target child protection

## **Methodology**

### **Research Approach**

The study adopted a mixed method approach. Qualitative design is best fit when explaining a topic about which little is known especially from an insider perspective and where an in-depth understanding is sought. Qualitative research is also suitable when one is pursuing a topic of sensitivity and emotional depth (Padgett, 2008). According to Moris (2006) qualitative enquiry plays a significant role for researchers interested in behaviours considered taboo or stigmatized. Prostitution of children is criminal in nature and a qualitative approach gives many advantages compared to the quantitative approach. Qualitative research gives the researcher an understanding of the particular context within which the respondents act and the influence that this context has on their actions. However this study employed both methods to complement each other. Quantitative approach gives a broad understanding of a phenomenon and in this study it helped in unearthing the prevalence of prostituted children in Zimbabwe.

### **Target Population**

Data collection was done in Beitbridge and Plumtree border towns. The population for the study was made up of child sex workers, police, officials from government departments, NGOs dealing with children, owners of beer selling outlets, owners of brothels, international truck drivers, Judicial Services Commission, taxi drivers, pimps and lodge owners.

### **Sampling**

A sample of 23 child sex workers and 62 other participants participated in the study bringing the total sample size to 85. Snowball, purposive and simple random sampling techniques were used to select study participants. Snowballing was used to recruit child sex workers while purposive sampling was used for the rest of the participants. Snowball is aimed at approaching few cases that are involved in the phenomenon to be investigated in order to gain information on other similar persons (De Vos, 2002). This qualitative sampling technique was chosen because prostituted children are difficult to identify. Purposive sampling is a deliberate process of selecting respondents based on their ability to provide the needed information (Padgett, 2011). Simple random sampling was utilised in selecting key informants on the prevalence of prostituted children.

### **Data collection tools and analysis**

Data were gathered through face to face interviews, non-participant observations and questionnaires. These techniques were selected due to the subtleness of the study area. Various interview guides were used for the different participants. Observations of the movement of child sex workers were done in their business spots and streets where they look for their prey. Questionnaires with a Likert scale were distributed to different stakeholders who are involved in child issues. Thematic Content Analysis (TCA) was used to analyse the data.

## **Presentation, Interpretation and Discussion of Study Findings**

### **Description of Study Participants**

A total of 23 child sex workers participated in the study. Of these, 10 were teen mothers while seven reported a history of either sexual abuse or abusive guardians. The lowest age reported was 13 while the highest age

was 17 years. A significant number, 13 of the child participants were either single or double orphans. In the case of Beitbridge, the trend was that most of the children did not originate from the town but came from various parts of the country with the hope to make more money in the border town. Interviews with child sex workers revealed that they came from as far afield as Chimanimani, Mt Darwin and Hurungwe among other places. The children were under the illusion that Beitbridge as a border town offers plenty of opportunities for them to make money through prostitution with truck drivers, clearing agents and other people. Others wanted to cross over to South Africa but failed due to lack of proper documents or money to bribe immigration officers. However the case was different for Plumtree as most of the children were from Mangwe and Bulilima districts. The average number of years spent in school by the children was nine. Reasons for selling sex among the children were diverse but they all reported some degree of vulnerability.

Data were also collected from 53 other participants who involved the following Child Welfare Officers, from the Department of Child Welfare and Probation Services (N=3), Area prosecutor (N=1), beer selling outlet owners (N=6), Ministry of Women's Affairs, Gender and Community Development official (N=1), Ministry of Youth, Indigenisation and Economic Empowerment official (N=1), taxi drivers (N=5), lodge owners (N=4), Family Support Trust (N=1), Wellness Centre, Beitbridge (N=1), Childline (N=1), National Aids Council (N=1), Restless Development (N=1), brothel owners (N=2), ordinary community members (N=11), Police officers (N=3) and District Medical Officer (N=1).

### Nature of Prostitution of Children

Prostitution of children ranged from organised enterprise to an opportune practice. Mobile child prostitution emerged as one of the most established practices where prostituted child move from one area to another in pursuit of sex. Observations at some hot spots during the operating hours from 5pm into the night confirmed an overwhelming subscription from young girls soliciting for sex in exchange for money. The situation was really 'a dog eat dog' with many young girls confirming it was tough. It was observed that prostitution activities are not limited to Beitbridge town but there appears to be a new concept classified as "mobile prostitution" as prostitutes take their business from one point to the other along the highway in this case Masvingo-Beitbridge highway. There were also classified hotspots for the prostitution activities. These include among others Mhandamabwe turn off road where truckers sleep, the Runde River truck in stop, Rutenga business centre, Ngundu Growth Point and Lutumba business centre. Charges ranged from zero dollars to five dollars for short service and zero to \$20 for an all-night service. It was also noted that some girls in Beitbridge belonged to pimps, "godmothers" who organised men for them. In some cases the girls' godmothers would get the money and later pay the girls. Some would even refuse to pay the girls as they claimed that it was compensation for food and accommodation. In Plumtree the girls frequented some night clubs and bars to solicit for sex. Girls could go to night clubs, bars or just milling in certain streets or near brothels to lure potential customers. The sex act was reported to be done at either a bush, in a car, in a lodge or at the girls' rented room or brothel. Some men were reported not to care about the ages of the children as they thought young girls were free from sexually transmitted infections. This was confirmed by a Beitbridge resident who said, "Do you think a man can ask for someone's ID before having sex?"

### Prevalence of prostituted children

Participants were asked to rank prostitution of children on a scale of very low, low, high and very high and 63 of the participants indicated that it was high and had prospects of increasing. In responding to the question, "Out of every ten sex workers, how many do you think are below 18 years?"

Most of the participants indicated that two in every ten sex workers were children which might suggest that 20% of sex workers are children. Statistics on prostituted children in the two towns were difficult to gather as none of the organizations interviewed kept a record of them. The difficulty in getting statistics in these two activities was supported by earlier scholars (Pollet, 2010; ILO, 2000, Dodo & Dodo, 2012). It was also reported that most of the children were not willing to reveal their real ages to authorities. This was confirmed by a number of participants in Beitbridge and was supported by a respondent at Wellness Centre who said, "The young girls always lie about their ages when asked and whenever they know there is a police operation they always loiter outside the bar fearing to be marooned". Some residents were worried with the alarming rates of prostituted children. It seemed for both towns that some residents knew some houses and streets that are used for prostitution of children. A resident in Plumtree had to say "Please do something about these night clubs, our children are gone...." Some police officers indicated that of late it has become difficult to identify child sex workers as they are no longer arresting women soliciting for sex.

### Causes of prostitution of children

Poverty was reported to be the main driver for prostituting children. "People do not have reliable sources of livelihoods due to unemployment and children are forced to supplement household incomes at a tender age", said an officer with the Ministry of Youth. Poverty in the town was reported to be very high by a number of participants among them Child Welfare Officers, community residents and guardians of the child prostitutes. Interviews with child sex workers themselves showed that most of them come from low income families. Due to poverty, children were often informally employed as vendors and end up being exposed to prostitution. Some of them were even encouraged by their mothers to engage in the activity due to poverty. Most of the child respondents regretted the type of work they did but were quick to say it was not out of will. A few respondents were very harsh and often demonstrated lack of care for example a 17 year old girl had to say "mari imari, inonzi yekurawa haitengi here" (Money is money, is the money that one gets from prostitution not worthy tenders?).

School dropout had been reported as one of the factors contributing to prostituting children. It was reported that the rate of school dropouts is very high in Mangwe district. Children drop out of school and only a few of them reach form four. With the high levels of school dropouts coupled with the lack of stable economic activities girl children venture into sex work while their male counterparts cross the border to Botswana at very tender ages. Only 7 out of the 23 child sex workers had completed ordinary level. None of the child participants from Plumtree had five passes at Ordinary level. Most of the participants had spent less than two years in post grade seven education. "Handina kudzidza saka handizivi rimwe basa randingaitawo semunhu asina kosi yaakaita" (I have not been to school so I do not know of any job that I can do as someone without any basic training). (Girl, 14, Beitbridge).

Absent parenting was reported to be a challenge in the two border towns. Most parents were in the Diaspora and they rarely came to see their children who would be staying alone or with grandparents. They simply sent remittances and during the school holiday it were the children who visit the parents. Enforcement of discipline seemed to be lacking among the children left behind. A beer hall owner indicated that absent parenting was becoming a challenge in Plumtree area. "It is common to find a 16 year old heading a household...", he said. A significant number of the child sex workers reported originating from broken families. This in itself shows that poor parenting styles were contributing to anti-social behaviour among children. A 15 year old child respondent (Beitbridge) confirmed this



by saying *"My mother was divorced and returned with us to her people. She remarried and the new husband could not take us on as well. I found myself homeless"*

Some children reported to be into prostitution because they lacked guidance in life. This was attested by some children who did not even charge for the sex services they rendered to men. One such child reported that *"The men just buy beer and food for the day and I am fine..."* Some children reported a history of sexual abuse and physical abuse. Those who reported having been sexually abused reported that they did not see the hope of living. Three children reported that they were home run aways because they were staying with abusive guardians and the only way they could fend for themselves was through sex work.

Peer pressure and social influence were reported to be drivers of child prostitution. Some children were into sex work as a result of influence from their colleagues. Most of the child sex workers who participated in the study were reported to belong to some form of groups or "clicks". Either they stayed as a group or they did their businesses in groups. In both Beitbridge and Plumtree, it was reported that some stayed in groups of 5-6 renting one room. Some children indicated that they already had relatives who were in the sex industry and these have inspired them to join. In Beitbridge for example, brothels were reported to be located in the high density areas thereby exposing children to alcohol and sex work. Certain houses were also being turned into shebeens and children observed cash transactions taking place as well as sex work.

Some children were into the practice as a result of exploitation by some adults. The adults would solicit men for underage children. A police officer indicated that these were usually old sex workers who were no longer marketable and exploited young girls. It was the old women who charged and collected the money and later paid the young girls. In some circumstances the children were paying their landlords a fixed amount of money on a daily basis. One special case reported for Plumtree was an adult woman who was acting as an agent, soliciting men for the young girls. She was linking the girls with potential customers and she got her payment from the men who wanted the "sweet" young girls. In Beitbridge, child sex workers were reported to pay USD10 a day to their godmothers who hooked them up with men and the money was reported to be meant for covering accommodation costs. The mothers pretended to be selling vegetables along the streets when in actual sense they would be soliciting men/clients for the young girls.

### **Services available to rehabilitate child sex workers**

There were no services specifically meant for child sex workers in the two towns during the data collection period. One of the most common avenues followed by the Department of Child Welfare and Probation Services (DCWPS) was committing child sex workers into some institutions for rehabilitation. However one case management officer indicated that rate of absconding from institutions among such children was high. Another challenge identified by a social welfare officer was that some beer selling outlets belonged to influential political figures and they were afraid of enforcing the law. In most cases when the police identified a case of a prostituted child they either fined her USD5 or handed her to the DCWPS.

### **Discussion of Findings**

Predominantly, the researchers got in touch with girl prostituted children. This portrays the vulnerability of the girl child. It maybe due to the fact that boy children are still given first priority when it comes to education or in some circumstances like orphanhood, girl children are burdened with the task of heading the family thus they end up engaging in prostitution to

provide economically to the family. The idea that there are more girl prostituted children has significantly been supported by literature for example Bourdillon, (2000) alluded to that too.

From the findings it has been noted that child sex work does not just occur at any places, rather there are specific places where the practice is very popular. For instances in high density suburbs, which could be due to over population and also because most people who populate such areas have low socio-economic statuses; at truck stops maybe because truck drivers are assumed to be financially powered and also because they spent a long time on the road away from their spouses or sexual partners hence they become an easy target; and at feeder points like growth points and business centers along Masvingo-Beitbridge road which may also be due to economic hardships, poverty, exploitation from parents or guardians and also due to the fact that many truck drivers and other people on transit find their resting places there.

A number of factors arose as causes of prostituting children from the study however poverty was mentioned as the major cause of prostituting children. This supports Kembo and Mohadi's (2002) assertion that there is a correlation between poverty and commercialized prostitution; Bourdillon's (2000) finding that some children engage in prostitution as a way of meeting economic demands and Montgomery's (2011) that poverty leads to prostituting children. The General Strain theory's assumptions can also be linked to the finding that some parents, legal guardians and pimps comfortably decide to lure their children in prostitution justifying their decisions on economic hardships. In some cases it was also found that children themselves also justify their prostitution on economic grounds.

The study could not establish any documented prevalence rate in relation to prostitution of children. The major reason for this failure is the lack of documentation of cases by major stakeholders who handle issues to do with children. The other reason also could be because of the criminalisation of child sex work in Zimbabwe. The difficulty in getting statistics in this activity was supported by earlier scholars (Pollet, 2010; ILO, 2000, Dodo & Dodo, 2012).

### **Recommendations**

As argued by Montgomery (2011), there is no blanket solution to the problems of prostituted children. Prostitution of children disintegrates the social and moral fabrics of the nation. It also disorients the nation's prospective nation builders hence causing economical, social and political problems. Such ill effects have prompted the researchers to propose the following recommendations to the policy makers:

- There is need to consolidate the various policies scattered in different ministries to avoid duplication of efforts by many players.
- There is need to have income generating programmes for out of school children which are consistent and well monitored. This should be done by the Ministry of Youth in collaboration with the Ministry of Gender and Women Empowerment.
- Police should intensify operations in beer selling outlets to ensure that beer is not sold to children as provided by the law and to ensure that children do not enter beer selling areas.
- Need to educate the public on issues of child sexual exploitation and the legal implications of having sex with a minor.
- Men are the most consumers of child sex services. It is therefore critical to have programmes that target men with the aim of reducing the demand for child sex. For example a

Forum for Men Against Child Prostitution can be set. Such a programme can be for men targeting men. "I am a Real Man, I Don't Sleep with a Child" can be a good campaigning motto.

- Police should be equipped with skills and resources to identify pimps, brothel owners whenever they identify child sex workers. The process should not end with fining somebody as further interrogation can identify syndicates involved.
- The DSWPS should be availed more resources so that they are able to be proactive in terms of knowing what is happening in the communities and also carry out awareness campaigns. They must also get financial resources from the government to implement effective rehabilitative programmes for children in prostitution.

## Conclusion

In conclusion, the findings of the research indicated that child prostitution is a real issue in Zimbabwe. Children were engaging in sex work mainly due to poverty, absentee parenting, peer pressure and exposure to risky lifestyles. If poverty continues in Zimbabwe, the prevalence of child prostitution is expected to rise. Children also participated in mobile prostitution as they moved along the highways soliciting for sex from truck drivers and clearing agents. Therefore there is need for implementation of multiple interventions to curb child prostitution in Zimbabwe.

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# A NARRATIVE REVIEW OF FOOD AND NUTRITION INSECURITY STATUS AMONG CHILDREN AGED 6-11 YEARS

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## Abstract

Food and nutrition insecurity continues to be a global challenge with women and children worst affected, mostly in sub-Saharan Africa. The recently endorsed sustainable development goals placed the need to address hunger, achieve food security and improve nutrition and promote sustainable agriculture under goal number two. Malnutrition and hidden hunger have daring consequences amongst children that include: poor cognitive ability, poor health and child mortality. Food and nutrition security has been perceived as the problem of rural areas taking into consideration that urban households are better placed than their rural counterparts. This has led to many policies and resources targeting the rural areas compared to urban areas. Nevertheless, recent trends of increased urban population growth, mostly in African cities which often outsmart the provision of resources, have witnessed growing urban poverty. The urban – rural continuum approach has been argued as an inclusive approach that include areas large enough to capture both urban and rural areas and realistic enough for sustainable development policies. This paper aims to review the current status of food and nutrition insecurity among school children aged 6 to 11 years in order to make necessary recommendations to policy makers and stakeholders.

## Introduction

Growth in children is a key indicator of optimal health, development and nutritional status forming the foundation for later life (Alaimo *et al*, 2001; De Onis M *et al*, 2003, Biro *et al*, 2010). Several factors influence nutritional status including disease, health status, environment, lifestyle and diet. Food security exists when all people, at all times have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life (FAO/WHO, 2012). There are four dimensions of food security which are availability, accessibility, stability and utilisation of food. Food may be available, but not accessible or properly utilised because of the presence of disease or non-bioavailability of nutrients. Food and nutrition insecurity are the leading

causes of malnutrition and death among young children particularly in developing countries (Black *et al*, 2008). Malnutrition and hidden hunger are associated with poor health during childhood and adulthood, which may result in poor academic performance among school children. Malnutrition is exacerbated by drought, floods, socio-economic status, rural-urban movement, lack of employment and income, HIV and AIDS scourge and disease outbreaks. Impaired growth is associated with delayed mental development. Stunted children are more likely to give birth to low birth weight infants who in turn are at risk of stunting and its consequences (Victoria *et al*, 2008). Globally, 795 million people were estimated to be chronically malnourished in 2012-2014 (FAO, 2014). In developing countries, it was found that approximately 183 million children are underweight for age, 67 million are underweight for height (wasted) and 226 million are low height for age (stunted)(Neumann *et al*, 2015). Northern Africa had a consistently low prevalence of hunger at less than 5 percent, while in Sub-Saharan Africa, one in four people remain chronically hungry (FAO, 2014). According to (WFP, 2015), 72% of the population of Zimbabwe live below the national poverty datum line which is pegged at \$494.16 per month for a family of five persons (ZIMSTAT, 2015). Socio-economic status has affected the nutrition status of both children and adults in Zimbabwe. Stunting, which is a result of chronic malnutrition has been above 30% in Zimbabwe for the past three decades. This is followed by underweight, a combination of acute and chronic malnutrition with a prevalence of 9.7% (Micronutrient survey report, 2015). Malnutrition is still rife despite efforts being made to eradicate it. The health delivery system and education in Zimbabwe has been under enormous strain due to brain drain, underfunding and breakdown in hospital and education infrastructures and services, (UNICEF, 2009). Another form of malnutrition that seems to be on the rise is overweight among children and adolescents. According to the Micronutrient Survey Report in 2015, overall prevalence for overweight among children under five years is 3.9% as shown in table 1 below.

**Table 1: Nutritional status of children under five years in Zimbabwe (Micronutrient Survey Report: 2015).**

Indicator	Rural (%)	Urban (%)	Overall (%)
Stunting	28.1	20.9	25.9
Wasting	3.6	2.2	3.2
Underweight	10.9	7.0	9.7
Overweight	3.0	5.8	3.9

Rural poverty has increased from 63% in 2003 to 76% in 2014 (WFP, 2015). A larger percentage of the population in rural areas is unable to produce adequate food to meet the nutritional needs for the children through to the next harvesting season. Unemployment among communities has led to inadequate cash income required to buy food that makes children in rural

areas prone to stunting and underweight. There is need to assess and rectify food and nutrition security in school going children in order to reduce malnutrition which heralds a negative development cycle. Assessment of the food and nutrition security situation of children aged 6-11 years is of paramount importance because physiological needs are at an increase and

there exist a gap in literature about the food and nutrition status of this school going age group in Zimbabwe.

## Methods

This was a narrative literature review of peer reviewed publications that discuss the state of the food and nutrition security status for children aged 6-11 years in rural and urban areas in order to make necessary recommendations for policy makers and stakeholders. This review consists of critical analysis of the literature published in books and electronic or paper-based journal articles based on the aim of the study. Narrative literature review articles have an important role in continuing education because they provide readers with up-to-date knowledge about a specific topic or theme. This type of review does not describe the methodological approach that would permit reproduction of data nor answers to specific quantitative research questions. This review used a qualitative approach.

## Nutrition Status

The Zimbabwe Vulnerability Assessment Committee (ZimVAC) 2013 report, cited that the Zimbabwe Demographic Health Survey (ZDHS) for nutrition data from surveys conducted between 1999 and 2010/11 shows that the prevalence of stunting and underweight increased slightly between 1999 and 2005/06 and decreased between 2005/06 and 2010/11. Over the same period, the prevalence of wasting and underweight showed a consistent increase.

The Zimbabwean government, under the leadership of the Food and Nutrition Council

(FNC), and guidance from a multi sectoral National Steering Committee (NSC), developed a National Food and Nutrition Security Policy that reflects a multi-sectoral approach. This task force reported the levels of hunger and protein energy malnutrition (PEM) in Zimbabwe as unacceptable for a country with the resource base it has. The FNC summary report, 2015 (unpublished) shows that one in every three children (33%) is undernourished. Severe PEM not only causes death in young children, but those who survive the costly, intensive management in our hospitals often never regain their true mental and physical growth potential. Even mild forms of under nutrition are estimated to contribute to the disease burden in young children as well as death. Protein energy malnutrition in young children is an indicator of problems in a community which may also affect the school going age of 6-11 years.

## Nutrition Interventions

Healthy nutrition intervention programmes to be used in policy making need to occur in early childhood. This is because it helps in preventing or reversing adverse effects of poor eating habits, overweight and underweight. Childhood is a critical period for provision of diets of high nutritional quality since the physiological need for nutrients is high relative to energy needs. Schools can thus provide an important opportunity for the prevention of the above stated conditions, provide the most effective method of reaching large numbers of children once and have also been identified as one of the fundamental settings for health promotion and establishing healthy eating and lifestyle patterns for children (Scriven and Stiddard, 2003).

## Supplementary Feeding Programmes

Several programmes have been unveiled to address the malnutrition challenges in school children. School meal programmes have been

practiced for several years to feed children in different countries. For example, in Brazil (*Bolsa Familia Program*), the National School Meals Programme provides federal funds for school meals to children in day care centres, pre-schools and primary schools of the country (World Bank, 2007). The same may be done in Zimbabwe by educating communities to come up with programmes to feed their children. Parents may be asked to pay levy to contribute to the feeding programmes. Parents who do not afford to pay their children's fees will be asked to grow crops like maize, beans, sweet potatoes, tomatoes and other vegetables and fruits in the schools gardens which will be used to feed their children and contribute to food security. School heads could be encouraged to carry out projects where pupils will breed livestock and grow marketable fruits in the schools' orchards. The produce will be sold to earn income that will be used to fund feeding programmes at their schools. Several studies have found that women play a key role in FNS. Therefore, it is vital to really target women in order to generate multiplier effects. In terms of micro-nutrient interventions, it is evident that maternal iron deficiency is associated with anemia which can lead to higher mortality risks. Iron deficiency during pregnancy is associated with increased risks for maternal mortality, premature birth and low birth weight. These aspects in fact have an important consequence for nutritional outcomes in later life (Bhutta et al. 2008). Apart from that, the greatest potential to improve the nutrition status of the newborn is through the promotion of breastfeeding and adequate and timely complementary feeding during the first two years of life (World Bank 2006, Lutter and Lutter 2012).

## Breakfast

Breakfast clubs have also been found to be an effective way to achieve food security in school going children. Results of an internal study of health behaviour in school aged children has shown that on average only 69% of boys and 60% of girls have breakfast every morning during school days (WHO, 2004a). Lack of breakfast is reported to have negative effects on pupils' concentration which result in poor academic function. Lack of breakfast has lead pupils to eat junk food such as sweets, potato chips and high sugared soft drinks which will be the only available options to pupils who do not carry packed lunch from home (Harvey, 2004). Pupils can benefit from set up breakfast clubs in schools where parents will add on a certain amount to the school fees which will be used to provide breakfast for all pupils at schools. Another way will be to educate parents on the benefits of providing adequate food for their children including the importance of breakfast.

## Drinking Water Supplies

Access to adequate potable water is also an important step towards achieving food security among children. For the body to function properly there should be an adequate intake of fluids. Thirst signals the first sign of dehydration at which point mental performance and concentration will already have decreased by 10%. This can have adverse effects on the academic performance of the child. Not much work has been done in Zimbabwe to assess the effects of this condition in schools. There is need to raise awareness among teachers on the importance of adequate fluid intake and also to encourage pupils to drink lots of water since they will concentrate better when not distracted by feelings of dehydration, thirst and tiredness.

## Food Safety

One of the import issues critical to food and nutrition security for consumers who include school pupils is food safety. Food safety relates to handling, preparation and storage of food in order to prevent food borne illnesses

(Boquist *et al*, 2014). Use of appropriate food preparation, handling and storage procedures ensures safety of the food from farm to fork. The primary objective of implementing food safety measures is to prevent contamination of food by chemical, physical and biological hazards. Examples of hazards are viruses, bacteria, parasites, drug and pesticides residues that may be found in foods. Contamination of food by microorganisms is primarily prevented by implementing good food hygiene practices throughout the food chain. The presence of hazards may result from environments under which food chains may be operating. The food vending and processing environments are regulated by government polices. If food safety issues are addressed as stipulated by relevant food polices, food and nutrition security of consumers that include school pupils aged 6 to 11 years will be guaranteed.

## Urban Agriculture

Food and nutrition security of children may be improved by implementing urban agriculture. Urban agriculture is the production of crop and livestock goods within cities and towns (Zeza and Fasciotti, 2010). Urban agriculture may have a role to play in addressing urban food insecurity problems, which are bound to become increasingly important with increased urbanization of poor populations in developing countries (Zeza and Tasciotti, 2010). Some families in urban areas supplement their food by growing crops like maize, vegetables, ground nuts and sweet potatoes in open spaces. Some urban dwellers earn low salaries which may not be adequate to purchase expensive food sold on the formal markets that include supermarkets. Urban agriculture contributes to the availability of food which provides a source of nutrients for school children including those aged from 6 to 11 years. The implementation of sound urban agriculture which has the potential to improve food and nutrition security of school pupils may be guided by government polices.

## Wild Foods

It has been established that close to one billion people include wild foods in their diets (Aberoumand, 2009). Forests are known to provide livelihoods and food for around 300 million people in the form of non-timber forest products (Bharucha and Pretty, 2010). Wild foods are important to both rural and urban communities. For example, affluent urban dwellers in Zambia and Mozambique are willing to pay 43 to 157 % more for bush meat which acts as a source of protein in their diets (Bharucha and Pretty, 2010). One major limitation of wild animals as sources of meat is that the animals may be carriers of microorganisms causing zoonotic diseases. To overcome the problems of possible spread of zoonotic diseases among consumers of meat from wild animals, governments need to implement animal health polices to control the diseases. In Zimbabwe, wild fruits such as *Uapaca kirkiana* (mazhanje), *Ziziphus mauritiana* (masau), *Sclerocarya bierra* (mapfura), *Parinari curatellifolia* (hacha) and *Adansonia digitata* (baobab or mawuyu) are consumed by both rural and urban communities.



**Figure 2: Ripe (brown) and unripe (green) fruit of *Parinari curatellifolia* (hacha or chakata)**

*Parinari curatellifolia* fruit saved rural families in different parts of the country from starvation in 2008 when the country faced critical shortage of food due to drought and difficult economic environment (Benhura *et al*, 2013). Figure 1 illustrate fruit of *Parinari curatellifolia*. The fruits provide nutrients that include carbohydrates, protein, minerals and vitamins. Because the fruits may be obtained at low cost or no cost from the wild, they provide nutrients for consumers who include school pupils. In addition to cereal based packed lunch, a pupil may carry fruits like *Uapaca kirkiana* (mazhanje) or *Ziziphus mauritiana* (masau). One disadvantage is that the fruits are seasonal and perishable. The shelf life of some of the fruits may be extended by drying which enables use of the fruits for food when they are out of season. Dried fruits of *Ziziphus mauritiana* and *Adansonia digitata* are consumed in Zimbabwe. The current threat to indigenous fruit trees are indiscriminate cutting down of trees and veld fires. Government need to implement environmental management policies to protect wild fruit trees. The government need to come up with health education programmes which encourage consumption of indigenous fruits and vegetables by local communities. Wild foods particularly fruits may contribute to food and nutrition security for school pupils aged 6 to 11 years.

## Exercise

Schools should allocate more time for physical activity as not all children participate in sport. Lack of exercise may lead to overweight as children will be eating junk food. Where schools are within walking distance children should be encouraged to walk. Mushonga *et al.*, 2015 noted that preschool children in Harare are less active leading to overweight and obesity. Scheduled time for supervised physical activity in schools is less than 50 minutes (Curriculum Development for ECD, 2011). Urban and rural councils should be encouraged to set up safe recreational parks for use by both adults and children.

## Policy

The current existing nutrition policies in Zimbabwe do not include evidence-informed interventions in an integrated approach. Most of the policies lack important interventions such as de-worming, complementary feeding, iron and folic acid supplementation and food fortification to addressing child and adult nutrition through school feeding programs and school gardens/orchards.

## Conclusion and recommendations

An integrated approach is required to reduce hunger and promote health in children. This can be done by involving the Agricultural sector in implementing and maintaining school gardens/ orchards. Ministry of Health and Child Care may provide on a regular bases health and nutrition education to school children and the community at large as well as regular de-worming programmes. School supplementary feeding programmes should be set up with both government and communities complementing each other in financing the programme. Measures to use will also include, public and private investments to raise social protection for the most vulnerable who are children and women. Proper eating habits are essential for good health and nutritional status of school children aged 6-11 years. It will have long term effects of growth and development, increased school performance and productivity in adulthood. Policy makers are therefore, encouraged to take the mentioned recommendations seriously for the benefit of the nation.

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# STAKEHOLDERS' PERCEPTIONS OF CORPORAL PUNISHMENT AS A SENTENCING OPTION FOR MALE CHILD OFFENDERS IN ZIMBABWE

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## ABSTRACT

*This article is based on a study that the writer carried out between October 2013 and November 2013 in Bulawayo Metropolitan, and Matabeleland North province, with sector stakeholders in the juvenile justice system (regional magistrates, probation officers, public prosecutors and legal practitioners), children committed in a rehabilitation institution for child offenders, as well as parents/caregivers. The study established the prevalence of corporal punishment, examined the nature of offences attracting corporal punishment for child offenders, and interrogated the reasons behind stakeholders' recommendation of corporal punishment as a sentencing option. In addition, the study also established stakeholders' personal perceptions on various dimensions of judicial corporal punishment for male children, documented the experiences of children with regards to corporal punishment and explored other alternative ways of dealing with child offenders. The study made use of one-on-one interviews, self-administered questionnaires and focus group discussions. The paper thus examines the controversy surrounding judicial corporal punishment for children and sets the arguments in juxtaposition with the study findings. Basing on the findings of the research study, the writer argues in the paper that judicial corporal punishment, as part of retributive justice, amounts to an unusual form of punishment for children, and hence must be abolished in Zimbabwe in favour of restorative approaches to the administration of child justice.*

## Key Words and Terms

**child offenders, judicial corporal punishment, perceptions, reform, restorative justice, retributive justice, sentencing options, stakeholder**

## INTRODUCTION

Corporal punishment is known by quite a number of other names which have evolved over the years, and these include flogging, birching, whipping, caning, and cuts. In Zimbabwe, corporal punishment is administered chiefly in homes, in schools, in alternative care settings as well as in the penal system. This subject has often received mixed reactions mostly driven by moral inclinations from the society, with some calling for the abolition of the practice while others maintaining that judicial corporal punishment should not be abolished. This paper highlights the provisions of local, regional and international instruments with regards to judicial corporal punishment for children and critically examines the various arguments put forward by different scholars on the subject. The article also illustrates the findings of the study that the writer carried out in Matabeleland to establish the perceptions of various stakeholders on corporal punishment for children which in turn informs the writer's own stance on the subject and recommendations for reform.

## Background of Corporal Punishment in Zimbabwe

The history of corporal punishment in Zimbabwe can be traced from as far back as the pre-colonial times where flogging was a common punishment for those who were found to have violated the norms of society. During the colonial period corporal punishment was sanctioned by law and was applicable to both adult and juvenile male offenders. In 1987, seven years after Zimbabwe attained independence, in *S v Ncube*<sup>84</sup>, the Supreme Court of Zimbabwe ruled that corporal punishment, as a sentence for adults, was in direct contravention of Section 15 (1) of the Declaration of Rights in the Constitution of Zimbabwe in force then. This section essentially outlawed the subjection of persons to torture, inhuman and degrading treatment.

The above was not, however, the case with male juveniles, as the Supreme Court seemed to have reserved a judgement with regards to whether the whipping of male juveniles was constitutional or not (Hatchard, 1991). The courts were rather silent on this matter and an opportunity to deal with it was presented in 1989 in *S v AJuvenile*<sup>85</sup>. Here an 18 year old male juvenile was found guilty of aggravated indecent assault and was sentenced to 'a moderate correction' of four (4) cuts as provided for by Section 330 (1) of the Criminal Procedure and Evidence Act (Cap. 59), which states that, 'as often as any male person who has not attained the age of nineteen years is convicted of any offence, the court before which he is convicted may...sentence such person to receive in private a moderate correction of whipping, not exceeding ten cuts'. The Supreme Court of Zimbabwe, however, held- by a 3-2 majority- that the sentencing of juveniles was also in contravention of Section 15 (1) of Zimbabwe's Bill of Rights which was in force at that time.

After these Supreme Court decisions, there emerged a number of arguments for and against corporal punishment for male juveniles in Zimbabwe amongst legal experts and stakeholders. In 1989, the then Minister of Justice told Parliament that the 'majority of the Supreme Court' was against corporal punishment, hence there was need for the abolition of this practice. In light of this, the Criminal Procedure and Evidence Act (Cap. 59) was amended to embrace the necessary statutory provisions. The Law Development Commission was tasked with looking into other alternative sentencing options to corporal punishment, and a Ministerial Committee was set up to 're-examine the Declaration of Rights' (Hatchard, 1991).

Hatchard (1991) notes that after all the above-mentioned developments, it came as a shock when the Constitutional Amendment Bill of 1990 (No. 11 of 1990) included a provision (Section 15:3) for corporal punishment for male persons under the age of 18 years. When the Bill was read for the second time in Parliament, the then Minister of Justice argued that abolishing corporal punishment had left the courts with no option except to give juveniles prison sentences which, according to the Justice Minister, 'had shaken the conscience of Government' (Hatchard, 1991). This saw the amendment in 1992 of the Criminal Procedure and Evidence Act (Cap.59), which included a provision for corporal punishment for males less than 18

<sup>84</sup> 1988 (2)S.A. 702; 1988 J. L.R.C. (Const.) 442

<sup>85</sup> S.C. 44/89



years of age. To date, this is the prevailing situation in Zimbabwe, with Section 353 of the Criminal Procedure and Evidence Act (Cap. 9:07) stating that for males under 18, 'moderate corporal punishment, not exceeding six strokes, may be ordered in lieu of or in addition to other punishment'. However, Section 53 of the new Constitution of Zimbabwe Amendment (No. 20) Act of 2013 categorically states that 'no person may be subjected to physical or psychological torture or cruel, inhuman or degrading treatment or punishment'.

In January 2015, Justice Esther Muremba, a judge of the High Court of Zimbabwe, ruled in a case involving a male juvenile offender that corporal punishment on male juvenile offenders was unconstitutional, but observed that this needed to be confirmed by the Constitutional Court for it to have legal force (Magaisa, 2015). Justice Muremba noted that Section 353 of the Criminal Procedure and Evidence Act (Cap. 9:07) was influenced by the old Constitution of Zimbabwe, but the new Constitution of Zimbabwe Amendment (No. 20) Act of 2013 (which was now in force when the juvenile was sentenced) does not provide for such form of punishment, but instead outlaws torture or cruel, inhuman or degrading treatment or punishment. Magaisa (2015) also concurs with Justice Muremba that if the new Constitution intended to permit corporal punishment, it would have been very clear, and would have retained this provision as it was in the old Constitution.

The case stated above was referred to the Constitutional Court, which is the Highest Court of Appeal in Zimbabwe, for determination, and on the 18<sup>th</sup> of June 2015 The Herald reported that the said court had 'provisionally set aside a High Court order outlawing the caning of juveniles as a form of punishment.' (Nemukuyu, 2015). This was done to allow for opposing arguments, as Chief Justice Chidyausiku and other nine judges noted that all the parties involved were calling for corporal punishment in all settings to stay. The Chief Justice was quoted by Nemukuyu (2015) as saying, 'The court observes from submissions made by all the parties that there is an agreement (for corporal punishment to remain lawful). The court will be happier if it will hear some opposing views before making a determination.' With these words, the matter was postponed indefinitely while in the meantime 'the law remains as it was before the issuance of the High Court order (by Justice Muremba)' (Chief Justice Chidyausiku as quoted by Nemukuyu, 2015). This therefore effectively meant that the Zimbabwean courts could continue imposing the corporal punishment sentence on convicted male children until such a time a determination was made by the Constitutional Court.

The above report raises fears that outlawing corporal punishment in Zimbabwe might be a pipe-dream, given the background of this issue in the country as well as the fact that, just recently, a majority of the Constitutional Court seemed to be in agreement that the practice should stay. Strong arguments, backed by research, therefore need to be put forward to the Constitutional Court for it to make an informed decision in the best interests of children. It is interesting to note that while the Constitution of Zimbabwe is the Supreme Law of the land, meaning any other piece of legislation that is not in sync with it should automatically fall away, the interpretation of that same Constitution rests with the Constitutional Court. However, according to Magaisa (2015), section 86(3) of the Constitution is very clear, as it states that 'no law may limit the following rights enshrined in this Chapter, and no person may violate them-

...

(c) the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.' Magaisa (ibid) argues that 'the effect of this provision is to make the rights in s. 53 (of the Constitution) absolute and non-derogable', meaning that no policy or law can supersede those rights

that are guaranteed in the Constitution. It is therefore critical that the Constitutional Court makes a decision that balances both morality and legality.

### ***Regional and International Legal Framework***

International legal instruments act as sites or beacons for policy that ideally should have a bearing on domestic legislations for state parties. International instruments that guide the administration of juvenile justice include, but are not limited to, the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), UNCRC, the ACRWC, the UN Rules for the Protection of Juveniles Deprived of their Liberty as well as the UN Minimum Standard Rules on the Administration of Juvenile Justice, popularly known as the 'Beijing Rules'. A commitment to uphold the provisions of these international instruments is declared through ratification by member states, and Zimbabwe is a signatory to these international treaties.

Article 7 of the ICCPR states that 'no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment'. With specific regards to children, according to the UNCRC's article 37 (a), 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'. In the same spirit, Article 16 of the ACRWC urges state parties to 'protect the child from all forms of torture, inhuman or degrading treatment'. The ACRWC goes on to stress that reformation and reintegration of the child offender should be the integral aim of treatment of such children (ACRWC Art. 17:3). Rule 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty state that '[a]ll disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment...' On the other hand, Rule 17.3 of the United Nations Minimum Standard Rules for the Administration of Juvenile Justice (the 'Beijing Rules') explicitly prohibits the subjection of juveniles to corporal punishment.

Both the UNCRC and the ACRWC are guided by certain principles which have got a strong bearing on the administration of juvenile justice, particularly on the handling of children who would have come into conflict with the law. These are essentially the principle of the best interests of the child, non-discrimination, participation and survival and development. Article 3 of the UNCRC and Article 4 of the ACRWC elaborate on the principle of the Best Interests of the Child by stating that 'in all actions concerning children, whether undertaken by...courts of law...the best interests of the child shall be a primary concern' (UNCRC Article 3). Thus, with regards to judicial corporal punishment, research with children, which is underpinned by the principle of participation, should also be able to establish whether this type of punishment is in their best interests or not. Article 2 of the UNCRC and Article 3 of the ACRWC elaborate on the principle of non-discrimination, where both provide for the child's enjoyment of their rights without discrimination on the basis of sex, race, language, colour, religion, social origin political opinion and other such distinguishing factors. The fact that judicial corporal punishment is only administered to male child offenders has led to some critics like Scarre (2003) arguing that there is no 'principled reason' why corporal penalties should even be restricted to male offenders, thereby bringing in a more radical dimension to the 'discrimination' based on sex inherent in judicial corporal punishment.

The principle of survival and development of the child is provided for in Article 5 of the ACRWC and Article 6 of the UNCRC. Article 5(2) of the ACRWC, for instance, urges state parties to 'ensure, to the maximum extent possible, the survival, protection and development of the child'. This includes the protection of the child from all forms of violence and abuse, in

order to facilitate for the healthy development of the child. Justice Gubbay (1989) described corporal punishment as 'institutionalized violence' on children and this dimension tends to bring the practice of corporal punishment into question as it is exposed to the provisions of the international instruments. Furthermore, with regards to the administration of juvenile justice, Article 17 (1) of the ACRWC states that 'every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth'. The ACRWC goes on in this said Article to mention that such kind of treatment tends to strengthen the child's 'respect for human rights and fundamental freedoms of others'.

However, one should be quick to note that while they provide a yardstick in as far as the administration of juvenile justice is concerned, the international instruments themselves are not cast in stone. While, for instance, the Beijing Rule No. 17.3 prohibits the subjection of juveniles to corporal punishment, Rule No. 1.5 provides for the implementation of the Rules 'in the context of the economic, social and cultural conditions prevailing in each Member State', leaving the instrument open to subjective interpretation by member states. It is indeed true that what can work very well in Europe, for instance, might not do the same in Africa, due to the differences in socio-economic and cultural conditions between the two continents. The same is also true for countries within the same continent, which also can have significant socio-cultural and economic differences which can nevertheless influence how juvenile justice is administered in a particular country. Thus, while corporal punishment can be viewed as inhuman treatment in one part of the world, it can also be viewed as constructive discipline in another, subject to the prevailing conditions. The principle of universality of human rights, however, tends to overshadow certain peculiar socio-economic and cultural realities, which compel member states to interpret children's rights in the same way across the globe.

## MATERIALS AND METHODS USED

The study consisted of two important stages; that is the desk review stage and fieldwork. At the desk review stage, wide literature on the subject of corporal punishment was consulted and analysed. The field study was largely informed by the subjective experiences and perceptions of the stakeholders, particularly children, and hence data collection methodologies were more inclined towards the qualitative approach. Quantitative methodologies were particularly useful in data analysis. For the purposes of data triangulation, three (3) data collection instruments were designed, that is an interview schedule for children, a self-administered questionnaire for sector stakeholders as well as a focus group discussion guide for caregivers and parents. In order to ensure adequate data triangulation, all these instruments were used in the collection of data.

19 (50%) of male children of ages ranging from 12 to 17 years committed at Percy Ibbotson Hostel that caters for children in conflict with the law were interviewed, while 2 focus group discussions were carried out in 2 wards in the rural Umguza district (wards 3 and 6) in order to capture the rural experiences. In addition, self-administered questionnaires were completed by sector stakeholders, namely regional court magistrates, prosecutors, probation officers and legal practitioners for children. Because of the small numbers of stakeholders within their strata, it was difficult to come up with samples of each category of stakeholders. A total of 14 sector stakeholders from Bulawayo were interviewed.

## DISCUSSION OF KEY STUDY FINDINGS

For the purposes of this paper, key findings from the Matabeleland study will be discussed concurrently with the research results from various scholars in order to draw a clear comparison between theory and practice.

### *Corporal Punishment: Torture, Cruel, Inhuman and Degrading Treatment?*

Save the Children & UNICEF (2004) define corporal punishment as 'the use of physical force causing pain, but not wounds, as a form of discipline'. Perhaps the most challenging part is to delineate the act of corporal punishment, that is addressing the question of where 'discipline' ends and torture starts. Indeed defining corporal punishment in the context of torture, cruel, inhuman and degrading treatment carries with it a great deal of moral and subjective overtones.

As a means of enforcing discipline, corporal punishment has enjoyed wide acceptance within an African context where the moral conviction of 'spare the rod and spoil the child' is widely held. This could be the reason why practice has been institutionalized in the penal justice system and perhaps why corporal punishment has stayed for so long in Zimbabwe. A research study carried out by the writer in Matabeleland revealed that in 2012 alone, the Bulawayo Regional Court handled 39 cases of juvenile offender cases, and out of this 28 (72%) were disposed of by way of corporal punishment while the remaining 11 (28%) was shared among other sentencing options like postponed sentence, suspended sentence, caution and discharge as well as transfer to the Children's Court. This data was matched with that from the community focus group discussions, where participants revealed that there were 'high' incidences of male child offender cases like rape, assault and theft in their respective villages, and these were 'often' disposed of by way of judicial corporal punishment. This data was also triangulated with data collected through the child interviews. Of the 19 children that were randomly selected, 2 (10.5%) of these had received corporal punishment in addition to institutionalization through the Children's Court. Data on those who had received corporal punishment only could not be collected as such children were normally released from the institution immediately after receiving their punishment. Thus only children who had received corporal punishment in addition to institutionalization were interviewed.

The above findings show that judicial corporal punishment is a real, not imagined practice in Zimbabwe, and is still highly favoured by adult stakeholders. Both focus groups of parents and caregivers were of the view that judicial corporal punishment for children should not be outlawed in Zimbabwe. 79% of sector stakeholders also maintained that while abolishing judicial corporal punishment had no link with an increase in rates of juvenile offending, the practice should stay, signifying the wider acceptance that corporal punishment for children has enjoyed in our society. It is however crucial to note that 95% of the interviewed children said this form of punishment should be abolished in Zimbabwe in favour of other alternative sentences like community service and supervision by a probation officer.

The debate as to what extent corporal punishment for young offenders constitutes 'torture' or 'cruel, inhuman and degrading treatment' is a complex one and a number of books have been dedicated to explore this area, with varying degrees of success. Definitions of these terms often sound too big, highly emotional and value-laden when associated with the punishing of young offenders in an African context. Article 1 of the UN Convention against Torture defines torture as:

*[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

Danchin (2009) points out that in order to qualify an act of torture, there has to be a combination of three elements. The first element is that the act 'must be an intentional act through which physical and mental pain is inflicted on a person'. Secondly, the act 'must be committed with a purpose' and lastly, 'it must be committed by a public official or by a private person acting at the instruction of the former'. In the same fashion, judicial corporal punishment seems not to have fallen short of what is contained in this description.

However, cruel, inhuman or degrading treatment is in most cases defined separately from torture, which has propelled some legal experts and authorities into concluding that while corporal punishment for juvenile offenders may not be classified as torture, it certainly does amount to one form or another of cruel, inhuman or degrading treatment, itself including 'acts that inflict mental or physical suffering, anguish, humiliation, fear or debasement, but that fall short of torture' (Danchin, 2009). In the same vein, Bonner (1979) observes that in April 1978, in *the United Kingdom v Tyler*<sup>86</sup> (then a juvenile in 1972), the court in the Isle of Man ruled that the corporal punishment given as a sentence to Tyler constituted neither torture nor inhuman treatment, 'on the ground that it did not produce suffering severe enough to warrant either characterization'. The same court took into consideration that in order for a punishment to be labelled degrading, 'it must attain a particular level of humiliation and debasement other than that inherent in punishment in general' (Bonner, 1979). Apparently this is a very relative and subjective qualification as it wholly depends on a case-by-case basis, particularly on 'the nature and context of the punishment itself and the manner and method of its execution' (Bonner, 1979).

The study that the writer carried out with children revealed that corporal punishment in Zimbabwe is administered to the children on the naked buttocks whilst the children were blindfolded, and this evoked feelings of claustrophobia, anger, anxiety and resentment among the affected children. Feelings of humiliation as a result of the children being asked to strip naked in front of the prison officers were also indicated by the children. The last piece of a human being's dignity rests with the privacy of their bodies, which is the reason why morally if a person is seen roaming the streets naked, people easily conclude that such a person has gone insane, and they normally rush to cover the person up. In view of this, judicial corporal punishment can therefore be viewed as a degrading form of punishment for children.

### ***Theoretical underpinnings of Punishment and Justice***

Garland (1991) explores four major sociological perspectives on punishment, namely the functionalist perspective, the Marxist, the power-

knowledge dimension proposed by Foucault as well as Elias' 'civil sensibilities' dimension. These view the issue of punishment from angles of varying degrees. For the purposes of this paper, the first two theories, namely the functionalist as well as the Marxist theory, shall be discussed. Theories of justice will also be explored, and these formed the basis of the study on judicial corporal punishment for children.

The functionalist perspective was largely proposed by Durkheim (1933). Durkheim saw punishment as 'a moral process, functioning to preserve the shared values and normative conventions on which social life is based' (in Garland, 1991). Basically, this theory emphasizes that punishment represents the 'collective conscience' of society, and thus an important element in social cohesion. In the case of Zimbabwe, corporal punishment for young male offenders could have been conceptualized along a functionalist framework, where it was thought as necessary for the common good of society, through keeping society safe from criminal tendencies by juveniles. This could explain why in the study a majority of adult stakeholders were not comfortable with the thought of judicial corporal punishment being abolished. In a sense, from a functionalist perspective, the essence of corporal punishment for young male offenders is the expression of moral condemnation of such unacceptable social behaviours like rape and theft by society. Because it is impossible for each and every member of the society to have a chance to administer the corporal punishment, the functionalists assert that a majority of the society eventually feels involved in the whole process of punishing through supporting the state institutions and legitimising them. According to the functionalist perspective, breaking the law is itself a threat to the already established social order, and hence punishment is an indication that social solidarity has 'triumphed' over the threat to social order-crime (Garland, 1991). Durkheim argued that 'non-punitive' ends -in place of such sentences as corporal punishment- like correction, rehabilitation of offenders and prevention of offences. These are regrettable in the justice delivery system, and hence Durkheim dismisses these as 'a modern delusion reflecting the aspirations of penal administrators, not the actualities of their institutions' (Garland, 1991).

However, some theorists (Mead, 1918; Garfunkel, 1956 & Erickson, 1966) argue that Durkheim's assertions are rather limited in scope, and that they are more likely to operate in small, homogeneous and close-knit societies that are readily willing to accept the notion of collective conscience. These theorists further point out that even in such societies, it is not always a given that 'penal rituals' such as corporal punishment will result in an enhancement of social solidarity. On the contrary, the social bonding can be produced in a negative way; that is through the act of corporal punishment, feelings of hostility and intolerance may be evoked among those who receive it, and, worse still, the 'ritual' (in this case, corporal punishment) itself may even fail to achieve the desired symbolic effect. In the Matabeleland study, the children who had experienced corporal punishment reported feeling very angry towards the person who was administering the corporal punishment. One pointed out that he felt as if he was the one who was now being provoked by the punisher, as his case had taken too long to be concluded at the courts. In such a scenario, it is apparent that corporal punishment would have failed to instil the much needed children's obedience to penal institutions.

The conflict perspective, also known as the Marxist approach to punishment, explains punishment in conflict terms, where it is viewed as a means of control of the people in the lower classes of society by those rich

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<sup>86</sup> (1978) 2 E.H.R.R.1

people who occupy the top class, the *bourgeoisie*. Rusche and Otto Kirchheimer (1968) moved from the traditional Marxist conception of punishment, and went a step further in proposing that those penal practises and institutions are historical in nature, instead of the 'punishment as usual' general conception. According to Rusche and Otto Kirchheimer (Ibid), the labour market is the chief determining factor with regards to the choice of methods to be employed in the justice system as well as how they are used. They point out that in times of abundant labour supply; the justice system is more likely to be inclined to 'be reckless with human lives' and use methods of punishment such as corporal and capital punishment. From this viewpoint, therefore, sentencing options like community service for juvenile offenders seems to be thrown away, as labour will be readily available elsewhere. The study conducted by the writer failed to establish this connection when the stakeholders' reasons for recommending or passing the corporal punishment sentence to children were examined. Garland (1991) also notes that a major weakness in this approach's depiction of penal history is its failure to acknowledge that economic concerns are nearly always influenced by other socio-political forces that might come into play.

Having laid the theoretical foundation of punishment, it is prudent to turn to the perspectives of justice. It should be pointed out at this juncture that contrary to popular assertions, punishment is not synonymous with justice and that it does not always mean that one has to be punished in order for justice to be seen to have been served. In light of this, two major dimensions of justice, namely retributive and corrective justice, will be examined here as they relate to corporal punishment in the administration of juvenile justice. Wood (2010) qualifies retributive justice simply as a 'basic, unanalysable, intuitively obvious, moral principle'. The retributive theory of justice emphasises the 'an eye for an eye' approach that is convinced that 'guilt deserves punishment' for the sake of justice (Wood, 2010). Advocates of the retributive justice model (as opposed to the corrective approach) believe that if the offender is not punished, then society would feel frustrated, and this way abiding to the law would seem meaningless. In this regard, punishment of criminals would serve the purpose of unifying society against both crime and criminals at the same time maintaining a respect for the law.

Galligan (1981) asserts that 'the core of the idea of retribution is the moral notion that the wrongdoer ought to be punished'. Galligan (Ibid), states that as long as it is sanctioned by society, retribution is the way to go, and in the same spirit he calls for the need to draw an essential distinction between 'retribution as a moral principle which people can use in their daily personal lives' and 'retribution as a social principle which justifies institutionalized state coercion of individuals'. Judicial corporal punishment for juvenile offenders can be taken to fall in the latter qualification, as it is sanctioned by law. This punishment, according to Wood (2010), 'involves the deliberate infliction of harm, the denial of choices and the deprivation of rights', and is essentially 'the righting of a wrong'. Retributive justice is also partly influenced by the 'just world hypothesis' which states that people should reap what they sow. For instance, juveniles who beat others should also be beaten, emphasizing the view that 'violence begets violence'.

The applicability of this theory to children is however in question, especially when research findings on the subject of corporal punishment are brought to the fore. The study conducted by the writer in Matabeleland found out that sexual offences were the most common offences committed by male child offenders that attracted the sentence of corporal punishment, with more violent offences like assault and robbery with an element of violence being at the bottom of the list. In this regard, if one is to subject the 'an eye for an eye' retributive approach, this tends to bring the suitability of corporal

punishment into question. If the whole idea of corporal punishment is to make children reap what they sow, then the logic will be that those children who rape must also be raped, and not be subjected to corporal punishment, because they would not have beaten anyone to warrant a beating! Hence, from this angle, corporal punishment cannot be justified as a form of punishment that can create a just world.

In the same study alluded to above, children who had received corporal punishment as a sentence revealed having experienced excruciating pain from the beatings that lasted 'for weeks'. In support of corporal punishment, advocates of the retributivist approach defend the pain encountered in the process as very necessary in order for the desired behavioural change to be achieved. Newman (1985) points out that 'pain is part of the definition of punishment', and traces the definition of the word 'pain' back to its Latin origin, '*poena*' which, in ancient Rome, meant punishment or penalty. He goes on to argue that 'pain is not only the prime ingredient of punishment, but is also a necessary condition of justice for without it there can be no punishment'. Thus, according to Newman (Ibid), corporal punishment cannot solely be dismissed on the ground that it causes pain, as this is the whole point of administering it. Newman (Ibid) also seems to draw a comparison between corporal punishment and custodial sentences, where he argues that custodial sentences are in no way better than corporal punishment, as 'criminals' right to integrity over their body is worthless if that body is enclosed in a prison cell, especially if that cell contains other violent inmates...' However, the main challenge with this assertion will be on cases in which children would have been wrongfully convicted and sentenced. If children in Zimbabwe had the opportunity to appeal against the sentence or conviction or both, for instance, it would be difficult to reverse corporal punishment, since the study found out that this was administered on the same day of sentencing. Thus in the event that a higher court found out that the sentencing court erred in its judgement and the child was in fact innocent, then the pain and anguish that the child suffered would be difficult to reverse.

Wood (2010) notes that a departure view from the retributive approach is that the notion of retributive justice should be totally done away with. This view states that retributive justice, executed through means like corporal punishment, 'has no moral standing, merely the desire for revenge dressed up in morally loaded language to give it a false respectability'. Maiese (2013) also echoes the same sentiments, pointing out the danger in retributive justice easily slipping to an obsession and emphasis on revenge. In such instance, it tends to defeat the whole purpose of the administration of juvenile justice.

Another dimension to justice is corrective or restorative justice, which focuses more on reparations, taking into consideration the rights of the offender as well as the needs of the victim with the objective of mending relations for the harmony of society. This notion basically embraces the principle that 'those who wrongfully cause losses to others should repair those losses'. According to Wood (2010), corrective justice is more desirable than retributive justice in that 'it is easier to calculate how much to compensate than how to punish'. The apparent challenge with this is that in cases where the offenders (in this case, children) are not in a position to pay the reparations, corrective justice cannot be applied with success. Wood (Ibid) is quick to point out that the correctional dimension of justice is more suitable for civil cases than criminal cases. Children's cases usually fall within the latter, and hence retributive justice is almost always applied to them. There is therefore need to infuse corrective justice into the criminal realm.



## The Continuing Debate

The debate on corporal punishment has gone on for decades, and in some quarters it has been on for centuries. This has in most cases taken a moral stance and hence moral arguments for and against corporal punishment have been put forward. This section will explore these arguments further, in order to proffer a deeper understanding of the issue of corporal punishment as presented by various scholars.

Scarre (2003) asserts that it is the objective of punishment to cause pain, but this is only done for the purposes of achieving 'good social ends'. Hence Scarre (Ibid) does not see anything wrong with corporal punishment being inflicted on offenders, as it is the very purpose of the justice system, so that society is freed from crime. The same sentiments are echoed by John Stuart Mill (in Scarre, 2003), who argues that 'to deter by suffering from imposing suffering is not only possible, but the very purpose of penal justice'. Scarre (2003) argues that there is no tangible evidence that points to the direction that corporal punishment has failed. He actually proposes, in those states that have prohibited it, the re-introduction 'of some physical penalties on an experimental basis and measure the impact on the crime rate'.

However, recent research findings tend to challenge the above assertions. Bordin *et al* (2009) found an association between corporal punishment and mental health problems in both childhood and adolescent stages of development. They also note that corporal punishment in childhood is strongly linked to antisocial behaviour and depression in adult life. On the other hand, a major meta-analysis conducted by the Global Initiative in 2002 established that although 3 of the 5 studies on the topic of compliance found that corporal punishment is associated with immediate compliance, 13 out of 15 studies revealed that such a form of punishment does not contribute to the child's long-term compliance with the desired behaviour. The analysis instead revealed that in 12 out of 13 studies, corporal punishment was found to be significantly associated with an increase in delinquent and other allied behaviours (Global Initiative to End Corporal Punishment, 2013).

As far back as the early 20<sup>th</sup> century, the humanitarian perspective maintained that 'all flogging is abomination, whether its victim be a man, a woman or a child' (Salt, 1905). This view puts even greater weight against corporal punishment especially in the case of children, where it notes that corporal punishment has an even more damaging effect. Salt (1905) warns against the beating of 'the feeble and defenceless' as a way of punishing them, as it is at that developmental stage that 'the ethical sense is more liable to be permanently confused and distorted by a lesson in personal violence as a substitute for moral persuasion'. He further condemns corporal punishment for children, and calls it a 'cowardly and mean practice' that is 'extremely likely to implant in the mind of the child who suffers it a tendency to act in a similar manner when the conditions are reversed, and when the slave grows into a tyrant'. Thus, according to this particular line of thought, corporal punishment must effectively be dealt away with, in the interest of humanity. In line with the foregoing, Von Hirsh (1996) proposes reduced punishments for children who come into conflict with the law for the reason that children have a 'less degree of culpability'. According to von Hirsh (Ibid), this line of thinking is based on the cognitive claim that children have less capacity to assess and appreciate the harmful consequences of their criminal actions, and this is even more pronounced in children when they reach adolescent stage, where they 'tend to be less able to postpone gratification, to control feelings of anger and to resist peer pressure' (von Hirsh, 1996).

With regards to the above arguments, Scarre (2003) claims that such arguments are 'unsubstantiated', but rather what is well known and documented is that the effect of previously convicted people turning into violent human beings in their later life is more often produced by locking them up in jail with other brutal and hard-core companions than by corporal punishment. Scarre (Ibid) further argues that the very notion that punishing offenders by corporal means tends to make them perceive violence as a legitimate means of solving problems itself 'radically underestimates the capacity of people, including children, to make a distinction between using force to punish wrong doing and using it for fun or to advance private ends'. In *S v A Juvenile*<sup>87</sup> in Zimbabwe, the then Chief Justice Dumbutshena, who interestingly earlier on had set the parameters for the implementation of corporal punishment in Zimbabwe, is said to have described this form of punishment as 'a type of institutionalised violence inflicted on one human being by another'. (Hatchard, 1991). Chief Justice Dumbutshena expressed that there were very few differences between corporal punishment for adults and that one for children. In the same spirit, Justice Gubbay (1989) concurred that 'judicial whipping...is a punishment inherently brutal and cruel; for its infliction is attended by acute physical pain...whipping, which invades the integrity of the human body, is an antiquated and inhuman punishment which blocks the way to understanding the pathology of crime'. However, in a dissenting judgement, Justice McNally (1989) attempted to differentiate between the judicial corporal punishment for adults and that for juveniles, and argued: 'The general and conventional wisdom is that moderate correction by way of corporal punishment may have a reformatory effect on children and young persons, whereas corporal punishment on adults is considered likely to have the opposite effect' (in Hatchard, 1991). It is however interesting to note that in submitting his judgement, Justice McNally (Ibid) admitted that he was just generalizing without concrete evidence informed by research.

Justice Gubbay (in Hatchard, 1991), in *S v A Juvenile*<sup>88</sup>, weighed heavily upon certain 'adverse effects' that are present in the act of whipping, and these shall be highlighted here. Firstly, Justice Gubbay argued that the manner in which corporal punishment is inflicted is '...somewhat reminiscent of the flogging of the past...a barbaric occurrence...it is relentless in its severity and is contrary to the traditional humanity practised by almost the whole civilised world'. Inherent in this argument is that it was high time for Zimbabwe as a nation to move with the times and emulate the reforms that were being made in the administration of juvenile justice the in most parts of the world. The same sentiments are echoed by Kaseke (1993) who points out that in disposing of juvenile offender cases, the options before the court in Zimbabwe are often limited, and chief among these is corporal punishment which he castigates as 'a retrogressive option which has no place in the juvenile justice system'. Secondly, and in line with the first argument, Justice Gubbay argued that corporal punishment, 'by its very nature ...treats members of the human race as non-humans...' Hence, according to Justice Gubbay, regardless of the nature of offence, even 'the vilest criminal remains a human being possessed of common human dignity'. Justice Gubbay therefore took the human rights stance, and seems to have been suggesting that corporal punishment is a serious violation of the fundamental right to dignity and self-worth of persons.

In his third argument, Justice Gubbay noted with concern that despite the safeguards provided for by law, corporal punishment in practice 'is a procedure easily subject to abuse in the hands of a sadistic and unscrupulous prison officer who is called to administer it'. Furthermore, and

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<sup>87</sup> See p. 2

<sup>88</sup> Ibid.



what sounds more like a rude awakening, in his fourth submission, Gubbay pointed out that corporal punishment ‘...is degrading to both the punished and punisher alike...’ Gubbay argues that the act of corporal punishment ‘causes the executioner, and through him society, to stoop to the level of the criminal’. Gubbay’s argument is therefore that society should stop corporal punishment not only for the criminal’s sake, but most importantly for its own sake as well. By abolishing corporal punishment, society would also have upheld, apart from the child’s, its own dignity too.

Hiemstra (in Middleton, 1984) notes that corporal punishment as a sentencing option for juveniles is necessary for two major reasons; that it keeps juveniles out of jail while on the other hand it assists the courts on many occasions ‘to avoid imposing heavy mandatory sentences upon juveniles’. Justice McNally (in Hatchard, 1991) also concurred with the latter view, arguing that if juveniles are not sentenced to corporal punishment, then the next possible mandatory sentence would be custodial sentence, ‘which achieves nothing and does [children] a great deal of harm’. McNally further added that the child offenders ‘cannot pay a fine and there is little point in their parents paying it’.

A major reason for recommending or passing the corporal punishment sentence put across by magistrates and public prosecutors in the Matabeleland study conducted by the writer was the need to keep children away from the harsh realities of the prison setup, as most of the offences committed by children like rape are serious and they normally attract very long prison sentences. Lack of other comprehensive alternatives to imprisonment thus compels those who pass the sentences on male child offenders to consider corporal punishment.

The above arguments are also recognized by William Godwin (in Salt, 1905), who describes corporal punishment as ‘an expeditious mode of proceeding, which has been invented in order to compress the effect of much reasoning and long confinement, that might otherwise have been necessary, into a very short compass’. In support of corporal punishment, Scarre (2003) argues that although there is an element of fear and anxiety on the part of a person who is waiting to receive corporal punishment, ‘this can be minimized by ensuring that the administration of justice is swift’. This is consistent with the findings of the Matabeleland study, where both the children and the sector stakeholders indicated that soon after the sentence, the convicted child would immediately be sent to receive the cuts at the prison to allow for ‘swift’ administration of ‘justice’. The apparent challenge with this way of doing things is that there would be no time for the child to appeal against both the conviction and the sentence, which is a constitutional right provided for in Section 70(5b) of the Constitution of Zimbabwe Amendment (No. 20) Act of 2013 which states that ‘[a]ny person who has been tried and convicted of an offence has the right...to appeal to a higher court against the conviction and sentence’.

The idea of ‘swift’ administration of juvenile justice in Zimbabwe is also compromised by the time it takes between date of committing an offence and sentencing date. The research study conducted by the writer established that the average time lag between offending and sentencing dates for children was 1.19 years, which brings to question the effectiveness of judicial corporal punishment in changing children’s behaviour, given such a long time before a child was sentenced. It is also worth mentioning that even in the Zimbabwean culture, it is very unusual to beat a child as punishment for the wrongs they did a year ago, and hence this serves to illustrate that the way judicial corporal punishment is administered in Zimbabwe is alien, and inconsistent with Zimbabwean cultural values.

## ***From Retribution to Restoration: Serious Considerations for Zimbabwe***

During the first cycle of the Universal Periodic Review of 2011 (Session 12), Zimbabwe as a country was examined, and in its national report<sup>89</sup> the government pointed out that ‘Zimbabwe administers corporal punishment to juvenile male offenders’. It however stated that the juveniles should be certified by a medical officer that they are ‘medically fit to receive corporal punishment’ which must be inflicted with ‘a light cane’ on the bare buttocks ‘in private...in a manner and place designated by the court’. The parents or guardians of the child and/or a probation officer have a right to be present when the punishment is administered. In reaction to this presentation, Austria recommended that the government of Zimbabwe should outlaw corporal punishment as a form of sentence as well as in all other settings. On the other hand, Portugal recommended that the government of Zimbabwe should ‘ratify the Convention against Torture, clearly criminalize torture and ban all kinds of corporal punishment’ (Global Initiative to End Corporal Punishment, 2011). At that time, the Government of Zimbabwe openly rejected Portugal’s recommendation<sup>90</sup>. It however accepted Austria’s recommendation<sup>91</sup>, which up to this day has not seriously materialised by way of reform.

In the Matabeleland study, the interviewed children who had experienced corporal punishment revealed that apart from their body mass being weighed on a digital scale, there was no further examination done on them to determine their ‘fitness’ for corporal punishment and this is in direct contravention of Section 353 (4) of the Criminal Procedure and Evidence Act (Cap. 9:07) which states that corporal punishment for male children ‘shall not be inflicted...unless a medical practitioner has examined the person...and has certified that he is in a fit state to undergo punishment’. Hence medical examination could be a ritual that still exists on paper, but has been abandoned in practice in some quarters, especially where, by merely looking at them with the naked eye, the child appears ‘fit’.

The study findings point to a strong need for reform in the juvenile justice system of Zimbabwe. The experiences of the children demonstrate that judicial corporal punishment in Zimbabwe is merely a form of state institutionalized violence against children, and hence must be abolished. There is therefore need for the government of Zimbabwe to repeal legislation that provides for judicial corporal punishment for children. Learning visits to other countries that have successfully abolished judicial corporal punishment are also crucial so that their experiences are tapped. The Matabeleland study established that retribution does not help much in terms of long-term rehabilitation of the child and their successful re-integration into society. As corporal punishment only focuses on the offender, a lot is missed on the victim, hence the need to use more restorative approaches when dealing with all child offenders. These include victim-offender mediation, counselling, supervision by probation officers, and community service. The research study revealed that some children commit offences aware of neither the magnitude of the offences nor the consequences. Legal education for such children is therefore critical.

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<sup>89</sup> A/HRC/WG.6/12/ZWE/1, Para. 49

<sup>90</sup> A/HRC/19/14, Report of the Working Group, para. 95 (5)

<sup>91</sup> A/HRC/19/2, Report of the Human Rights Council on its 21<sup>st</sup> Session para. 706.

Furthermore, preventive programmes, or the 'software' approach, can go a long way in challenging the need for judicial corporal punishment, as well as corporal punishment in other settings like the home and school. Family clubs and parenting skills trainings can go a long way in ensuring positive parenting and child-rearing attitudes in the country. Due to factors such as the AIDS scourge, migration and urbanisation, the traditional family setup no longer exists in most instances and this poses parenting and disciplining challenges. Awareness and other community training programmes thus help to ensure that children do not come into conflict with the law in the first place.

Abolishing judicial corporal punishment alone is not enough without putting in place proper measures for dealing with child offenders. Firstly, there is need for reform in the current sentencing options like institutionalisation and community service to ensure that they respond to the unique and varying needs as well as situations of children. Secondly, restorative justice implies manpower in the civil service and this therefore means additional resources allocated by the government towards child welfare and probation services for effective supervision of children. This means there have to be serious efforts towards improving budgeting for children. The study carried out by the writer revealed that magistrates and public prosecutors do take into serious consideration the recommendations made on each child offender by the probation officers. However, the same study revealed that due to pressure of work, probation officers are most likely to recommend 'swift' sentences like corporal punishment, after which regular follow-ups are not usually conducted unlike in the case of institutionalization and putting the child under the supervision of the probation officer.

An institutional capacity assessment of Zimbabwe's Department of Social Services carried out in 2010 revealed that the social worker-child ratio was 1: 49 587. The situation has since improved a bit with the creation of a new Department of Child Welfare and Protection Services in 2014 which specifically deals with the protection of children. This department has slightly over 100 social workers throughout the country. However, currently

probation work functions are only done by social workers in the public service and this means that social workers in government are still overwhelmed, a situation exacerbated by limited resources for social workers resulting in them not being able to effectively discharge their mandate. Yet restorative processes require a hands-on approach where the social worker is constantly in touch with the child offender, the victim and the concerned families and communities using the case management approach that has since been adopted by the government. The government of Zimbabwe thus needs to expedite the process of engaging social workers outside the public service as probation officers as this is already provided for in Section 46 (1a) of the Children's Act (Cap. 5:06). This strengthens the social welfare workforce in the country in as far as probation work is concerned and hence quality outcomes for children.

## CONCLUSION

The paper has essentially highlighted that there are various arguments put for and against corporal punishment which are morally laden and hence are not informed by research in the area. Research study findings go a long way to inform policy in the area of juvenile justice administration. The writer's study showed that although adult stakeholders are in favour of judicial corporal punishment, this form of punishment is not in the best interests of children, as it shatters prospects of successful long term rehabilitation of the child and their re-integration into society. It has been indicated that judicial corporal punishment in Zimbabwe was reintroduced and indeed continues to be in place, mainly due to lack of other comprehensive alternatives to corporal punishment. If this form of punishment continues, then this means the state will have failed in this regard as it will have run out of options. Serious reforms are therefore critical in ensuring that Zimbabwe moves away from the retributivist approach when dealing with all child offenders and should adopt more restorative approaches that benefit both the child and society. This way Zimbabwe would have achieved a milestone in the realization of the rights of the children as in the spirit of the country's Constitution, regional and international child rights instruments.

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# **PART 3**

MONITORING BUDGETARY ALLOCATIONS FOR CHILDREN



# INTRODUCTION TO CHILD FRIENDLY BUDGETING

**Chakanyuka Nziradzemhuka**

The rights of children are fundamental component of society. There is need to uphold and resource the effort toward preserving children's rights. Zimbabwe is a signatory to a number of conventions that guide and elaborate the rights of Children. These include African Charter on the Rights and Welfare of the Child and the United Nations Convention on the Rights of the Child among other variant international declarations.

From a child rights perspective, child friendly budget work focuses on building long term institutions for advancement of child friendly policies and budgets. Among the driving motivations is the realisation of public finance and child friendly budgeting principles. In the former case, these are equity, efficiency and stability integrated with the former embraced under maximum available resources, participation and accountability. The principles are key throughout the budget cycle as governments aspire to honour their obligations under the multiple treaties of children's rights.

The snapshot of rights that children are entitled to which deserve Government attention through resource provision include;

1. Best interests of the Child (Article 3),
2. Registration, name, nationality and care (Article 7),
3. Health and health services (Article 24),
4. Education (Articles 28 and 29), and
5. Leisure, play and culture (Article 31).

Child friendly budgeting aims to influence budget allocations in favour of children enable key stakeholders who represent the powerless segment of society as they have limited access to economic resources and little capacity to influence budget decision making. It also enhances literacy of stakeholders understanding their role towards the mechanisms by which Government raises funds and evaluates the expenditures.

It is clearly evident in the case of Zimbabwe that the Government is constrained with respect to its revenue measures. Prioritisation of resource allocation is a deterministic factor that influences the budgets; thus the need for child friendly budgeting to be more profound. This situation has material impact on the ability of the Government to strive for the attainment of the principles of child friendly budgeting and public finance. For instance, there is a heavy reliance on donors for funding of social protection and some health and education programmes done in collaboration with various Government ministries.

This section of the Monitor provides a commentary on using fiscal policy to address child poverty and inequality and also gives brief analyses of the budgetary allocations made to three sectors by Government namely, Social Welfare; Education and Health for the 2015.

# USING FISCAL POLICY TO ADDRESS CHILD POVERTY, SOCIAL EXCLUSION AND INEQUALITY

BL Muchabaiwa

## Abstract

*Fiscal policies are not neutral. They have far reaching effects on the implementation of children's rights. It is through fiscal policies that child rights policy commitments are translated into concrete outcomes for children. These commitments, no matter how good they are, will remain empty promises unless backed by adequate and sustainable mobilization and allocation of public resources towards their implementation. Using examples from selected developing countries, this paper highlights some practical ways of using fiscal policies to address child poverty, social exclusion and inequality. The paper is premised on the view that delivery of essential services to children such as education, child protection, health, water and sanitation is a central function of government, which should be realized through child responsive budgets. The paper is mainly a result of desk review of research papers, fiscal policy documents of several governments in developing countries and reports of relevant United Nations bodies and non-governmental organizations. The desk review was complemented by interviews with key informants in Kenya, Uganda and Zimbabwe.*

## Introduction

UNICEF (2014) estimates that nearly 18000 children under five years die every day from preventable causes like diseases and hunger. Fifteen per cent of the world's children engage in child labour that compromises their right to protection from economic exploitation and also infringes on their right to learn and play (UNICEF 2014). In 2013, under-five mortality in the world stood at 6.3 million (UNICEF, 2015). Lack of sufficient resources, inequitable allocation and ineffective spending on children are often cited as the main reasons for the poor implementation of children's rights (HRC, 2014; Save the Children, 2012; ICF & Plan 2013; UNICEF, 2014).

This paper is divided into four sections. The first section provides working definitions of key concepts, notably fiscal policy, child poverty, social exclusion and inequality. In the second section, the paper establishes the conceptual connections between fiscal policies and child rights and subsequently with child poverty, social exclusion and inequality. The third section presents practical ways on how fiscal policies are used to address child poverty, social exclusion and inequality. The fourth part distils some crucial lessons learnt on application of fiscal policy to address the same.

## Overview Key Concepts

### Fiscal policy

Fiscal policy is broadly defined as the use of government spending and taxation to influence the economy (Miller and Vanhoose, 2001; Willis, 2005; IMF, 2014). A fiscal policy outlines a range of measures to guide public revenue mobilization and public spending (Muchabaiwa, 2012). Fiscal policy is implemented mainly through government budgets, borrowing and taxation. In general, fiscal policies are used by governments to influence aggregate demand and supply, manage economic hardships, foster economic growth and promote sustainable development (Miller and Vanhoose, 2001; Willis, 2005). The main objectives of fiscal policy are to promote macro-economic stability, deliver

public goods, correct market failures and to redistribute national income (IMF, 2014).

A key fiscal policy instrument that this paper will focus on is the government budget. A government budget, whether local or national, is a true indicator of the commitment of those in power to fight child poverty, social exclusion and inequality. A government budget shows how expected government revenue will be shared amongst competing priorities to achieve desired objectives. The process of public budgeting is both technical and political. Therefore, the process of influencing fiscal policies, including yearly budgets, cannot be separated from the political and economic system in which they are embedded.

Revenue mobilization and sharing – the two key functions of fiscal policy, are guided by specific public finance principles and laws, all of which are influenced by the political economies of states. Taxation, for instance, should ensure certainty, cost-effectiveness, horizontal and vertical equity and be supportive of government policy. Horizontal equity aims to ensure that people in similar circumstances who have similar finances should pay the same amount of tax. Vertical equity seeks to ensure that the tax burden does not disproportionately affect the poorest in society. This is achieved by making the rich pay more tax than poor people - what is commonly known as progressive taxation. This means tax paid will increase in proportion to income. There is however debate on the degree of progression that is desirable (Harrison, Smith and Davies, 1992).

### Child Poverty

Child poverty is different from adult poverty. At the basic level, as UNICEF points out, child poverty is a situation where children "experience deprivation of the material, spiritual and emotional resources needed to survive, develop and thrive, leaving them unable to enjoy their rights, achieve their full potential or participate as full and equal members of society" (UNICEF, 2012, p.26). Save the Children (2013, p.10) describes child poverty as "multiple and overlapping deprivations" amongst children evidenced by stunting, stigmatization, low literacy levels and general material insecurity, among other factors. According to the 2007 United Nations General Assembly, "children living in poverty are deprived of nutrition, water and sanitation facilities, access to basic health-care services, shelter, education, participation and protection" (UNGA 2007). Whilst a severe lack of goods and services hurts every human being, it is most threatening and harmful to children, "leaving them unable to enjoy their rights, to reach their full potential and to participate as full members of the society" (Ibid). Therefore, child poverty has something to do with powerlessness, limited opportunities for development as well as feelings of economic and physical insecurity. Poverty impacts disproportionately on children because of their vulnerability; inability to negotiate life challenges and their circumstances. Children are thus at the mercy of decisions made for them by adults.

### Social exclusion

Applied to children's contexts, the term social exclusion denotes a situation where the "dignity, voice and rights of children are denied, or their existence threatened" (Minujin *et al*, 2005, p.15). Although closely related to child poverty, social exclusion has distinct characteristics. Social

exclusion “is primarily concerned with the relationship between the individual and society, and the dynamics of that relationship” (Klasen, 2005, p.5). Klasen contends that social exclusion has more to do with “inability to participate effectively in economic, social, and cultural life and, in some instances, alienation and distance from mainstream society” (2005, p.5).

Applying a human rights framework, DFID (2005, p.3) described social exclusion as “a process by which certain groups are systematically disadvantaged because they are discriminated against on the basis of their ethnicity, race, religion, sexual orientation, caste, descent, gender, age, disability, HIV status, migrant status or where they live”. Parallels can be drawn between systemic discrimination and social exclusion. Social exclusion may arise from a ‘dislike’ of a particular racial, ethnic or religious group resulting in systematic but subtle discrimination and isolation.

From the foregoing, and as also pointed out by Peace (2001, p.17), it can be concluded that social exclusion is associated with “poverty, hardship, deprivation and marginalization” of children. When children are socially excluded, it means they have limited or no access to social and other development opportunities, public benefits as well as spaces for participation in policy processes including budgeting. Whilst it is difficult to exhaust categories, socially excluded children include those involved with armed groups, religious minorities, children living in slums, HIV affected children, children with disabilities and children from migrant families. Roma children in Europe and the United States are an example of socially excluded children arising from migration. In a number of African countries, social exclusion amongst children is a phenomenon mostly associated with children in mining, farming, rural, peri-urban, indigenous and nomadic communities such as the San in Botswana and the Maasai and Samburu in Kenya. Social exclusion weighs heavily on the girl child.

### **Inequality**

Inequality amongst children is a relational term that is used to refer to situations where children do not have access to the same level of income, protection and life chances to realize their rights relative to other children (UNICEF, 2015; Save the children, 2012; Sen, 1999). Migrants, ethnic minorities and children from indigenous communities, orphans and other vulnerable children often have less access to social services than other population groups, even though their needs may be greater. According to UNICEF (2015), the poorest 20 per cent of the world’s children are twice as likely as the richest 20 per cent to be stunted by poor nutrition and to die before their fifth birthday. At the same time, nearly 9 in 10 children from the wealthiest 20 per cent of households in the world’s least developed countries attend primary school – compared to only about 6 in 10 from the poorest households.

A study by Save the Children (2012) observed that a child in the richest 10% of households has 35 times the effective available income of a child in the poorest 10% of households. According to WHO (2010), women in the richest 20% of the population are up to 20 times more likely to have a birth attended by a skilled health worker than those from the poor segments of society. Children can experience inequalities in income, access to essential services, representation in institutions and processes and in the protection and promotion of their rights. One of the biggest blind spots in the Millennium Development Goals (MDGs) framework was the failure to address inequality comprehensively (Save the Children, 2012). Gladly, the idea that no one should be left behind by progress is now firmly rooted in the post-2015 development framework.

### **Links between fiscal policy and children’s rights**

To implement children’s rights, governments need to mobilize, equitably allocate and effectively utilize available resources. The allocation and utilization of government resources is achieved through fiscal policy instruments such as public budgeting, which are the means through which service delivery to children is achieved.

Four crucial links between fiscal policies and children’s rights can be established. First, fiscal policies provide the framework and instruments for raising government revenue to invest in children. Money spent on children should come from somewhere. Second, fiscal policies provide the framework for the redistribution of national resources. They determine where, on what and how much of the ‘available resources’ will be spent. This is done through public budgeting. Government budgets are perhaps the most significant vehicle through which national income is redistributed. To this extent, fiscal policy helps governments to address income inequality and social inequities. The role of the state in modelling the appropriate spending pattern, through its fiscal policies, is therefore particularly important considering that in many cases markets often fail to allocate resources optimally (Harrison, Smith and Davies, 1992; Willis, 2005). Third, fiscal policies cement the social contract between citizens and government. When citizens, including children, pay tax on income, goods and services they consume, they have the right to demand services and accountability from government. Lastly, fiscal policies contribute to the re-pricing of goods and services consumed by children.

Article 4 of the United Nations Convention on the Rights of the Child (UNCRC), which is the most authoritative international child rights instrument ratified by all countries, except the United States of America and Somalia, places an obligation on all state parties to invest to the ‘maximum extent of their available resources’ in children in order to realize their rights. A government’s fiscal framework and budgets, and their sensitivity to children, is therefore a good mirror of its commitment to addressing child poverty, social exclusion and inequality.

In recognition of the links between fiscal policy and social development, in 2000, heads of state of African Union countries met in Dakar and made a commitment to allocate 9% of their GDP to education by 2010. In 2001, they also met in Abuja and pledged to allocate at least 15% of their annual budget to the health sector. At the same time, they urged donor countries to fulfill the target of allocating 0.7% of their GNP as official Development Assistance (ODA) to developing countries. Unfortunately, by 2012, only 7 countries in Africa had met the Abuja commitment and 6 countries meeting the Dakar commitment (WHO, 2012; UNESCO, 2012; ACPF, 2012).

In order to improve their fiscal space, governments of developing countries may also seek development assistance from donors. However, although it is undisputable that donor aid works and can deliver phenomenal child rights outcome, it is rather unsustainable to depend on external financing for long term investments in children. Regrettably, many child- focused social protection programmes in many developing countries are significantly funded by donors. A new development paradigm is urgently required that emphasizes domestic revenue mobilization.

Instead of taking a piecemeal approach to ensuring that fiscal policies effectively respond to children’s issues, some governments are putting in place comprehensive Child Responsive Budgeting (CRB) frameworks. CRB is both a social and fiscal policy tool. Muchabaiwa (2013, p.4) defines CRB as:

A framework that seeks to ensure that practical and strategic needs of all children are considered and effectively responded to in fiscal policy planning and budgeting in order to implement child rights in line with the UNCRC. CRB serves as a guide on how government departments can address specific deprivations, inequality and other challenges faced by

children in order to ensure progressive realization of their rights to survival, development, protection and participation. The objective of CRB is not to have a separate budget for children, but to guide the nature and scope of direct and indirect public investments on children.

CRB aims to ensure that fiscal policies are designed and implemented with the best interests of children in mind. It also seeks to ensure the visibility of children in government budgets. Following are two cases of CRB to further illustrate the nature of CRB.

### **CRB in Bangladesh and South Sudan**

*From 2011, the Ministry of Women and Children Affairs of the Government of the People's Republic of Bangladesh in partnership with UNICEF developed a 'Child Focused Budgeting (CFB) framework'. The purpose of the framework is "to guide the nature and scope of public sector investments that, directly or indirectly, influence the realization of children's socioeconomic rights, and set in motion an upward spiral of inclusive, sustainable growth and human development that benefits the entire society".*

*The framework proposed a mechanism for continuous tracking and analysis of government budgets to see if they are child-friendly. It is fashioned along the lines of the Gender Responsive Budgeting Initiative in Bangladesh. In 2013, Save the Children in Bangladesh started engagements with the Ministry of Finance and Economic Planning to expand the scope of CFB, building on what the Ministry of Women and Children Affairs and UNICEF had done. The additional aspects that Save the Children proposed through the Ministry of Finance include the need for specific guidance on how budget allocations at national and local level can be more responsive to children; how children and young people can be involved in public budgeting; and mechanisms for enhancing fiscal transparency and accountability throughout the budget cycle.*

*In 2013, Save the Children in South Sudan in partnership with the Ministry of Gender, Child, Social Welfare, Humanitarian Affairs and Disaster Management developed a guide for policy makers and child focused organizations on 'Child Responsive Budgeting in South Sudan'. The guide is a tool 'for various stakeholders in their efforts to influence and track national and state level budgets to advance children's rights'. In 2010, the Government of Kenya also launched a 'Social Budgeting' Framework for the purposes of promoting stakeholders' (including children and young people) participation in national and local budgeting.*

**Source: Muchabaiwa, 2012: Save the Children in Bangladesh, 2013**

The relevance of fiscal policy to implementation of children's rights cannot be disputed. The challenge is how to make fiscal policies work for children.

### **Fiscal Policies and Children's Rights in Practice**

In this section, I highlight concrete ways in which fiscal policies could be used to address child poverty, inequality and social exclusion. The discussion is, as I indicated earlier, aimed at highlighting only key examples. There are several ways in which fiscal policies could be used to advance children's rights that are not presented in this paper. The few examples will hopefully stimulate debate on the subject.

### **Public investments in strategic and anti-poverty initiatives**

In order to respond effectively to child poverty, social exclusion and inequality, the primary challenge of governments is to orient taxation and public spending towards addressing the same. To begin with, as pointed out by the Overseas Development Institute, fiscal policies should aim to "tackle chronic poverty, stop impoverishment and support sustained escapes from poverty" (Shepherd *et al* 2014, p.12). To tackle chronic child poverty, for instance, public spending should prioritize issues such as social assistance programmes, basic infrastructure to deliver social services, and universal free primary education and primary healthcare for all. Public spending should also, among other things, emphasize decent employment, social insurance, disaster risk reduction and universal health coverage, which are associated with positive outcomes for children.

Furthermore, fiscal policies should seek to strike a balance between 'poor human development' and 'sustainable economic growth'. This means that government budgets should pursue the goal of economic development (by investing in sectors such as transport, roads, energy and technology) alongside human capital development (by investing in programmes such as health, education, resilience and child protection). As Save the Children (2012) noted, in a number of middle income countries, economic growth has not always led to equitable development, due to lack of this balance. In fact, many children have been left behind by progress, in the midst of plenty. As a result, today, most of the world's poorest children live in middle income countries (Save the Children, 2012). Addressing this anomaly would entail improved public investments in human capital through, for example, delivery of quality of public services such as health and education and strengthening of social protection systems that recognize the specific vulnerabilities of children.

From the late 1980s and early 1990s, a number of governments all over the world, including sub-Saharan Africa, with inducements and technical advices from international financial institutions, especially the International Monetary Fund and the World Bank, introduced privatization and cost recovery measures in the provision of essential services such as water, transport, electricity, health and education. The main objective was to reduce government expenditure, contain ballooning wage bills and purportedly enhance efficiency and effectiveness in public service delivery. The results were mixed. In some cases they were catastrophic. In a few countries such as Thailand and Malaysia, however, privatization contributed to improved efficiency and effectiveness in public spending as well as reduction in corruption and leakages.

A number of lessons could be drawn from these reform programmes and the results thereof. First, market forces alone are inappropriate tools to redistribute national income and address inequality amongst children. The government, through its fiscal policies, has crucial roles to play. Second, privatization and cost recovery mechanisms should be appropriately timed and phased. Third, mechanisms should be put in place to cushion children and other citizens from the likely negative impacts of these policy options. Last, cost-benefit analyses and child rights impact assessments should be done in order to ascertain how children will be affected by these policies. For example, privatization of schools and colleges in a number of developing countries has worsened inequalities in access to education.

### **Strategic use (and or review) of government subsidies on essential products and services consumed by children**

A government subsidy is some kind of support to a specific development sector, usually financial - but not always - provided with the aim of lowering the ultimate cost of production or prices of specific goods and services. A number of governments have at some point offered subsidies on goods and services they consider essential for living, such as food,



fuel, water, electricity, health and education. Subsidies may also be aimed at boosting production in specific sectors. Agricultural subsidies in the form of fertilizers, inputs, and pesticides fall in this category.

In general, most subsidies are designed with families and firms in mind, not individual children. It is assumed that the benefits to firms and families will trickle down to children. Of course, this is not always the case. There are several cases where subsidies end up benefitting the rich more than the poor. Such a scenario leads to greater inequality (Son Hyun Son, 2003). They also sometimes generate artificial shortages in the formal market resulting in a thriving informal/parallel market. Recognizing these imperfections, high risk of abuse and failure to address inequality, a number of countries have started to reform subsidies in favour of more targeted child poverty reduction strategies. Ghana is a classic example.

### **Subsidy reform in Ghana**

Ghana has in the past implemented fuel and fertilizer subsidies. Unfortunately, these subsidies turned out to be more beneficial to the rich than to poor families and their children. Almost 78% of fuel subsidies benefited the wealthiest group, with less than 3% of subsidy benefits reaching the poorest quintile. Over the years the subsidies also became a drain to the national budget. Budget deficits ballooned. As a result, the government decided to remove the fuel subsidies. The process started as early as 2001 in line with IMF's recommendations to streamline government expenditure. It was only in 2013 that the government succeeded in removing the entire subsidy. The process was protracted because citizens protested against the move. However, cost-benefit analyses and simulations done with Ghana's social protection programme, LEAP, showed that if the same amount of money used to pay for subsidies was used to scale up well-targeted social protection programmes such as cash transfers, it would reduce poverty by 2.3%. This move would also have an added value of reducing inequality. The simulation also discovered that the cost of administering the social protection programme would be less than maintaining the fuel subsidy. After removing subsidies the Ghanaian government introduced and expanded a host of pro poor policies, including the removal of primary and secondary school state school fees.

**Source: Cooke E.F.A et al, 2014**

### **Effective public spending on social assistance**

One way of taking children out of chronic poverty and tackling inequality and social exclusion, using fiscal policies, is through prioritizing public spending on child sensitive social protection programmes. These programmes come in various forms, which include cash transfers, public works and coupons to be exchanged for a particular service. Well designed and targeted cash transfer programmes, for example, have the potential to re-distribute national income in order to benefit the poorest and socially excluded children. The sustainability of cash transfer programmes is however still a subject of discussion, with some liberal economists leading the crusades against such. However, it is difficult to deny the fact that a robust social protection programme can protect children from extreme deprivation, whilst at the same time enhancing their life chances and reducing inequality. Unfortunately, only 5–10% people in sub-Saharan Africa and Southern Asia are covered with a broad based social security programme. The coverage rate is 20-60% in middle-income countries (WHO, 2010).

In Africa, Ethiopia's Productive Safety Nets Programme (PSNP) is one of the largest social assistance programs in Sub-Saharan Africa outside South Africa. The PSNP, which began in 2005, operates as a safety net

by providing food and cash transfers and also facilitates public works to the chronically food insecure families in a way that prevents asset depletion at the household level and creates productive assets at the community level. The PSNP is complemented by a series of food security related activities such as improved access to credit, agricultural extension services, water conservation and harvesting and agricultural technology transfer. The programme reaches more than 7.5 million people. Recent evaluations of the PSNP has shown that many families in the targeted regions have been moved out of chronic poverty, children have improved their nutritional status and asset levels did not fall, contributing to sustained poverty escapes. As a result of the impact of the programme, about 495,995 households graduated from PSNP between 2008 and 2012 (Gilligan et al, 2008).

A body of knowledge exists to show that cash transfer programmes have the potential to improve household income, stimulate aggregate demand in targeted communities and consequently address child poverty and inequality (Gilligan et al, 2008; Cooke E.F.A et al, 2014). Cash transfers are either conditional or unconditional. A conditional cash transfer is provided on the understanding that the recipient will use the money in a certain way or is expected to do certain things afterwards. An unconditional cash transfer does not have any strings attached. A number of studies in Latin America and Asia have concluded that cash transfers tend to reduce the Gini Index (Son Hyun Son, 2005). To be effective, cash transfer programmes should be reflected in medium term fiscal frameworks of a country.

Under the National Action Plan for Orphans and Other Vulnerable Children (NAP for OVC), phase 11 for the period 2011-2015, the Zimbabwean Government is implementing a cash transfer programme in which targeted households receive US\$20 a month (NAP for OVC 11, 2011). Kenya has since 2009 been implementing a cash transfer programme targeting orphans and other vulnerable children. By 2012, the programme was reaching 412,470 orphans with cash while 1,778,297 most vulnerable children were reached with educational support. From 2005 to 2010, social protection expenditure in Kenya rose from KES 33.4 billion to KES57.1 billion, which was equivalent to 2.28 percent of Gross Domestic Product (GDP) in 2010. The programme "directly reduced chronic poverty and vulnerability" and made "significant impact on consumption, school enrolment, and health outcomes" (Kenya Social Protection Review, 2012, p.32).

### **Cash transfer programmes in Mexico and South Africa**

Since 1997, Mexico implemented a conditional cash transfer programme, called *Oportunidades* with the aim of alleviating immediate suffering and breaking the intergenerational cycle of poverty. In 2004, the budget for *Oportunidades* was USD\$2.2 billion for a total of 4 million families. By 2007, this had reached USD\$3.7 billion dollars to cover over 5 million families. The Mexican example underscores the need for government to make a cash transfer programme part of the national fiscal framework, rather than relying on donor funding. Evaluation of the programme revealed improvements in reducing maternal mortality, school enrolment and pass rates.

Since 1998, South Africa has been implementing a Child Support Grant (CSG), reaching over 10 million South African children each month. The CSG is paid to the primary caregiver of a child at a level of ZAR280 per month after passing a means test based on household income. Several evaluations of the CSG have shown that school enrolment, child health outcomes, gender outcomes and personal confidence of targeted children significantly improved. Inequality amongst children was also reduced. The



CSG is predominantly funded from the national budget, although there were some contributions from international development partners.

**Source: DSD, SASSA and UNICEF, 2012**

In order to ensure that every child realizes the right to education, including the poorest and socially excluded, many governments include in their fiscal policies free basic education and health services such as immunization. The services are not 'free' in the strict sense of the word. It is the government, through its budgets, that pays for them. A number of developing countries, including Bangladesh, Cambodia, Kenya, Uganda, Swaziland and Zimbabwe have been implementing free primary education policies in line with Education For All (EFA) goals.

### **Free primary education in Zimbabwe**

Soon after attaining its independence from British colonial rule in 1980, Zimbabwe introduced free primary education. The government paid for everything from teachers' salaries to books and other materials. It also embarked on a huge infrastructural development programme to build more schools and to improve the learning environment. The result was a phenomenal increase in school enrolment and literacy levels. Zimbabwe has one of the highest literacy rates in Africa standing at 98% in 2012 (ZimStat, 2013). Regrettably due to economic and political problems, the level of government spending on primary education significantly decreased in real terms since 2001. The positive trend in education outcomes was reversed. School enrolment dropped from nearly 99% in 2001 to 91% in 2009. During this period, schools charged several levies to cover the gap left by government. Today, primary education in Zimbabwe is no longer as free as purported. What parents pay as additional levies is in most cases more than what schools get from the government budget. This practice, if put alongside the proliferation of private schools, is making it difficult for children from poor families to access quality education. This has impacted disproportionately on children from poor households.

**Source: NAP for OVC 11, 2011; ZimStat, 2012**

### ***Demand side and child specific financing instruments***

In order to respond to specific vulnerabilities and particular circumstances of specific categories of children, governments may also come up with demand side financing models targeting specific categories of children. Demand side financing is allocation and earmarking of resources to identified programmes to benefit a specific group of children because of their particular circumstances and needs. This entails targeted rather than universal approaches to public spending. Demand side financing can be in the form of a pooled, thematic or social assistance funds. Examples include scholarships for poorest children, educational assistance for children with disabilities, grants to children in institutions of care as well as other child focused funds such as the Child Protection Fund in Zimbabwe and the Health Equity Fund in Cambodia.

The Royal Government of the Kingdom of Cambodia introduced a Health Equity Fund (HEF) and Government Subsidy schemes in 2003. The primary objective of the HEF is to help poor families including children to access health services. The HEF initially covered medical fees. It was later extended to include transportation and food costs for caretakers during hospitalization. Beneficiaries have to meet an eligibility criterion. The HEF is currently financed by the Health Sector Support Program including funds from international development partners as well as from the Royal Government of Cambodia national budget.

Well targeted, demand driven financing instruments, including scholarships, affirmative action programmes for girls and financial quarter systems, can be effective tools to address child poverty, inequality and social exclusion. These efforts should be accompanied by transparency and accountability measures to ensure effective use of the allocated resources.

### ***Safeguarding core spending on children in times of austerity***

In a number of developing countries, public spending is pro-cyclic. This means that it increases as economies grow and resource bases improve. The opposite is true. In times of economic depression, most governments from developing countries tend to reduce their social expenditures, especially on sectors such as health, education, water and sanitation. This usually affects children the most. To avoid regression in child rights outcomes governments may consider borrowing for the purposes of countercyclical spending on essential services.

In line with the principle of progressive realization of children's rights, governments have the responsibility to do everything in their power to safeguard public spending in crucial sectors that affect the development and protection of children. The same logic should be applied when procuring loans. Loan repayment arrangements should take into consideration existing commitments of governments to deliver a minimum package of social services to children and the general populace.

### ***Raising or lowering taxes***

To generate public resources to invest in children, governments can either raise direct or indirect taxes. Direct taxes are levied on income whilst indirect taxes are levied on transactions, goods and services. A common example of indirect tax is Value Added Tax (VAT). Both types of taxes should however be assessed to see if they do not entrench inequality. As we pointed out earlier, tax policy should be progressive. Regressive policies contribute to inequality. In the Latin America region, El Salvador and Guatemala have been noted to have the most regressive taxes (ICEFI & Plan, 2013).

In recent years, some governments have introduced 'innovative' indirect taxes to mobilize domestic revenue. These include higher taxes on luxury goods; taxes on harmful goods such as cigarettes and alcohol (sin taxes); environment related taxes such as carbon tax as well as taxes on some transactions such as financial transactions tax, air ticket tax and tax on mobile money transactions. Proceeds from these specific taxes could be earmarked for identified children's issues. For an example, Zimbabwe introduced an Aids Levy which was earmarked for HIV and AIDS prevention, mitigation, care and support. A significant chunk of AIDS levy resources were directed to supporting children infected and affected by the pandemic. Some countries such as Mozambique and Zimbabwe are contemplating earmarked 'child taxes' that will be levied on crucial economic sectors such as the extractive industry (UNICEF, 2014). Of course, a lot still needs to be done to ensure buy-in and to discuss modalities of such taxes.

Although there is no direct causal relationship between taxation and public spending on children, it has been demonstrated that with political will, additional fiscal space arising from improved tax revenue is generally associated with increases social sector spending. In Gabon, a new 1.5% levy on the post-tax profits of companies that handle remittances and a 10% tax on mobile phone operators' turnover raised the equivalent of US\$30 million for health in 2009 (Save the Children, 2013). In Rwanda, the strengthening of tax collection systems and subsequent improvements

in tax revenue through a host of direct and indirect taxes has resulted in improved social sector spending (ODI, 2012).

Governments also have powers to reduce taxes, including excise duties on goods that benefit children. Some countries such as Bangladesh give child focused organizations some tax rebate on expenditures aimed at benefiting children. The real impact of these tax incentives on children however need to be comprehensively assessed for efficiency, sustainability and impact. Governments can also either increase or decrease personal income taxes. Due to increasing cost of living, it is common for governments to increase the tax free threshold in order to leave households with more disposable incomes to invest in children.

Mainly for the purposes of attracting foreign direct investments, a number of governments also offer tax incentives to potential investors. However, albeit well intentioned, in some cases tax incentives have not always produced the desired results. Most of the tax incentives offered by developing countries are actually missed opportunities to generate tax revenue to invest in children (TJN-A, 2011). A tax incentive appears to be low on the key issues considered by companies when they make decisions on destinations for their investments. Tax incentives should be properly assessed for cost-benefit analysis.

## Lessons learnt and recommendations

### *Fiscal policy, political economy and children's rights*

A key lesson from the experiences of many countries across the world is that fiscal policy instruments do not however work in isolation. They often reflect the factors shaping the political economy of states, including power relations, interests and incentives available to those in power. Fiscal policies are also influenced by globalization and other forces shaping the international political economy, not least the hegemonic influence of international finance institutions. No matter how good a fiscal policy is, if not grounded in a supportive economic and political environment there are limited chances of positive impact on children. Notwithstanding this point, economic growth and political stability are not guarantees of improvements in public investment in children (Save the Children, 2013). Without political will economic growth may only benefit a few and consequently result in inequality. An analysis of economic growth and investment in children trends in many countries has shown that public investment in children has not always increased in tandem with economic growth (ODI, 2012).

### *Fiscal transparency and accountability*

The second lesson learnt, on how fiscal policies are implemented, is the central role of fiscal transparency and accountability in enhancing public confidence in public financial management, ownership and effectiveness in public spending (ODI, 2012; World Bank, 2006). Fiscal policies make the most impact on children if they are implemented in a transparent and accountable manner. This entails availability of and public access to relevant policy and budget information as well as to opportunities to participate in public budgeting. Without access to information, it is difficult for the public to participate in policy and budget making and to hold governments accountable for child poverty, social exclusion and inequality. Open, inclusive and accountable fiscal governance demonstrably lead to better development outcomes for children (IMF, 2014; World Bank, 2006). Unless governments put in place strong, independent and efficient institutions to ensure fiscal transparency and to provide oversight on taxation, borrowing and public spending the desired impacts on child poverty, inequality and social exclusion may not be achieved.

### *Equity, fiscal policy and children's rights*

Third, we learnt that to be effective in addressing inequality amongst children and social exclusion, the design of fiscal policies should be informed by analysis and statistics on social, economic, geographical, gender and other disparities in access to opportunities for development and protection of children as well as different levels of vulnerabilities (Sen, 1999; Save the Children 2012). Fiscal policy instruments should always reflect equity lens. Tax policy, for example, should aim to promote horizontal and vertical equity whilst at the same time respecting the principle of 'progressivity'. Budget allocations should effectively respond to age, spatial and demographic disparities amongst children. Public spending on social protection programmes, for example, should deliberately target and seek to rapidly improve life chances of poor and socially excluded children. To do this, the importance of accurate data, child rights impact assessments and simulations in the design of policies cannot be overemphasized. Fiscal policies should thus aim to improve the lives of all children by addressing specific vulnerabilities and situations of the different categories of children. Children should not be taken as a homogenous group. In the same vein, in-country (within the same region of a country) transfers should, among other factors, be informed by geographic, economic and demographic disparities that perpetuate inequality.

### *5.4 Child rights impact assessment of fiscal policies*

Fourth, because fiscal policies are not neutral, we realized the importance of periodically conducting *ex-ante* and *post-ante* child rights impact assessment of fiscal policies and budgets. We learnt that fiscal policies have far reaching impacts on children, which elicit their periodic assessment (HRC, 2014). Where possible, the costs and benefits of fiscal policies to different categories of children, should be comprehensively assessed before they are fully embraced. If implemented wrongly, some fiscal policy proposals may actually worsen child poverty, inequality and social exclusion.

### *Quantity and quality of public investments in children*

Fifth, and to be clear, we observed that a fiscalist approach to children's rights does not always mean increases in allocations, it is also about ensuring that whatever resources are there are well spent in order to maximize child rights outcomes. This underscores the importance of transparency, accountability and public participation in public spending. Quality spending also entails minimization of wastages, inefficiencies and leakages. According to the World Health Organization, an estimated 20–40% of health resources are wasted through inefficiencies and corruption (WHO, 2010).

### *Strategic timing of fiscal policy instruments*

Sixth, our analysis of health and education spending led us to the conclusion that fiscal policies make the most impact on children, if they are well timed. Empirical evidence exists to show that public spending is likely to yield better health, education and other development outcomes if concentrated in the early years of childhood (ODI, 2012; Save the Children 2013; UNICEF 2014). Public spending should therefore, of necessity, and in line with the life cycle approach, be oriented in such a way that the investments are prioritized during the early years of development (HRC, 2014).

## Conclusion

This paper established the connection between fiscal policy and children's rights. The central argument in the paper is that that fiscal policy is a key tool that could be used to address child poverty, social exclusion and

inequality. These three issues are intricately related and reinforce each other and should thus not be discussed and responded to in isolation. An integrated child rights approach is required to sustainably address these menaces. These issues should be responded to within open, inclusive and accountable governments systems.

Unless all governments take concrete measures to mobilize and commit adequate resources to invest in children, child rights commitments will remain empty promises. The situation of children in many developing countries demands more than business as usual. A fiscal policy revolution, from a child rights perspective, is long overdue.

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# SOCIAL AND CHILD PROTECTION BUDGET BRIEF

## UNICEF Zimbabwe, Social Policy & Research Section

### KEY MESSAGES

- Ministry of Public Service, Labour and Social Welfare (MoPSLSW) allocated US\$172.51 million, about 4.2% of the total budget;
- Social Protection allocated 5% of the MoPSLSW budget;
- Child Welfare & Protection was allocated 6% of the total MoPSLSW budget;
- Harmonized Cash Transfers allocated US\$1.7 million in 2015;
- BEAM allocated US\$7 million in 2015; and
- A total of 426,031 primary and secondary children supported under BEAM in 2014, plan is to expand to 500,000 children in 2015

### Introduction

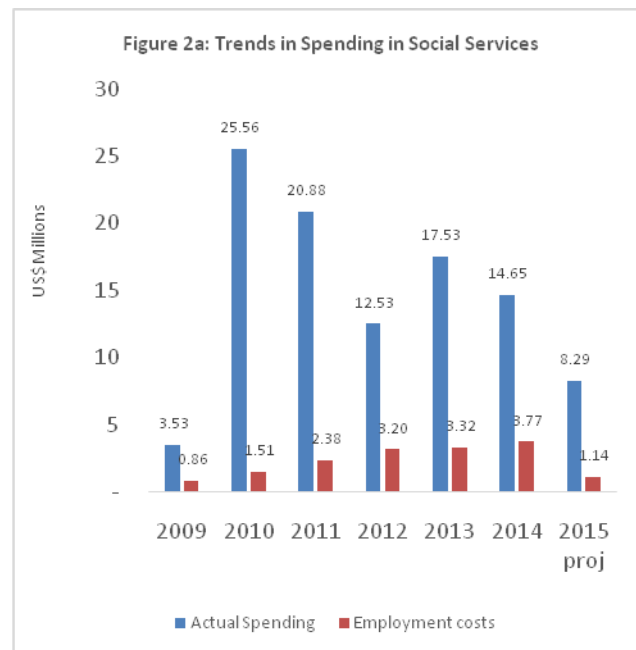
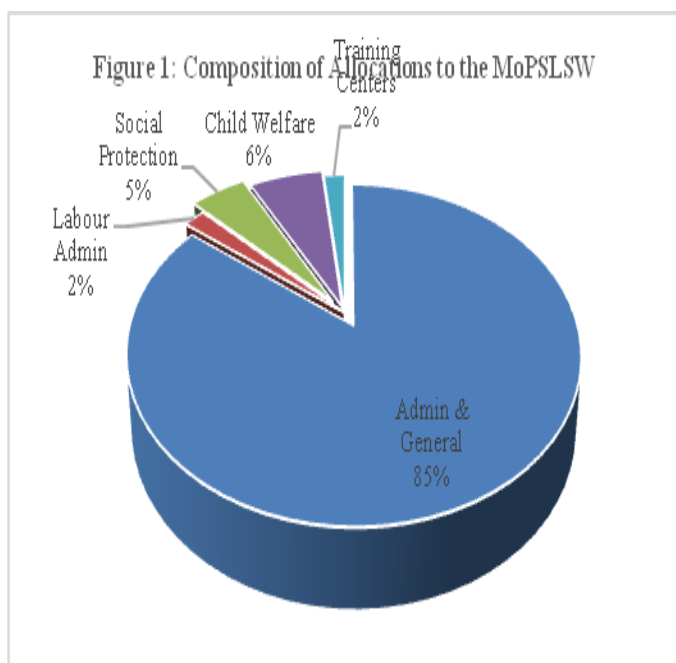
Social and Child Protection falls under the Ministry of Public Service, Labour and Social Welfare (MoPSLSW). The Ministry's mandate is to promote fair labour practices; enhance labour productivity; access to decent jobs; promotion of efficient, effective and accountable public service; as well as compressive social protection system. In the 2015 Budget, the government introduced a new sub-vote focusing on child welfare and protection services.

The Ministry of Public Service, Labour and Social Welfare was allocated US\$172.51 million in the 2015 Budget, about 4.2% of the total budget. The 2015 allocation was 2.3% higher than the US\$168.71 million allocated in 2014. Of the US\$172.51 million allocated towards the MoPSLSW, US\$147.26 million (85%) will be spent on Administration and General Expenses. Training Centers and Labour Administration expenses accounts for 2% each, whilst Social Protection and Child Welfare & Protection services were allocated 5% and 6%, respectively, (Figure 1).

### Social Protection

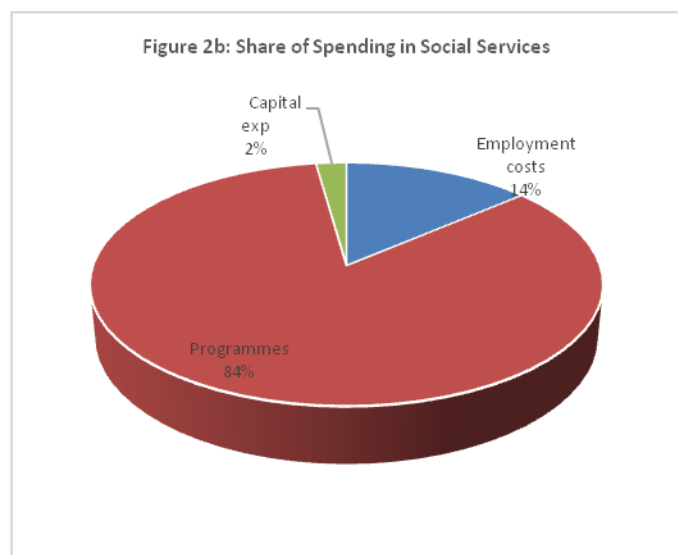
The 2015 Budget allocated US\$8.29 million towards Social Protection, accounting for 5% of the total Ministry budget. This amount is 47.7% lower than the US\$15.52 million allocated in 2014. Actual spending in 2014 amounted to US\$14.65 million, about 92.5% of the budget allocation.

Against the background of tightening fiscal space, actual spending in Social Protection has been on a steady decline from the peak of US\$25.56 million in 2010, (Figure 2a).





On average, 68.7% of the budget is spent on programmes, with employment costs accounting for an annual average of 17%. In 2015, 84.0% will be spent on programme whilst 13.7% and 2.2% will be spent on employment cost and capital expenditures, respectively (Figure 2b).

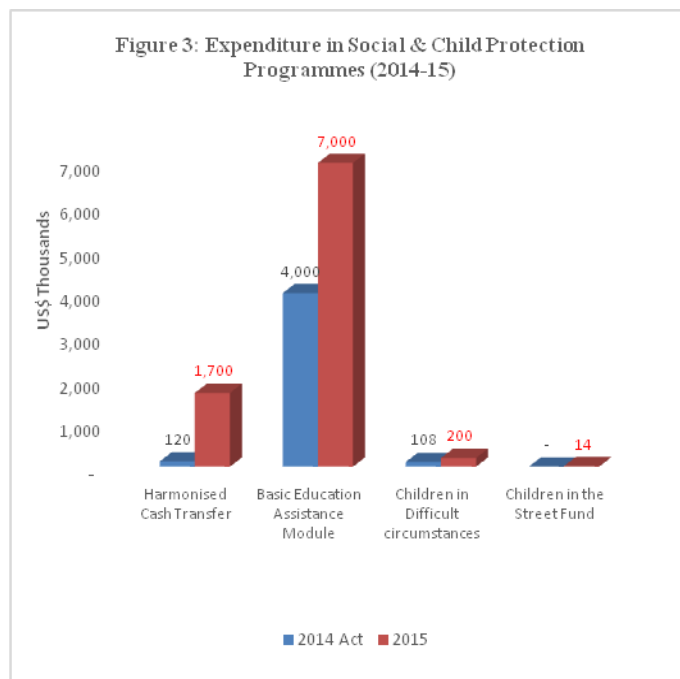


Source: 2015 National Budget Statement

Programmes under Social Services includes the Harmonised Cash Transfers (HCT), which provides monthly cash payments to poor households. Under this programme, a total of US\$1.7 million, (Figure 3), was allocated in 2015 compared to US\$3 million allocated in 2014. However, only US\$120 thousand was actually spent from the US\$3 million allocation made in 2014. This has seen development partners shouldering the burden of supporting social protection. For example, UNICEF under the HCT made cash transfers of US\$13.17 million in 2014, benefiting 55 509 households and it is projected that this would increase to US\$14.41 million in 2015, more than 8 folds the government budget of US\$1.7 million.

### Child Welfare and Protection Services

The Government in the 2015 Budget introduced the Child Welfare and Protection Services, as a stand-alone sub-vote in the MoPSLSW. Programmes under this sub-vote includes: the Basic Education Assistance Module (BEAM), Children in difficult circumstances and Children in the Street Fund, which were previously classified under the Social Protection sub-vote. Child Welfare and Protection Services was allocated a total of US\$10.78 million, about 6% of the MoPSLSW's total budget, of which 64.9% was allocated towards BEAM. Children in difficult circumstances and children in the street were allocated US\$200,000.00 and US\$14,000.00, respectively, (Figure 3).



BEAM is meant to assist the orphans and vulnerable children (OVC) access education. It provides assistance for tuition fees, levies, and examination fees to OVCs through block grants transferred directly to schools. A total of 426,031 primary and secondary school children were assisted through BEAM in 2014 at a cost of about US\$4 million. In 2015, a total of US\$7 million was allocated towards BEAM, (Figure 3), targeting to support 500,000 OVCs. However, this is against a total of more than 900,000 needy children. Hence, in the absence of donor support, who over the years had played a significant role in supporting BEAM, many of the OVCs will not be able to access education. Against increasing difficult economic outlook, many will likely to be forced out-of-school.

Whilst BEAM only covers school fees, the financial barriers to education remain a concern, as schools generally charge some fees. The average annual fee charged ranged between US\$5 to US\$25 in 2009, depending on the location and the size of the school<sup>92</sup>. There are other fees too such as the examination fees. This means that the out-of-pocket expenditures of households is quite sizeable. While the latest data on this is not available, historical data shows that, out of pocket expenditures for basic education accounted for almost 10.2% of all households' spending<sup>93</sup>.

<sup>92</sup>World Bank Aide Memoire: Multi-Sector Mission in Support to 2014 Budget Preparation "Supporting Socio-Economic Transformation and Poverty Reduction

<sup>93</sup> Ibid

# 2015 PRIMARY AND SECONDARY EDUCATION BUDGET BRIEF

## UNICEF Zimbabwe, Social Policy & Research Section

### Key Messages

- Primary and Secondary Education allocated US\$890.14 million about 21.6% of total budget;
- Actual education spending in 2014 amounted to US\$796.47 million (18.54%) of the total Budget, and below the 20% Dakar Declaration threshold;
- As a share of GDP, the education expenditures are projected to increase from 6.55% in 2014 to 7.12% of GDP, albeit below the SADC average of 7.5%;
- Employment costs to chew US\$873.21 million (98%) of the 2015 budget allocation;
- Junior educations allocated 64% of the budget, Secondary education gets 33% whilst ECD is allocated less than 1%, (US\$1.77 million); and
- US\$4.49 million allocated for school development, of which 48% (US\$214 million) is rural compared to 52% (US\$2.35 million) for urban schools.

The education sector falls under the Ministry of Primary and Secondary Education (MoPSE). The Ministry has, over the years, been receiving the highest share of the budget in line with the Government's policy to invest in human capital development. In 2015, the sector was allocated US\$890.14 million about 21.6% of total budget. This represents slight However, despite allocations breaching the 20% threshold in 2014, actual Primary and Secondary Education spending has remained below the Dakar Declaration on education spending, wherein African Governments committed to spend at least 20% of their budgets on education. In 2014, US\$796.47 million (18.54%) of the total Budget was actually spend in education, an improvement from the 18.32% spend in 2013, (Figure 1). Over the period 2012-2014, actual expenditures averaged 18.6% compared to average allocation of 19.4%. This was mainly on account of lower-than-expected revenue outturn and expenditure overruns, particularly on employment costs – following unplanned salary adjustments in the public service. As a share of GDP, the education expenditures are projected to increase from 6.55% to 7.12% of GDP, albeit below the SADC average of 7.5%. This notwithstanding, whilst the share of the education budget has been high over the years, the quality of spending remains a major concern. For instance, employment costs which accounted for 95% of the actual education budget in 2011, increased to 98.3% in 2012 and 99% in 2014, (Figure 1).

increase from the 21.3% allocated in 2014. Government allocations have steadily increased from 11.7% in 2009 to 14.5% in 2012, 19.4% in 2013, before breaching the 20% threshold in 2014, when US\$876.27 million (21.3%) was allocated towards the sector.

In the 2015 Budget allocation, US\$873.21 million, about 98% of the budget was allocated towards employment costs. This leaves only 1% on other recurrent and maintenance costs and another 1%, or US\$8million, to be spend on capital projects, (Table 1)

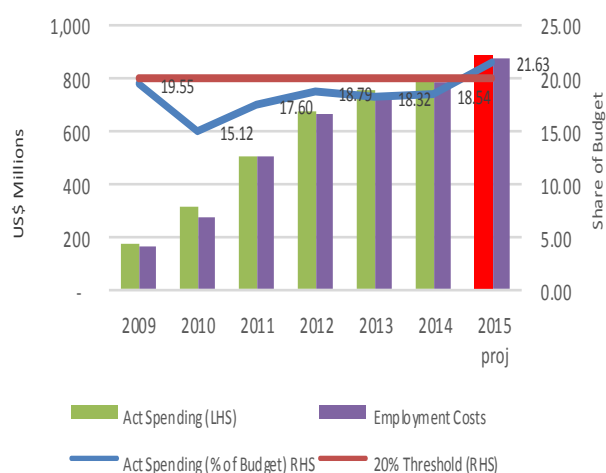
**Table 1: Composition of the 2015 Education Budget Allocation**

	2015 Allocation in US\$ Millions	% of Sector Budget
Current expenditures	880,074,000	98.87
Employment costs	873,210,000	98.10
Goods and services	4,606,000	0.52
Maintenance	546,000	0.06
Programmes	1,712,000	0.19
Current transfers	2,063,000	0.23
Capital expenditures	8,000,000	0.90

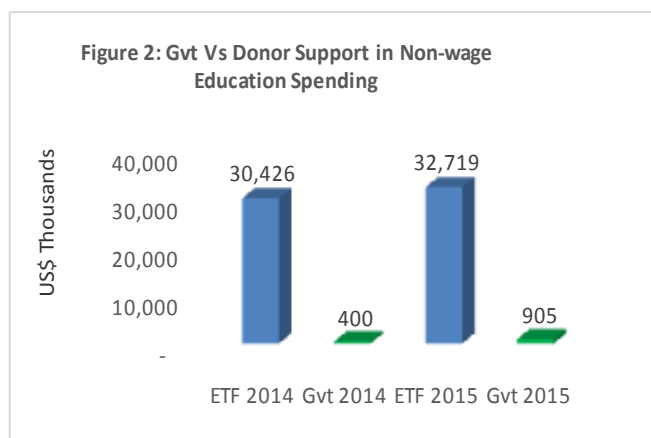
Source: 2015 Budget Statement and UNICEF

With less than 2% of the budget being spent on non-wage investments, the education sector has experienced corrosion of learning environment in schools evidenced by; dilapidated school infrastructure and inadequacies in school infrastructure and teaching-learning materials. This has seen development partners, particularly through the UNICEF managed Education Transition Fund (ETF) playing a leading role in funding non-wage expenditures in education, such as teaching and learning materials (textbooks, material and education supplies). For example, in 2014 government spending in teaching and learning material is estimated at US\$400 thousand compared to the US\$30.43 million spend under the

**Figure 1: Trends in Actual Education Spending (2009-2015)**



ETF. In 2015, the ETF is projected to spend US\$32.72 million compared to US\$905 thousand from the government, (Figure 2). Over-reliance on development partner support remains unsustainable as shift in donor priorities or funding constraints can be catastrophic to the recovering education sector.

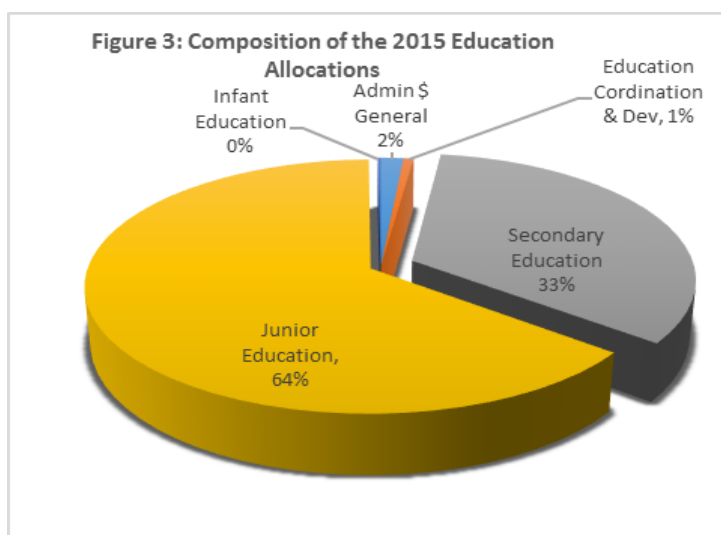


Source: 2015 Budget Statement

The Government often defends this expenditure structure on the basis that it is important to protect the welfare and remuneration of teachers, who are an important cog in the education sector. However, whilst it is important to acknowledge the role played by the teacher in the classroom, in facilitating learning, there is need to strike a balance between keeping a motivated teacher and investing in teaching and learning material as well as building and improving school infrastructure across the country.

### Allocations by Functionality

Sixty four percent of the education budget was allocated towards junior education (covering grades 1-7), whilst 33% was allocated towards secondary education, (Figure 3).



Source: 2015 Budget Statement

These numbers are a reflection of the number of teachers employed in each of the two sub-categories, with employment costs accounting for 99% of the allocation in each case. Hence, the 65% allocated towards

junior education reflects that the sub-category employs a higher number of staff compared to secondary education. It is estimated that around 60% of the staff employed in the education sector are in primary education sub-sector while 35% are in secondary education<sup>94</sup>. Administration and general expenditures account for 2% of the education budget in 2015, whilst only 1% is allocated towards education coordination and development with less than 1%, about US\$1.77 million going towards infant education (Early Childhood Development (ECD)). More resources would need to be channelled towards ECD, to ensure that children are school ready by the time they enroll for primary education. MICs 2014 results showed that only 22% of children aged 3-5 years were attending organised ECD, of which 26.2% were in urban areas compared to 20.1% in rural areas. This in turn affects school readiness, which is estimated at 86.2% (MICS 2014). School readiness is the percentage of children in first grade of primary school, who attended pre-school during the previous school year. It is linked to learning, school completion, later skill development, and acquisition of academic competencies and non-academic success. Children who enter school 'ready to learn' are more likely to stay in school and succeed at school. Similarly education coordination and development is a key imperator in the continuous development of the education system so that it keeps pace with the ever-changing global environment, new skills and responsive to the job market.

### Equity Consideration in Education

Achieving equality in education should be a critical priority of any government to ensure access to quality education for all including the marginalized and vulnerable sections of the society. This can be achieved if budgetary resources are equitably allocated across the country- rural and urban and for each province or district. However, low non-wage investment in education, has resulted in insufficient and dilapidated school infrastructure. The student classroom ratio (SCR) was 50:1 on an average in 2012, ranging from 58 in the poorest districts to 47 in the richest districts, against national targets of 30 pupils per classroom. Classrooms in poorer districts are more crowded than those in the upper quintiles of school income<sup>95</sup>.

Unfortunately, it is not possible to view the budget of the Education sector by province or districts. However, the equity analysis herein, is based on the US\$4.49 million, (from the US\$8 million for capital projects, (Table 1)) allocated towards school development. It can be seen that 48% (US\$214 million) was allocated to rural schools whilst 52% (US\$2.35 million) was allocated to urban schools. However, this is despite the fact that there is a higher ratio of out-of-school children in rural than urban for both primary and secondary. The out-of-school (OOS) indicator measures the percentage of school going age not attending school (primary or secondary education). For primary education, the out of school for rural is 7.4%, compared to 3.7% for urban. Similarly, secondary school OOS ratios higher, 23.1% in rural compared to urban (11.3%)<sup>96</sup>. This, to a large extent, explains government's attempt to allocate more resources towards secondary education (20.6%), which, on average, has higher OOS ratios compared to primary schools (6.6%), (Figure 4a & b).

<sup>94</sup>World Bank Aide Memoire: Multi-Sector Mission in Support to 2014 Budget Preparation "Supporting Socio-Economic Transformation and Poverty Reduction"

<sup>95</sup>World Bank Aide Memoire: Multi-Sector Mission in Support to 2014 Budget Preparation "Supporting Socio-Economic Transformation and Poverty Reduction"

<sup>96</sup> MICS 2014 Results, Zimbabwe

Figure 4a: Urban Vs Rural Allocation

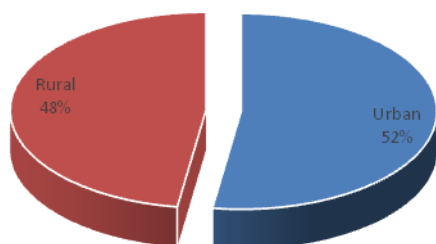
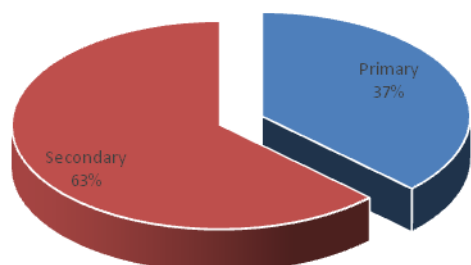


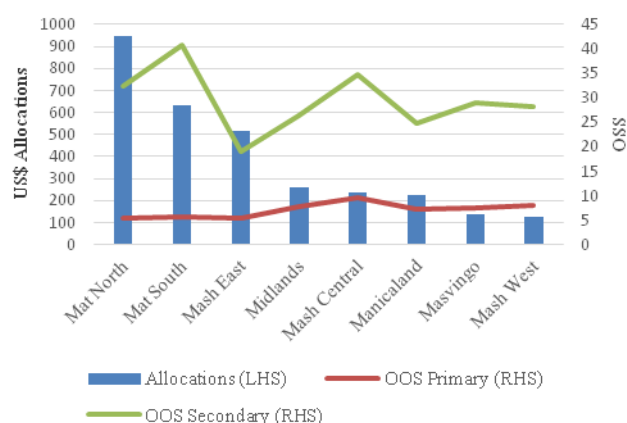
Figure 4: Primary Vs Secondary Education Allocations in 2015



In the absence of a clear government policy on allocations to schools, it remains difficult to determine the equity pattern. For instance, provinces with high OOS ratios for both primary and secondary education, such as Mashonaland Central, Manicaland, Masvingo and Mashonaland West,

received low budgetary allocations (per 1000 people) compared to Mashonaland East, with relatively lower OOS rates, (Figure 5).

Figure 5: Allocations for School Dev per 1000 Vs OOS



Harare, Bulawayo With regards to provincial allocations for schools development, it can be noted that Matebeleland North with fairly large OOS ratios of 2.5% and 27.1% for primary and secondary education obtained the highest allocation per 1000 people of US\$948. However, the highest allocations were made towards the two Matebeleland provinces with relatively higher secondary education OOS rates of above 27.1%. This, shows attempts to address inequalities in the sector's budget allocations.

# 2015 HEALTH AND CHILD CARE BUDGET BRIEF

## UNICEF Zimbabwe, Social Policy & Research Section

### Key Messages

- MoHCC allocated US\$300.98 million, 7.3% of the total budget;
- Health care budget allocation is showing a falling trend in real terms from the peak of 9.9% in 2013 to 7.8% in 2014 to 7.3% of total budget in 2015;
- Actual spending remain below the 15% Abuja Declaration at 6.5% in 2013 and 6.4% in 2014;
- Projected per capita spending of US\$20.66 in 2015 is lower than the WHO threshold of US\$34.00
- Projected spending as share of GDP of 2.41% in 2015, is below SSA average of 3.1%;
- Employment costs to account for 59% of total budget compared to 9% for capital spending;
- 81% of total budget is curative vs 9% preventive;
- Donor and user fees remain important sources of health financing; and
- there is an attempt to achieve equity -transfers towards health centers are larger in provinces with highest poverty incidences.

The 2015 National Budget allocated US\$300.98 million, towards the Ministry of Health and Child Care (MoHCC), which is 10.7% lower than the US\$337.00 million allocated in the 2014 Budget. Allocations to the health sector have been growing steadily from US\$120.78 million allocated in 2009 to US\$345.69 million in 2012, before reaching a peak of US\$381.04 million, about 9.9% of total budget, in 2013. Since then, allocations have been declining to US\$337.00 in 2014 to US\$300.98 million in 2015. As a share of total budget, health budgetary allocations have been falling, from the peak of 9.9% in 2013 to 7.8% in 2014 to 7.3% in 2015.

Budget execution in health has been relatively strong, with actual spending averaging 82.7% of the allocated budgets over 2010-2014. In 2014, US\$276.46 million (82.0% of allocation) was actually spent in the sectors. This notwithstanding, actual health spending has been persistently below the Abuja Declaration by African Governments to commit at least 15% of the national budget towards health. Actual government spending in Health and Child Care, having averaged 8% of the budget between 2009 and 2012, declined to 6.5% in 2013 and 6.4% in 2014. However, spending is projected to increase to 7.31% of the total budget in 2015, translating to US\$20.66 per capita, (Figure 1a).

Figure 1a: Trends in Health & Child Care Spending

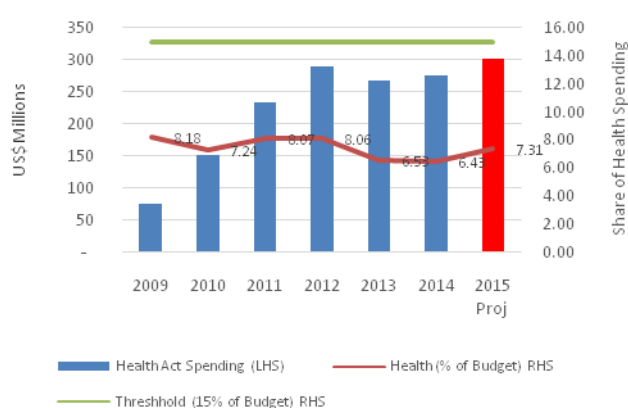
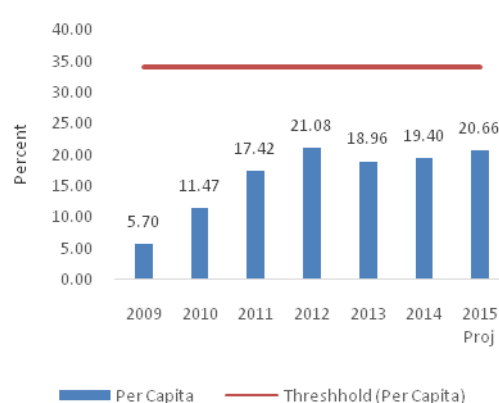


Figure 1b: Actual Percapita Health Spending

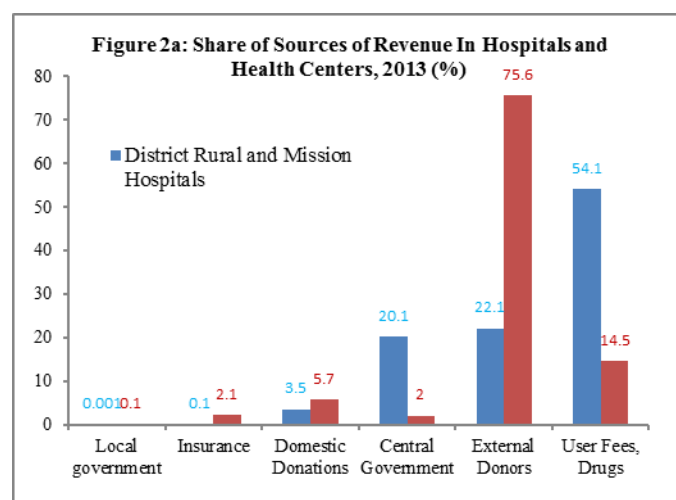


Per capita spending has been on a steady increase from US\$5.70 in 2009 to the peak of US\$21.08 in 2012, before shading 1.68% to US\$19.40 in 2014, (Figure 1b). Per capita health spending has also remained below the World Health Organization (WHO) threshold of US\$34.00. The projected US\$300.98 million allocation in the 2015 Budget will raise per capita spending to US\$20.66, about 39.23% lower than the US\$34.00 threshold. As a share of GDP, Zimbabwe's projected health spending in 2015 of 2.41% remains below the Sub Saharan Average of 3.1% of GDP.

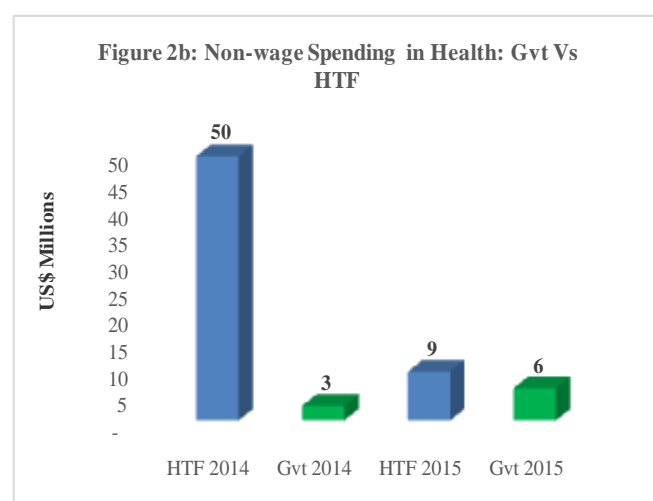
Consequently, the major financial burden of health care falls on households in the form of out-of-pocket payments, rendering the health system inefficient and inequitable, particularly for the poorest households. The basic level of health system relies heavily on user fees and external donors for non-wage expenditure, (Figure 2a & b). User fees are one of the major sources health care financing, deterring many from seeking



health care at all income level. For example the World Bank 2014<sup>97</sup>, noted that the most commonly cited reasons for not accessing health care when ill is the cost, which accounts for 40.9% among the poor compared to 26.4% among the rich.



Source: World Bank Survey 2014



Source: 2015 Budget Statement and UNICEF

As a share of revenue for District and Mission hospitals, user fees account for 54.1% compared to 22.1% from external donors and 20.1% for the central government. Domestic donations, insurance and local government contribute less than a combined total of 3.6%, (Figure 2a). External donors contribute 75.6% of revenues in hospitals, whilst user fees account for 14.5%, compared to 2.0% by the central government, (World Bank 2014).

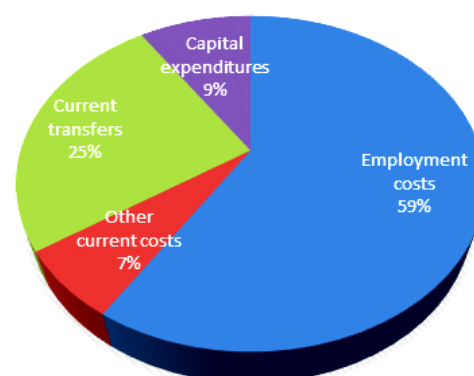
Whilst the foregoing analysis is based on 2013 data, the situation has not changed much as budget data for 2015 suggest that external funders still play a significant role in funding the health sector. External funders such as Global Fund, GAVI, and bilateral donors through the UNICEF managed Health Transition Fund (HTF), have largely borne the burden of financing drugs, maternal health, child health and nutrition as well as other

preventive services. For instance, it is estimated that government expenditure in medical supplies and services amounted to US\$3 million, about 6% of US\$50 million that was spent under the HTF. Similarly in 2015, the government projects to spend US\$6 million, compared to the US\$9 million under HTF, in medical supplies and services, (Figure 2b).

## Composition of Health and Child Care Budget Allocation

Employment costs also consume a large share of the health budget, with expenditure on goods and services, accounting for far much lower than that of wage costs, making it difficult to adequately provide for resources in critical areas such as the availability of drugs as well as building and maintain health infrastructure. In the 2015 Budget allocation, US\$177.55 million, about 59% of the health budget was allocated to employment costs, with only 9% going towards capital expenditures, (Figure 3).

Figure 3: Composition of Health Expenditures in 2015



On account of the limited fiscal space, and the high employment costs as a share of the health budget (59%), external funders have been playing a significant role in financing non-wage health care expenditure, as already shown in Figure 2b.

Whilst donors have played a significant role in supporting the health sector, this situation remains unsustainable as it largely depends on donor priorities and availability of resources from their capitals. Hence any change in priorities and shocks to aid flows will leave the health sector significantly exposed, thereby reversing some gains made in the sector since 2009<sup>98</sup>.

<sup>97</sup>World Bank Public Expenditure Review Health Sector Zimbabwe, Harare, October 2014

<sup>98</sup> MICS 2014 show that, compared to 2009, major health care indicators improved, including: maternal mortality (960 to 614 per 1000), full immunization (36.8 to 69.2%) postnatal care, mother (27.1 to 77.3%), among others



## PART 4

MONITORING THE RIGHTS OF CHILDREN WITH INDICATORS

# THE USE OF CHILD INDICATORS TO MONITOR THE IMPLEMENTATION OF CHILD RIGHTS PRINCIPLES IN ZIMBABWE

TC Nhenga-Chakarisa

## The need for child rights indicators

Children across the world, and particularly in developing countries, carry a disproportionate burden of deprivation. It is important to build an understanding of the dynamics of child well-being, in order to inform policy and programme responses that are appropriately conceptualized and well targeted. There is little debate about the importance of statistical measures to monitor socio-economic conditions, inform policy decisions and evaluate progress. The collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation of children's rights (General Comment No. 5 (2003)).

The United Nations Development Programme's (UNDP)<sup>99</sup>, states that indicators "are powerful tools in the struggle for human rights". They make it possible for people and organizations—from grassroots activists and civil society to governments and the United Nations—to identify important actors and hold them accountable for their actions...they can be used as tools for:

- Making better policies and monitoring progress;
- Identifying unintended impacts of laws, policies and practices;
- Identifying which actors are having an impact on the realization of rights;
- Revealing whether the obligations of these actors are being met;
- Giving early warning of potential violations, prompting preventive action;
- Enhancing social consensus on difficult tradeoffs to be made in the face of resource constraints;
- Exposing issues that had been neglected or silenced.

Crucially, child rights indicators can help the countries, and other stakeholders, recognize when national and international policy adjustments are required" (Hunt 2003: 6).

In the mid-1990s, the UNCRC Committee called for the development of indicators that could meet some basic requirements such as validity, objectivity, sensitivity, comparability, accuracy and disaggregation. The UNCRC Committee saw child rights indicators as having two main objectives, namely:

- (i) Maintaining systematic information systems on the national conditions of children's lives, in order to plan, implement and evaluate interventions for their well-being and enjoyment of their rights; and
- (ii) Fulfilling the government's obligations as a state party to the Convention on the Rights of the Child by showing the progressive achievement of children's rights.

Here you see the twin focus on the rights holder, the child, and the extent to which they are enjoying their rights, and the duty bearer, the government and measuring whether and how it is respecting, protecting and fulfilling children's rights under the Convention. The UNCRC General Comment 5 therefore indicates that there is need for:

*Sufficient and reliable data collection on children, disaggregated to enable identification of discrimination...needs to extend over whole period of childhood...nationally applicable indicators... qualitative as well as quantitative studies...evaluation requires the development of indicators related to all rights guaranteed by the Convention...in many cases only children themselves are in a position to indicate whether their rights are being fully recognised and realised.<sup>100</sup>*

This text succinctly describes all the key elements of a child rights indicator:

- Indicators are necessary to assess government's implementation of the Convention
- They must be related to all Convention rights
- Indicators must be disaggregated
- They must cover the whole period of childhood up to 18 years of age
- Indicators must be both qualitative and quantitative and very importantly
- They must incorporate the views of children on the extent to which their rights are being realised

## Indicator framework of the UN General Guidelines of Implementation

The United Nations Committee on the Rights of the Child has urged countries to follow the General Guidelines in preparing their periodic reports which require, where appropriate, information and disaggregated statistical data and other indicators. It is through these indicators that the enjoyment of rights and the rights environment of the world's youngest and most vulnerable citizens can be understood and monitored.

The Guidelines have grouped the provisions of the Convention into clusters – an approach that reflects the holistic perspective on children's rights taken by the Convention: i.e. that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein." (CRC/C/58/ Rev.1, para. 3). The basic objective of such a framework was to adopt a structured and consistent approach for translating CRC standards into indicators that are contextually relevant and useful at a country level.

Under each cluster heading should be a rationale for the indicator sets. For this to be conceptually meaningful, it will be anchored in the normative content of the right, as enumerated in the relevant articles of the treaties and general comments of the Committee. For each indicator appropriate references to relevant articles in the CRC may be made. An overarching key question may be also be given in each rationale, which provides the foundation for the indicator.

Following the rationale statements may be a table in which each foundational question is unpacked into sets of questions that are divided into sections titled: '**Structure**,' '**Process**,' and '**Outcomes**.'

<sup>99</sup>Human Development Report 2000: Human Rights and Human Development.

<sup>100</sup>UNCRC/GC/2003/5 paras 48 and 50.



- **Structure**, as an indication of commitment to take action, refers to the existence of institutions and policies aligned with the CRC and the realization of the particular rights;
- **Process** refers generally to efforts made and actions taken following commitment and thus to specific activities, resources, and/or initiatives undertaken in pursuit of rights realization;
- **Outcome** refers to a resultant and measurable change either in the rights environment or in early childhood development measures.

This three-tiered categorisation could be used with a view to reflect an emerging consensus on child rights indicators and to facilitate easy convergence with UN child rights indicator efforts. Within each table, we may identify potential sources of information and propose one or two measures, which may be the most effective and economical ways to describe the specific achievement with regard to the rights under consideration. Within each table, we may also delineate the relevant duty bearers and provide references to sections of the Reporting Guidelines.

The following are the indicator clusters suggested in the Guidelines that may be used to develop the framework of indicators for the country which will guide the implementation of the country's provision of children's rights and be used as a tool for reporting to treaty bodies and monitoring performance:

#### I. General measures of implementation

Article 4: implementation obligations; article 42: making Convention widely known; article 44(6): making reports widely available (in Guidelines for Periodic Reports, also covers article 41: respect for existing standards).

#### II. Definition of the child

Article 1.

#### III. General principles

Article 2: non-discrimination; article 3(1): best interests to be a primary consideration; (the Guidelines for Periodic Reports also covers article 3(2): the State's obligation to ensure necessary care and protection; and article 3(3): standards for institutions, services and facilities); article 6: the right to life, survival and development (see also, VI, below); article 12: respect for the views of the child.

#### IV. Civil rights and freedoms

Article 7: right to name, nationality and to know and be cared for by parents; article 8: preservation of child's identity; article 13: freedom of expression; article 14: freedom of thought, conscience and religion; article 15: freedom of association and peaceful assembly; article 16: protection of privacy; article 17: child's access to information, and role of mass media; article 37(a): right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. (The original Guidelines for Periodic Reports indicates (para. 48) that these are not the only provisions in the Convention which constitute civil rights and freedoms).

#### V. Family environment and alternative care

- Article 5: parental guidance and child's evolving capacities; article 18(1) and (2): parental responsibilities and State's assistance; article 9: separation from parents; article 10: family

reunification; article 11: illicit transfer and non-return; article 27(4): recovery of maintenance for the child; article 20: children deprived of their family environment; article 21: adoption; article 25: periodic review of placement and treatment; article 19: protection from all forms of violence; article 39: rehabilitation and reintegration of victims of violence (see also VIII below).

#### VI. Basic health and welfare

Article 6: right to life, survival and development (see also, III above); article 18(3): support for working parents; article 23: rights of children with disabilities; article 24: right to health and health services; article 26: right to social security; article 27(1)-(3): right to adequate standard of living.

#### VII. Education, leisure and cultural activities

Article 28: right to education; article 29: aims of education; article 31: right to leisure, play and participation in cultural and artistic activities.

#### VIII. Special protection measures

- Children in situations of emergency*  
Article 22: refugee children; article 38: children and armed conflict; article 39: rehabilitation of child victims (see also V above).
- Children involved with the system of administration of juvenile justice*  
Article 40: administration of juvenile justice; article 37(a): prohibition of capital punishment and life imprisonment; article 37(b)-(d): restriction of liberty; article 39: rehabilitation and reintegration of child victims (see also V above).
- Children in situations of exploitation*  
Article 32: child labour; article 33: drug abuse; article 34: sexual exploitation; article 35: sale, trafficking and abduction; article 36: other forms of exploitation.
- Children belonging to a minority or an indigenous group*  
Article 30.

It is important that the indicators used within this framework must be sensitive to the various issues specifically mentioned in the article: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. It is also essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children.

### Zimbabwe's Use of Child Indicators in its Periodic Reports to the United Nations Committee on the Rights of the Child

The United Nations human rights regime established specialist bodies charged with the oversight of state performance under each specific treaty. Such instruments contain regular reporting obligations for members. These responsibilities are based on an assumption that the examination of reports by these bodies would lead to a dialogue between

each state and the relevant treaty bodies, and thus progressive improvement in compliance.<sup>101</sup>

The UNCRC has the Committee on the Rights of the Child, the African Charter on the Rights and Welfare of the Child has an African Committee of Experts on the Rights of the Child.<sup>102</sup> Article 44(1) of the UNCRC provides that:

*States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:*  
*(a) Within two years of the entry into force of the Convention for the State Party concerned,*  
*(b) Thereafter every five years.*

To date, Zimbabwe has filed three reports, the latest having been submitted in 2013 report (which was 11 years late). In this report, the country made very limited use of child indicators which would have given more clarity on the country's level of implementation of children's rights. The following table outlines the rights, the indicators that were cited and the sources and ages of data.

cited. The quality of data that was given was not always reliable and data did not always extend over the whole period of childhood. While Zimbabwe produces data from various sources through various sources including the multiple Indicator Cluster Surveys. It is clear that Zimbabwe has a long way to go as far as supporting its reports using child indicators.

RIGHTS	INDICATORS AND AGE OF DATA	SOURCE AND AGE OF DATA
Right to Education	Reduction in rate of school dropouts Increase in Trained teachers increased by from 1997-2004 in primary and secondary schools Number of children assisted by the Basic Education Assistance Module (BEAM) 2002 – 2007	Demographic Health Survey 2010/2011 Zimbabwe Census 2012
Right to life, survival and development	Decrease in Infant and child mortality rates Decrease in MMR 2005/2006 to 2010/2011 Prevalence of HIV, Mother to child transmission and access to ART 2007	Demographic and Health Survey of 2005/6 and 2010/2011 National HIV and AIDS Estimates (2007)
Name and Nationality	Percentage of birth registrations in rural and urban areas	Zimbabwe Census 2002 and 2012
Child Protection	Percentage of children engaged in economic labour 2004	Zimbabwe Child Labour Report, Central Statistical Office, March 2006.

What may be deduced from the above is that there are very few rights which the country reported on which are supported by statistics. Only four rights (which include Right to Education; Right to life, survival and development; Name and Nationality; and Child Protection) were supported by indicators. The statistics were not always disaggregated to show disparities by gender, age, race, geographical location etc. Because the Report was long overdue, in some cases the data that was used at the time of reporting was too old. Some of the statistics lacked national coverage and hence little was known of the implementation of child rights in various areas. From the sources cited, the data was sourced from various sources with the Zimbabwe Statistical (ZIMSTAT) Office barely

<sup>101</sup> Such as the International Covenant on Economic, Social and Cultural Rights GA res 2200A (XXI) 21 UN GAOR Supp (No 16) at 49 UN Doc A/6316 (1966) 993 UNTS 3 entered into force on 2 January 1976 and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 96 UNTS 271 entered into force on 25 July 1951.

<sup>102</sup>Article 22.



# MONITORING THE WELFARE OF CHILDREN IN SELECTED SECTORS

JChitereka, T Mangwengwende

## Introduction

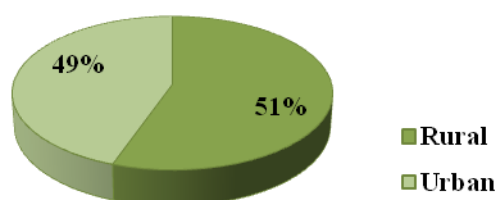
This section presents the situation of children in Zimbabwe highlighting the key indicators on health, mortality, child development, education, children and law, access to vital registration, child abuse, child labour and access to housing and basic services. The indicators are grouped according to articles in the Convention on the Rights of the Child (CRC). A series of studies have been done on children and adolescents in Zimbabwe and a gap on child sensitivity of the data generated exists impacting on the subsequent use by policy makers, academia and development partners. In most cases the data is not disaggregated and is fragmented in different data sources. Some thematic areas within the scope of the CRC provisions have data readily available while others do not have comprehensive statistical information. This fact sheet is an attempt to compile all the key indicators from recent surveys that include Zimbabwe Demographic Health Survey, Multiple Indicator Cluster Survey and Census, as a compendium that is user friendly, gives a call to action and can be used as a 'barometer' for measuring the level of policy implementation as well as providing baseline information in programming for children in Zimbabwe. However, in this first Issue of the Child Monitor, there are a number of information gaps in many articles of CRC since some of the data has to be generated from specific programmes by different stakeholders who will be taken on board in subsequent publications.

## Demographics of Children in Zimbabwe

### Child Population

The child population refers to all persons under the age of 18 years. This proportion of the population gives the denominator often used to monitor socioeconomic rights of children. Forty-eight percent (48%) constitute the child population in Zimbabwe, of which 51% live in rural areas and 49% are in urban areas. Disaggregated by sex, 50% are males and 50% females. Figure 1 and 2 shows distribution of children by place and sex.

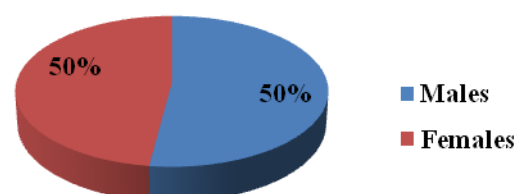
**Percent distribution of children by place of residence**



sex.

**Fig 1: Distribution of children by place, Census 2012**

**Child population by sex**



**Fig 2: Child population by sex, Census 2012**  
**Provincial Variation**

The provincial distribution of child population indicates that four provinces namely Masvingo, Matabeleland North, Manicaland and Matabeleland South have populations over 50%. Table 1 below shows provincial variation of child population.

**Table 1: Child Population by province**

Province	Total Population	Child Population	Percent age (%)
Masvingo	1,485, 090	774,492	52.3
Matabeleland North	749, 017	382,004	51.2
Manicaland	1,752, 698	892,835	51.0
Matabeleland South	683, 893	347,973	50.9
Midlands	1,614, 941	799,898	49.7
Mashonaland Central	1,152, 520	568,189	49.4
Mashonaland East	1,344, 955	651,808	48.6
Mashonaland West	1,501, 656	715,600	47.7
Bulawayo	653, 337	267,674	41.0
Harare	2,123, 132	855,311	40.4

Source: Descriptive Child and Youth Equity Atlas, Zimbabwe UNICEF, 2015

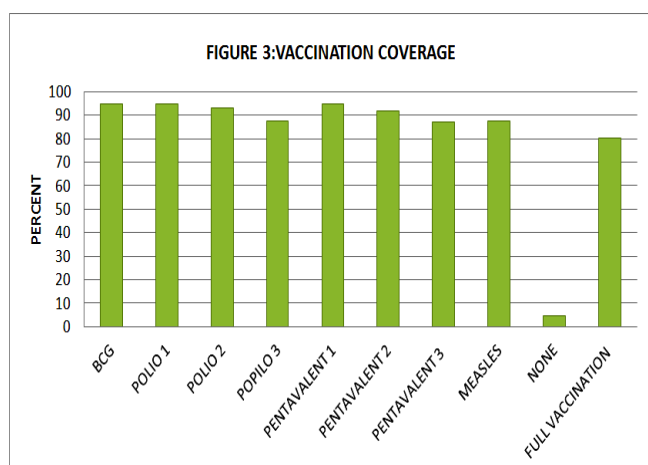
## Basic Health and Welfare

The right to health and services is enshrined in the Constitution of Zimbabwe and under social cluster; the lead arm of government is the Ministry of Health and Child Care. The Ministry of Public Service, Labour and Social Welfare takes the lead in the coordination of welfare services. The main indicators considered under this cluster include vaccination coverage, nutritional status, and child mortality

### Vaccinations

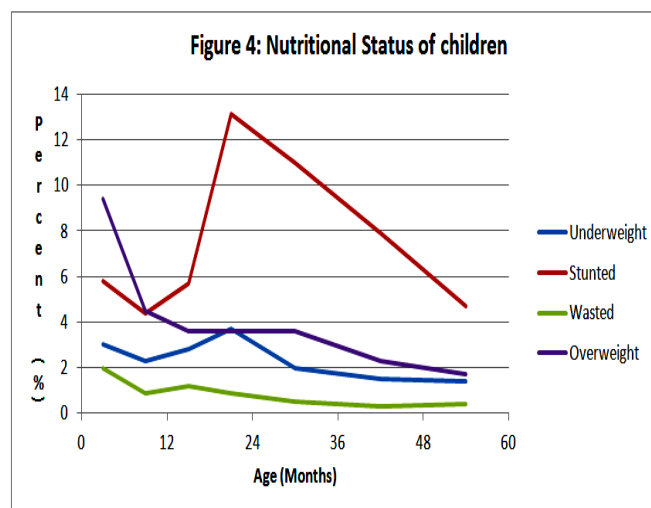
Zimbabwe has been implementing an immunisation programme under the Expanded Programme of Immunisation (EPI) since 1982. The programme has a consistent schedule of basic childhood vaccines. A child is said to be fully immunised if he/she receives one dose of BCG Vaccine (against Tuberculosis), three doses each of Pentavalent (a combination of diphtheria, pertussis, tetanus, haemophilus influenza type b and hepatitis type B), three doses Pneumococcal Vaccine (PCV), Polio Vaccines, one dose Measles Vaccine and two doses of Rotavirus. According to the Multiple Indicator Cluster Survey (MICS, 2014) immunisation coverage for Zimbabwe was based on children age 12-23 and 24-35 months fully immunised before their first birthday.

The national coverage on full vaccination was 80.3% of children aged 12-23 months who were fully immunised against preventable childhood diseases, 87.6% were vaccinated for measles. About 4% were not immunised. Fig 3 shows immunisation coverage.



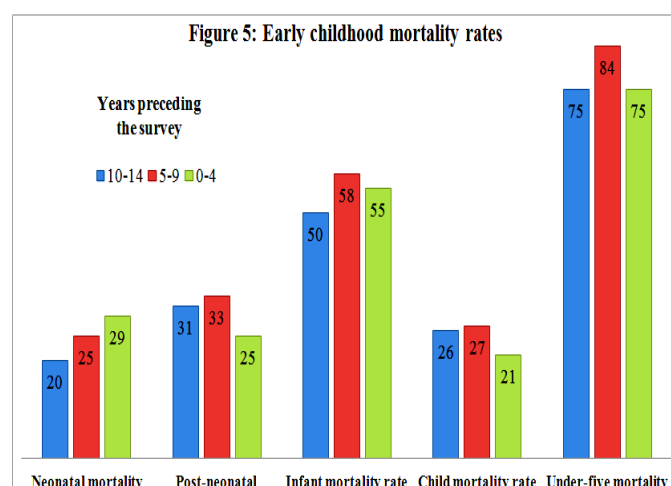
### Nutritional Status

According to the Government of Zimbabwe (GoZ)'s, National Child Survival Strategy 2010-2015, about 25% of all deaths among children under the age of 5 were due to nutritional deficiencies. Improved nutrition contributes to the sustained, equitable growth and general welfare of children. Nutritional status reflects on overall health. Underweight for children aged 12-24 months ranged from about 6% to around 13%. Stunted growth was highest among children between the ages 24-36 months ranged from 34% to 39%. Wasted, peak at age 12- 24 years at 7%. Overweight was highest among children less than 1 year at 9% and dropped with age as shown by Figure 4.



### Child Mortality

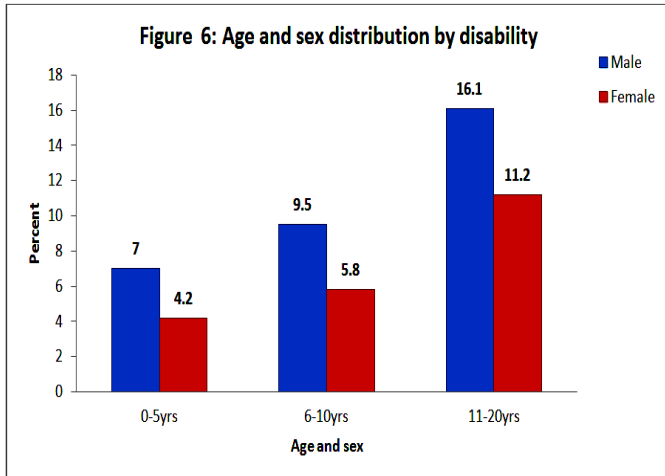
Child mortality includes neonatal mortality, post-neonatal mortality, child mortality and under five mortality. Neonatal mortality was estimated at 29 deaths per 1000 live births, 25 deaths per 1000 live births post neonatal mortality rate, infant mortality rate 55 deaths per 1000 live births while child mortality was 21 deaths per 1000 live births. The Under 5 mortality was the highest at 75 deaths per 1000 live births (MICS, 2014). Figure 5 shows Early childhood mortality rates.



Data on other child health indicators for instance HIV and AIDS among children from nationally representative studies is not presented in a child centred information format i.e. not disaggregated for younger ages 0-17 years. However, programme data can be generated from service statistics from the Ministry of Health and Child Care Health Information System and aggregated on an annual basis

### Children Living with Disability

According to the World Health Organisation (WHO) Classification of Functioning, Disability and Health (ICF), a person has disability if due to a health problem; s/he has difficult seeing, hearing, and walking, with memory, self-care or language. A study commissioned by the Ministry of Health and Child Care in 2013 indicated that 7% of the total population (estimated at 13 Million) were living with some form of disability which is over 900, 000. Fig 6 shows the age and sex distribution by disability. Disability was more in males than females among children in the study.



### Child Development

Early childhood is defined as the period from birth to eight years old. A time of remarkable brain growth, laying the foundation for subsequent learning and development<sup>103</sup>. Child development index is measured using four dimensions which are literacy-numeracy, physical, social-emotional and learning. Early Childhood Development Index (ECDI) is an important indicator to give policy direction on developmental status of children in Zimbabwe. The data showed that 93% of the children were on track in physical dimension, learning 87%, 67% in social-emotional dimensions. However, the literacy-numeracy is lagging behind with 9%, which calls for government attention through relevant ministries and departments. Table 2 shows the ECDI for Zimbabwe.

<sup>103</sup> [www.unesco.org/new/en/education/themes/...education.../early-childhood/](http://www.unesco.org/new/en/education/themes/...education.../early-childhood/)

Table 2: Early child development index

Percentage of children age 36-59 months who are developmentally on track in literacy-numeracy, physical, social-emotional, and learning domains, and the early child development index score, *Zimbabwe MICS, 2014*

	Percentage of children age 36-59 months who are developmentally on track for indicated domains				Early child development index score <sup>1</sup>	Number of children age 36-59 months
	Literacy-numeracy	Physical	Social-Emotional	Learning		
<b>Total</b>	<b>9.3</b>	<b>92.5</b>	<b>66.9</b>	<b>87.4</b>	<b>61.8</b>	<b>4025</b>
<b>Sex</b>						
Male	8.8	93.5	63.9	87.3	59.2	1978
Female	9.8	91.6	69.9	87.6	64.3	2047
<b>Region</b>						
Manicaland	5.8	95	68.8	85	60.6	547
Mash Central	7.6	89.5	55.1	82.2	49.2	222
Mash East	12.5	91.8	60.6	89.5	59.8	437
Mash West	5	91	52.5	89.6	50.7	508
Matabeleland North	6.7	91.2	77.3	82.4	64.9	382
Matabeleland South	8.1	91.8	81	90.2	74.2	348
Midlands	11.1	97	78.6	89.4	72.5	528
Masvingo	8	89.2	66.1	82.1	57.1	480
Harare	19.3	95.4	56	93.6	60.2	356
Bulawayo	12.6	89.9	71.5	91.3	69.7	216
<b>Area</b>						
Urban	15.2	93.9	63.5	91.8	64.2	998
Rural	7.4	92.1	68.1	86	61	3027
<b>Age</b>						
36-47 months	4.6	89.6	65.4	82.9	57.1	2145
48-59 months	14.8	95.9	68.7	92.6	67.2	1879
<b>Attendance to early childhood education</b>						
Attending	23.6	97.1	68.2	93.7	71.1	871
Not attending	5.4	91.3	66.6	85.7	59.3	3154
<b>Mother's education</b>						
None	3.1	89.9	76.7	80.6	63.4	184
Primary	5.8	91.8	69	86.4	61	1581
Secondary	11.8	93.5	64.7	88.6	61.8	2096
Higher	18.9	91.1	65.9	89.6	67.6	164
<b>Wealth index quintile</b>						
Poorest	5.5	92.3	70.6	84.1	60.7	932
Second	5.5	91.8	69.3	85.1	60.1	896
Middle	9	92.2	66.7	88.2	63.1	768
Fourth	11.7	92.9	63	89.5	60.9	801
Richest	17.8	94.1	63.5	92.1	65.5	628

**Notes**

Literacy-numeracy: Developmentally on track if at least two of the following are true: EC8=1 (Can identify/name at least ten letters of the alphabet), EC9=1 (Can read at least four simple, popular words), EC10=1 (Knows the name and recognizes the symbol of all numbers from 1 to 10).

Physical: Developmentally on track if one or both of the following is true: EC11=1 (Can pick up a small object with two fingers, like a stick or a rock from the ground), EC12=2 (Is not sometimes too sick to play).

Social-emotional: Developmentally on track if at least two of the following are true: EC15=1 (Gets along well with other children), EC16=2 (Does not kick, bite, or hit other children), EC17=2 (Does not get distracted easily).

Learning: Developmentally on track if one or both of the following is true: EC13=1 (Follows simple directions on how to do something correctly), EC14=1 (When given something to do, is able to do it independently).

MICS indicator 6.8 is calculated as the percentage of children who are developmentally on track in at least three of the four component domains (literacy-numeracy, physical, social-emotional, and learning).

### Family Environment and Alternative Care

Children have the right to parental guidance and protection from all forms of violence. Data on other articles of CRC under this cluster is not readily available for example illicit transfer and non-return, separation from parents, rehabilitation and reintegration of victims of violence. On this cluster focus will be on care for children using the recent MICS survey. Leaving children alone or in the presence of other young children aged 10 years and below amounts to inadequate care and may increase the risk of injuries. Results from the Zimbabwe MICS Report, 2014 showed that 18.5% of children under 5 years of age were left without adequate care in the week preceding the survey. There is a relationship between mother's education, household wealth quintile and inadequate care. Inadequate care decreased with increase in mother's education and wealth quintile as shown in Table 3 (see left)

### Education, Leisure and Cultural Activities

The right to education, leisure, play and participation in cultural as well as artistic activities is observed in Zimbabwe among children in the school curriculum system. The Education Act [Chapter 25:04] gives all children the right to education. The Government of Zimbabwe values education as key in combating ignorance, poverty and contribution towards socio-economic transformation.<sup>104</sup> Zimbabwe has the literacy rate of 92%. Education status is measured by the dimensions on early childhood education; school readiness, net intake rate in primary education, primary school attendance, secondary school attendance, primary school completion rate and transition to secondary education. Net intake rate in primary school is higher in girls than boys and transition rate to secondary school is also higher in girls as shown by Table 4.

Gender Parity Index (GPI) is used to show the differences in attendance ratios among girls and boys. UNESCO states that gender parity exists where the GPI is between 0.97 and 103.<sup>105</sup> The GPI for primary school was 1.01 in 2014 and signify no difference in attendance for girls and boys. The overall GPI for secondary school (forms 1-4) was 1.18 indicating that girls were attending lower secondary school at a higher rate as compared to boys (MICS, 2014). Statistics on leisure and cultural activities is being collected in the national surveys currently.

**Table 4: Education Indicators by sex**

Percentage of children age 36-59 months attending early childhood education	Percentage of children attending first grade who attended preschool in previous year	Percentage of children of primary school entry age entering grade 1	Net attendance ratio (adjusted)	Net attendance ratio (adjusted)	Percentage who reach grade 7 of those who enter grade 1	Primary school completion rate	Transition rate to secondary school
Attendance to early childhood education	School readiness	Net intake rate in primary education	Primary school attendance	Secondary school attendance	Children reaching last grade of primary	Primary school completion rate	Transition rate to secondary school
20	87	72	93	51	90	80	83
23	86	75	94	60	92	82	85

### KEY

Boys
Girls

**Table 3: Inadequate care**

Percentage of children under age 5 left alone or left in the care of another child younger than 10 years of age for more than one hour at least once during the past week, Zimbabwe MICS, 2014

	Percentage of children under age 5:			Number of children under age 5
	Left alone in the past week	Left in the care of another child younger than 10 years of age in the past week	Left with inadequate care in the past week <sup>1</sup>	
Total	4.6	16.2	18.5	9884
Sex				
Male	4.8	16.6	18.9	4913
Female	4.5	15.8	18	4971
Region				
Manic	4.5	19.5	21.8	1326
Mash Cent	3.9	18.7	20.4	552
Mash	5.2	13.9	16.9	1093
Mash West	6	17.7	20.7	1281
Mat North	3.1	16.5	18.4	918
Mat South	3.2	8.2	10.2	800
Midlands	4	23.8	25.2	1227
Masvingo	6.3	22.1	24.4	1143
Harare	5.9	7.6	10.5	917
Bulawayo	2.1	4.6	6	626
Area				
Urban	3.6	6.5	8.7	2625
Rural	5	19.7	22	7259
Age				
0-23 months	1.9	10.2	11.2	3806
24-59 months	6.3	19.9	23	6078
Mother's education				
None	6.4	18.8	21.8	323
Primary	5.2	20.9	23.2	3576
Secondary	4.4	14	16.3	5522
Higher	2.1	4.3	5.6	463

*Inadequate care is defined as children left alone (EC3A => 1 and EC3A <= 7) or in the care of another child younger than 10 years of age (EC3B => 1 and EC3B <= 7) more than one hour at least once in the past week.*

<sup>104</sup> GoZ, 2005 National Action Plan of Zimbabwe: Education for All Towards 2015

<sup>105</sup> UNESCO, 2010. Gender Parity in Primary and Secondary Education., UNESCO Institute of Statistics

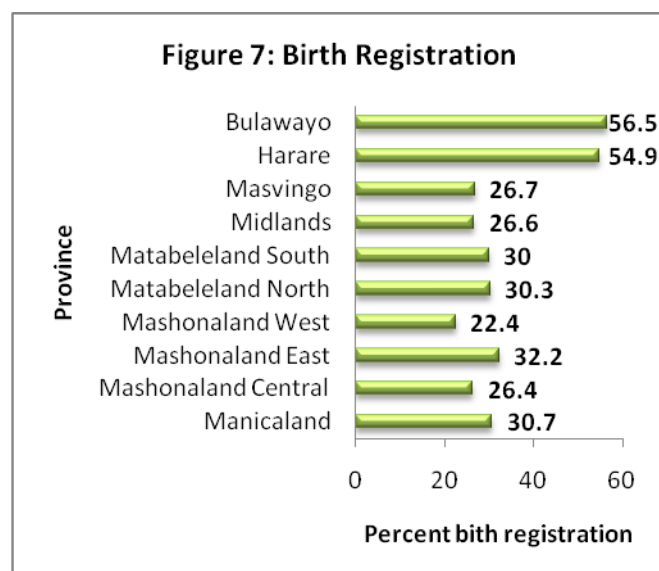


## Civil Rights and Freedoms

Zimbabwe has ratified international and regional treaties for instance the Convention of the Rights of Children (CRC) and the African Charter on the Rights and Welfare of the Child. Children have the right to a name, nationality and preservation of identity. There are so many provisions that constitute civil rights and freedoms may not be exhausted at this point. The focus on this segment is on birth registration and child discipline.

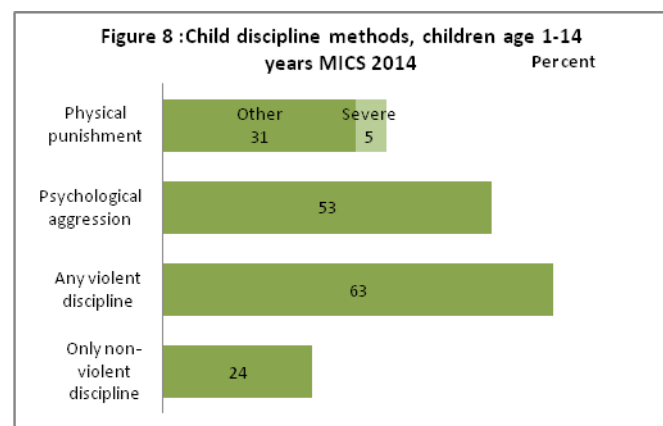
### Birth Registration

The Birth and Deaths Registration Act [Chapter 5:02] obliges every person in Zimbabwe to be registered. Birth registration is an entry point to other rights such as education, health, access to justice and as a pillar in the vital statistical system.<sup>106</sup> A child may not possess the birth certificate but the birth may have been registered with the Registrar General's Office. About 32% of births of children under 5 years of age were registered, 19% possessed birth certificates and 3.4 % did not have birth certificates (MICS, 2014). Bulawayo (57%) and Harare (55%) had the highest percentages of birth registration and Mashonaland West Province (22.4%) had the lowest. Distribution of birth registration by province is shown by Figure 7.



### Child Discipline

Imparting children with self control and good behaviour is part of child discipline in every culture. However, some children are exposed to violent and harmful discipline measures which is tantamount to child abuse. Violence against children is an offence at law in Zimbabwe. Findings from the MICS in 2014 indicated that 63% of children aged 1-14 years were exposed to violent behaviour, 53% experienced psychological aggression and 5% were severely punished physically. Figure 8 shows the child discipline methods used.



### Special protection measures

Special protection measures are extended to children in situations of emergency, children involved with the system of administration of juvenile justice, children in situations of exploitation and children belonging to a minority or an indigenous group. Statistics from all these situations are out-dated except for child labour with recent statistics from the Child Labour Survey Report of 2015.

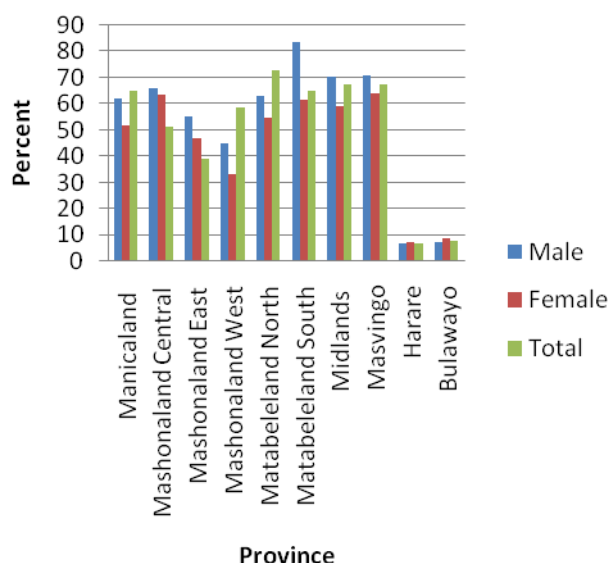
### Child Labour

The International Labour Organization (ILO) defines; a child who spends at least one hour per week on any economic activity as someone in economic child labour. In Zimbabwe, three major variations were introduced, namely: (a) a cut off of three hours or more per day in relation to economic activities; (b) provision to allow for involvement of children aged 15 years and above in some form of work as per national law; and (c) a cut off of five hours or more per day for children involved in unpaid care activities as constituting non-economic child labour. (Ministry of Public Service, Labour and Social Welfare, Central Statistical Office and International Labour Organization, 1999).

Findings from the Child Labour Survey Report, 2015 showed that, about 49.9% of children aged 5-17 years were engaged in an economic activity. Matabeleland South Province had the highest proportion (73.02 percent) of children engaged in an economic activity, followed by Masvingo Province (67.49 percent). Harare and Bulawayo provinces had generally fewer working children compared to the rest of the provinces. The proportion of working children generally increased with the age of the child, from 30 percent among the 5 to 9 year olds to 68.8 percent for children aged 15 to 17 years. Figure 9 shows percent distribution of working children by sex and province.

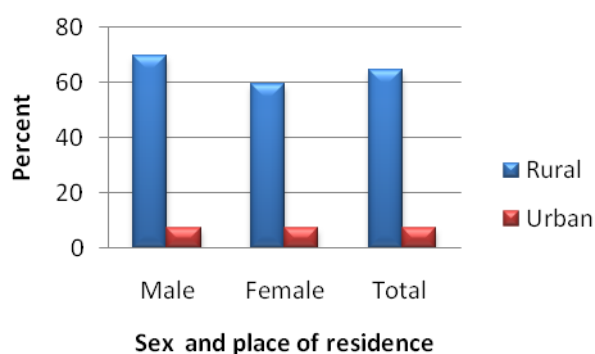
<sup>106</sup>UNICEF, 2015. The State of the World's Children 2015: Reimagine the future

**Figure 9: Percent Distribution of Working Children by Province and Sex**



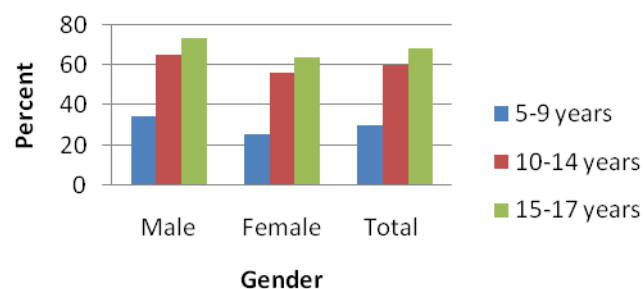
In terms rural-urban differentials child labour was more prevalent in rural areas (65%) than in urban areas (7.3%). Figure 10 shows the percent distribution of child labour by sex and place residence.

**Figure 10: Distribution of child labour by sex and place of residence**



Child labour was high in the 15-17 year age group (69%), followed by the 10-14 year age group (60%). Child labour was low in the 5-9 year age group (30%) but the figure is still high for that particular age. Figure 11 shows the percent distribution of child labour by age and sex.

**Figure 11: Distribution of Child labour by age and sex**



### Conclusion

Child centred reporting is an important element lacking in most of the surveys carried out in Zimbabwe, hence policies crafted and programmes carried out may lack the rigour in terms of being child sensitive. Most of the articles in the CRC clusters have information gaps which call for a multi-stakeholder platform in the generation of the next edition of the Child Monitor. Programme data from different players in child programming can also be helpful if harnessed to give current developments in the situation for children on an annual basis.

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