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Children's Rights in Zimbabwe

1. What is a child in Zimbabwe?

The Children's Protection and Adoption Act defines a child as any person under the age of 16 while the Legal Age of Majority Act defines children as persons under the age of 18 as does the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child. Therefore in the Zimbabwean context, any person below the age of 18 may be defined as being a child and as such may lay claim to the rights accorded children by law.

The rights of Zimbabwean Children

There are no rights for children specifically enshrined in the constitution, however they are entitled the rights guaranteed all persons in Zimbabwe, regardless of age, by the Declaration of Rights. Children's rights are recognized in Zimbabwean law as defined by the Children's Protection and Adoption Act, the Guardianship of Minors Act and the Education Act. In addition Zimbabwe has assented to the United Nations' Convention on the Rights of the Child and ratified the African Charter on the Rights and Welfare of the Child. Therefore we will also consider these two international instruments in reviewing the state of children's rights in Zimbabwe. The rights guaranteed to the child apply to all children in Zimbabwe and are **not** subject to prevailing circumstances or any other decisive factor. They are co-dependent, indivisible rights, and as such may not be protected in part.

The rights guaranteed to children by these instruments and statutes are as follows:

- Rights guaranteeing the protection of children include:
 - *The inherent right to life thereby entitling the child to all means that will ensure its survival and development. Further more no death sentence shall be pronounced on children.*
 - *Every child has the right to an identity. To this end every child has a right to be registered immediately after birth and furthermore the right to a name and a nationality.*
 - *Children are to be protected from physical and mental violence and freedom from discrimination.*

- Rights ensuring the development of the child include:
 - *They also have the right to a family and not to be unjustly separated from such family.*
 - *In addition children have the right to freedom of thought, conscience and religion; freedom of expression which includes the right to seek, receive and impart information*
 - *The right to food, shelter, education and the best possible health care.*

However in Zimbabwe education is neither free nor compulsory and as such the right is unenforceable. There is a shortage of teachers, particularly in rural areas, and with the turmoil on commercial farms brought about by resettlement, disruption and discontinuance of educational services on most farms is inevitable. Moreover the higher cost of secondary education means that fewer children, again by and large in the rural setting, will have access to education at a post-primary level. The Education Act merely imposes a duty on parents to educate their minor children. With rising retrenchments bread winners have been forced out of their jobs and children's education has been affected as issues such as feeding the family take priority.

The above rights are guaranteed regardless of the child's parents' or guardians' race, ethnic group, sex, language, religion, political opinion or any other status. These rights recognise that every child has certain basic needs as *"the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development; and require legal protection in conditions of freedom, dignity and security"* – 1990 African Charter on the Rights and Welfare of the Child. Unless children are aware of these rights they are essentially ineffective. In so far as this the CRC requests that governments to actively guarantee that children are educated on and are able to exercise their rights.

Orphans and AIDS

Due to the HIV/AIDS related deaths of their parents and guardians, orphanhood is befalling children at a disturbing rate. In June 2002 the National AIDS Council estimated the number of Zimbabwe's orphans who had lost one or both parent to the disease at approximately 700 000. Prior to the commencement of the fast-track resettlement program the Farm Orphan Trust estimated that an average 11 orphans, most of whom have lost their parents to AIDS, lived on every farm. These orphans have since been displaced by the resettlement program and do not qualify for resettlement themselves. This places into question Zimbabwe's priorities, integrity and commitment to upholding "rights of the child" as enshrined in the UN Convention on the Rights of the Child.

Orphaned children are further affected by HIV/AIDS in that a significant number are born infected with the virus and die before the age of five. This infringes various rights including the right to life and health. Furthermore with regards to HIV/AIDS, girl children are made prone to rape and sexual abuse due to the mythical prescription by some traditional healers to their male clients that having intercourse with a young virgin girl.

Children who have lost parents to AIDS are susceptible property grabbing by relatives of the parents. Despite the existence of the Administration of Estates Amendment Act 6 of 1997, which determines that beneficiaries to an intestate customary law estate are the surviving spouse and children but in practice greedy relatives can still limit the process due to the court imposed administrative requirement that the relatives endorse the surviving spouse status where there is no marriage certificate.

Child Abuse in Zimbabwe

Abuse of children can be categorized in four main classes: Sexual Abuse, Physical Abuse, Emotional Abuse, Neglect. Child sexual abuse has recently received wide coverage in both the public and independent media. Below is a brief outline of child sexual abuse in the Zimbabwean context:

Girl children in the rural setting in Zimbabwe are particularly prone to child sexual abuse due to traditional practices such as *kuzvarira* – the practice through which a girl child is given to the donor of material goods required by the family, in most cases food; *mudzimu* – offering a girl child as a wife to displeased ancestors in order to appease them ; *chiramu* – a practice whereby a brother-in-law is allowed to sexually touch his young sister-in-law in the confidence that she too is his wife. Another practice that leaves children liable to abuse is *chigadza mapfihwa* whereby a young girl is taken to become the husband of her brother-in-law should her sister pass away.

The United Nations' Convention on the Rights of the Child obliges the Government to protect children from all forms of abuse. Therefore it is up to the Government to prevent such abuse taking place rather than attempting to take corrective measures once the abuse has been committed. Non-Governmental - Organisations currently working to assist abused children include Childline, the Girl Child Network, Farm Orphan Trust and the Family Support Trust. There is unquestionable need to create an environment that is complimentary to the enforcement of pieces of legislation that seek to promote children's rights in order that their protection ceases to be theoretical. There must be constitutional safeguards pertaining to the above. Thus this should be taken into account should the drafting of a new constitution should ever be placed back on the government's agenda. In addition education of children on their rights is paramount. All the above will be useless an educational campaign directed at the children themselves is undertaken.

2. Political Rights Violations

There was a decrease of reported cases and instances of political violence in May in comparison to the cases reported in the first four months of 2002. The Human Rights Forum in the midst of this lull urges the Zimbabwean government to take meaningful steps towards achieving an environment of peaceful political competition. Further to this, of critical importance is the restoration of the rule of law and the end to impunity enjoyed by perpetrators of violence. It is of necessity that members of the ruling party and state agents do not benefit from the selective prosecution by the police and the courts as they have done in the past.

Table 2. Human rights violations during April 2002 in Zimbabwe, including those resulting from political violence

Type of violation	Ordinary	Political	Total
murder	1	2	3
attempted murder	0	0	0
unlawful detention	3	2	5
unlawful arrest	1	0	1
torture	9	71	80
assault	7	4	11
abduction/ kidnapping	1	2	3
disappearance	0	0	0

firearms offences	0	0	0
death threats	0	0	0
death penalty	2	0	2
political intimidation/ discrimination/victimisation	0	3	3
freedom of expression/ assembly/association/movement	18	0	18
rape	3	1	4
school closure	0	0	0
property related	2	3	5
displacement	0	0	0

Notes to the table

Torture:

All cases of torture fall under the definition of torture according to the general definition given in the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment and Punishment.

The four elements of torture are:

1. Severe pain and suffering, whether physical or mental
2. Intentionally inflicted
3. With a purpose
4. By a state official or another individual acting with the acquiescence of the State.

Those individuals referred to in point # 4 include the ZRP, ZNA, ZPS and the ZNLWVA (as a reserve force of the ZNA) and by any other grouping when directly sanctioned by the state.

Unlawful arrest and detention:

Arrest by the Zimbabwe Republic Police (ZRP) with no reasonable suspicion that an offence has been committed. Detention thereafter for a period exceeding 48 hours without access to redress through the courts or subsequent release without charge.

Abduction/kidnapping:

iA kidnapping by a member(s) of an organised group that is not the ZRP organisation eg. political party, ZNLWVA, ZNA, MDC, Zanu PF etc

Disappearance:

Kidnapped persons whose whereabouts remained unknown at the time of reporting. Their whereabouts have still to be ascertained through follow-up reports or further investigation.

Property related: These are incidents in which property rights have been violated. This includes arson, property damage and destruction and theft.

3. Zimbabwe Human Rights NGO Forum Member Focus:

The *Human Rights Monthly*, carries a brief narrative on the activities of a member of the Zimbabwe Human Rights NGO Forum in each issue. This is intended to assist our readers to understand the activities of the coalition and furthermore about the services offered by each NGO. This month we feature the Zimbabwe Women Lawyers Association

ZWLA – Uplifting the legal status of women and children in Zimbabwe

Background Information

The Zimbabwe Women Lawyer's Association, a member of the Zimbabwe Human Rights NGO Forum, was established in 1995/ 1992 as a charitable organisation that enables women and children to assert their rights by providing them with access to the relevant legal resources. The organisation is made up of lawyers in private practice, public service, commerce and NGOs. ZWLA's mission is to create a society where there is equal legal and social status between women and men. The main objectives of ZWLA are:

- To promote and enhance the legal status and rights of women and children in Zimbabwe
- To provide legal assistance to women and children
- To educate women on their legal rights
- To lobby for legal reform
- To support and network with any likeminded institutions that promote and support the enhancement of women's rights

How does ZWLA assist members of the community/society?

ZWLA carries out a range of activities for the benefit of the community including the establishing and running of a legal aid center, holding of workshops and media campaigns to educate women on their rights and lobbying for policy changes on laws and practices that disadvantage women. The organization also undertakes the dissemination of information through media campaigns to enhance women's participation in the constitution reform process and makes public statements on the marginalisation of women and their absence in positions of decision making. The organization undertook research on the violence that women suffered in the run up to the June 2000 parliamentary elections.

ZWLA has documented experiences that indicate problems with the state of children's rights in Zimbabwe. After a realisation that children's rights were only being addressed as mainly ancillary issues to women's problems, a need to create a unit that specifically addressed children's rights was seen and 2001 saw the birth of the Children's desk. Since the inception of this children's desk, it has been working more closely with international conventions passed on children's rights that Zimbabwe is a party to and also with the various legislation that have been passed in Zimbabwe to compliment children's rights such as the Maintenance Act, The Children's Protection and Adoption Act, The Sexual Offences Act, Administration of Estates Amendment Act 6 of 1997, Guardianship of Minors Act.

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The Human Rights Forum occupies Suite 1, 1 Raleigh Street (corner Rotten Row), Harare.

We can be phoned on (04) 792222; 737509; 731660; or faxed on (04) 772860.

Our postal address is: P O Box 5465, Harare; or

email: research@hrforum.co.zw