

"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace."
Kofi Annan



CHILD LAW NEWS

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Welcome to the Justice for Children (JCT) fortnightly e-newsletter. JCT's mandate is to promote and ensure access to transformative justice and enjoyment of human rights by children. The newsletter series aims to educate, inform and mobilise action on contemporary and topical issues around child protection in Zimbabwe.

AGE OF CONSENT, SEXUAL INTERCOURSE WITH YOUNG PERSONS AND ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH CARE IN ZIMBABWE

The debate on the age of consent to sexual intercourse by young people and surrounding issues has been on-going for quite some time in Zimbabwe. Access to adolescent sexual and reproductive health care, rising levels of teen pregnancies, illegal termination of pregnancies involving minors, the high levels of sexual abuse and the thorny issue of child marriages have contributed to this. Information, opinions and misinformation have been shared across various media platforms. The most recent reports that again brought to issue to the fore, were reports allegedly attributed to the Parliamentary Portfolio Committee on Health and Child Care, that legislators were pushing for downward review of the age of consent to 12 years from the current 16. The Chairperson of the Committee was later to clarify that the Committee in fact was considering proposals to lower the age of access to sexual and reproductive health services to 12 years.

To this end JCT launched a publication in June 2019 titled *Age of consent, sexual intercourse with young persons and access to sexual and reproductive health care in Zimbabwe*. The publication was launched at a national dialogue convened by JCT at its Harare offices. In attendance were representatives of child rights organisations, duty bearers, and children drawn from schools and child-led institutions such as the Child Parliament. Professor Julie Stewart of the University of Zimbabwe officiated the launch.

The publication seeks to give clarity on the discourse, and to contribute as a resource tool in policy formulation. As a critical component, age of consent and the law are not two separate discourses, and this publication harmonises the hitherto parallel conversations. The publication looks at the policy framework around the age of consent debate and also explores the gaps in the laws and policies and in implementation of these laws vis-à-vis protection of children. Among issues interrogated with the publication are policy and legal consistency in both the criminal and health regulatory framework, protection of children from ill-informed decisions if allowed access to sexual and reproductive health care as well as protection from medical negligence, and intervention methods to discourage early onset of sexual activity, including sexual and reproductive health education.

As a goal, the publication aims to inform debate and discussion from a multi-dimensional perspective, and quite exhaustively points out the legal issues of concern. Child protection programmers, duty bearers and policy makers can all use the publication. The content of the publication is built upon the legal expertise of Justice for Children, the experiences of its lawyers in dealing with children's cases in the courts and beyond, and the provisions of the law in both statutes and judicial decisions. The publication also considers positions in other countries such as Namibia, South Africa, Kenya, Botswana and Malawi in the region.

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There is consensus among child rights practitioners that children are in fact engaging in underage consensual sexual activity, which in terms of our law, is not criminalised if both are under the age of consent. Because of the age of consent placed at 16 years in order to protect children from adult sexual exploitation, practice and policy in the medical profession is to restrict access to sexual and reproductive health care for children, in the absence of parental consent. The reality is that children do not then seek such parental intervention when they have engaged in consensual sexual activity with their peers, in order to access sexual and reproductive health care services. The result is a discordance in the law and in how the law seeks to protect children. As complex an issue as it is, there is need for law reform, which is evidence-based, and which seeks to strike a fine balance which ultimately seeks to achieve enhanced child protection.

The right to health as captured in the Constitutions of Zimbabwe, including in section 81 which addresses children rights, and in the United National Convention on the Rights of the Child (UNCRC), has been interpreted by the Committee on the Rights of the Child to encompass access to sexual and reproductive health services, in line with the evolving capacities of children, with a view to provide the greatest protection possible.

The publication is available online, and can be collected in hard copy at JCT offices on request, free of charge.

JCT PARTICIPATES AT THE SADC PEOPLE'S SUMMIT IN DAR ES SALAAM

Every year, in the days immediately before the SADC Summit of Heads of State and Government, a group of leading civil society organisations in the region gather in the same host city under the banner of the SADC People's Solidarity Network (SAPSN), in what is called the SADC People's Summit. SAPSN is currently under the auspices and coordination of the Zimbabwe Coalition on Debt and Development (ZIMCODD), based in Harare. Between 14 and 17 August 2019, JCT Coordinator Chinga Govhati and JCT lawyer Musa Kika represented JCT at the 2019 SADC People's Summit in Dar es Salaam, Tanzania. This preceded the SADC Heads of State and Government Summit held on the 18th and 19th of August 2019 in the same city. The theme for the 2019 SADC People's Summit was "Rebuilding People's Movements Within Southern Africa's Climate, Political and Economic Emergencies: Towards Radical Democratic Alternatives and a Just Transition".

On the 15th of August 2019, JCT participated in an hour-long session on ending child marriages titled "Strategic partnerships and strategic resourcing for social justice action in context of shrinking space – Movement building for empowerment of young women and girls through ending child marriages". The session was coordinated by the Rozaria Memorial Trust, and featured IM Swedish Development Partner-funded organizations. The session aimed at raising awareness of ending child marriages, sharing best practices, and building solidarity and partnerships in fighting child marriages.



Professor Julie Stewart of the University of Zimbabwe officiating at the launch.



Child parliamentarians expressing children's views at the launch of the publication.

The broader agenda on the session was “Building a social movement for socio-economic rights and empowerment of young women and girls through ending child marriage”, with the following specific objectives:

- i. To share best practices of movement building work within key constituencies i.e. justice, women’s movement and traditional leadership that is implementing programs on ending child marriage;
- ii. Strengthen collaboration and build a solid commitment of partners within the SADC People Summit space for institutionalising the thematic focus on social justice for young women and girls with a
- iii. focus on ending child marriage in context of shrinking space;
- iv. Identify key recommendations and messages for effectively influencing the SADC People Summit Outcome Document to be presented to SADC summit on ending child marriage; and
- v. Engage in communication and advocacy actions with the session and beyond for continue commitment and deepening of interventions to end child marriage within the people’s movements, civil society and other networks in the region.

The session was moderated by Mrs Daphne Chimuka, Chair of RAAG, Gender and Education Expert, and the other panellists included Mr Tichafa Chibanda, Former Acting Chief from Murewa, Zimbabwe, who spoke on Accountability Through Transformative Actions of Traditional Leaders to End Child Marriage; Bridget Thindwa of the Non-Governmental Organizations Coordinating Council (NGOCC) - a girl child survivor of a child marriage in Zambia, who spoke on building a national movement of rights holders to ending child marriage in Zambia; and Dalitso Kubalasa, IM Swedish Development Partner Southern Africa Regional Director, who spoke on strategic Partnerships and Strategic Resourcing for Social Justice Actions in context of shrinking space. Musa Kika presented on behalf of JCT on the topic “**Using the law to advance access to justice for survivors of child marriages**”. He also took questions during the question and answer plenary session that followed the presentations. The presentation touched on six aspects:

- Making formal statutory prohibitions of child marriages;
- Criminalising child marriages;
- Protection of children in existing child marriages;
- Grey areas and often ignored aspects;
- Other strategies to detect, prevent and end child marriages;
- and Picture of legal protection against child marriages in Southern Africa.

JCT was able to support the session through providing the legal and technical expertise on using the law to protect children from child marriages. Attendees at the summit benefited in insights as to what the region is doing on the legal front, as well as in sensitising the summit on gaps and opportunities for advocacy and programming. JCT also managed to cement its relationship with regional partners in our collective fight against child marriages. JCT inputted in drafting the communiqué that was to be delivered to the SADC Heads of State and Government, working with partners to draft the lines on the recommendations for ending child marriages in the communiqué.

SOME FACTS ABOUT CHILD ON CHILD SEXUAL ABUSE

Child sexual abuse, sadly, remains prevalent in the country. This includes child-on-child sexual abuse. In this section, we share some important facts. The terms child-on-child sexual abuse are defined as sexual activity between children that occur without consent, or that occur with consent by with one of the children being above the age of consent. Oftentimes, older children sexually abuse other children in seeking some sort of sexual stimulation, or in experimentation, whilst exploiting the younger child.

- Incidences of child-on-child sexual abuse frequently go unreported. Even if known by adults, it is sometimes dismissed as harmless.
- Children who initiate or solicit overtly sexual acts with other children most often have been sexually victimised by an adult beforehand, or by another child who was in turn abused by an adult.
- Just like adult perpetrators, a child sexually abusing another child is most likely a friend or family member, and rarely a stranger.
- In some instances, the perpetrating child was exposed to pornography, movies, video games or repeatedly witnessed sexual activity of adults at a very young age, which in itself is a form of child sexual abuse.

What can be done to safeguard children?

- Communication is key. Talking to children about their activities, how they spent their day and with whom on a daily basis increases the likelihood that a child would report sexual abuse.
- Setting clear standards and boundaries for what is considered appropriate behavior is important.
- There must not be overemphasis of “stranger danger” bearing in mind that in most instances the perpetrators of sexual abuse are often known to the child.
- Children should be informed and sensitized on child protection systems that exist for them, including where to report when abused.





Musa Kika speaking on how SADC can drive towards ending child marriages through regional and national legal frameworks at the SADC People's Summit in Dar es Salaam in August 2019

LEGISLATIVE REFORM ON CHILD PROTECTION - WHAT TO WATCH OUT FOR

Child Justice Bill - The government is in the process of developing a Child Justice Bill. In June 2019, a “layman’s draft” of the proposed Child Justice Bill was released by the Ministry of Justice Legal and Parliamentary Affairs. The Draft Bill is yet to be gazetted, meaning it remains in draft form. The Bill seeks to establish a distinct criminal justice system for children who are in conflict with the law, so that due protections accorded to children by the Constitution are observed. These include all procedural and substantive issues attendant to a child alleged to have committed a criminal offence.

Education Amendment Bill - The Education Amendment Bill is currently before Parliament for the remaining stages, having been taken for public consultations. The Bills seeks to align the Education Act to the Constitution, and among other things, address issues of corporal punishment in schools, the curricula, non-discrimination of children, and learners with disabilities. Check out the Bill online and let us know what you think.

Marriages Bill - The Marriages Bill 2019 was gazetted and has just been taken for public consultations. The Bill seeks to harmonize marriage laws in Zimbabwe, and among other things, prohibit and criminalise child marriages. Does the Bill do enough to protect children from child marriages?

Children’s Amendment Bill - The Children’s Act is being amended for conformity to the Constitution. The Bill is yet to be gazetted, and to be debated in public consultations.

JCT has been actively involved in consultations around the Bills. The upcoming Issues of this newsletter will address some of the issues emanating from these Bills.

WE WOULD LOVE TO HEAR FROM YOU!

Do you have issues that you would want the Child Law News to address? Do you have feedback and comments on this issue and on our work? If yes, please contact us on details above.

