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BRIEF

Brief to Zambia's Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child (Reporting period: 2008 – 2017)

**Presented to the African Committee of Experts on the Rights and Welfare
of the Child**

by

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A brief about the situation of children in Zambia: observations of critical child rights concerns

Introduction

1. As a non-governmental organisation, the Centre for Human Rights (CHR) was granted Observer Status in 2017 by the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee)¹ under article 42(a)(iii) of the African Charter on the Rights and Welfare of the Child (African Children's Charter). The African Children's Charter recognizes the complementary role of civil society organisations (CSOs) in helping State parties in the implementation of the African Children's Charter. It is under this authority that the CHR presents this brief on critical areas of child rights concerns in Zambia.

2. The brief offers observations, facts and perspectives on critical priority child rights concerns in Zambia and suggests actionable recommendations to improve the situation of children in Zambia. As a brief, it is limited to priority areas of concern. The CHR humbly invites the African Children's Committee to evaluate this brief as an independent and complementary perspective on the situation of children in Zambia. The CHR commends the government of Zambia and its partners for working very hard to improve the situation of all children in Zambia. It, however, notes with concern certain areas identified and discussed below.

Definition of the child: age of criminal responsibility

3. Although the State party has amended some laws,² majority of the laws are still not in line with the African Children's Charter. For example, subordinate legislation³ provide for conflicting provisions with respect to the age of a child and subsequent rights that accrue. In particular, the definition of a child within the statutory framework of Zambia poses a serious protection risk to children due to inconsistencies with the African Children's Charter. The Juveniles Act, for example, differentiates between a child and a juvenile. Such varying definition of a child contributes to increased vulnerability of children with regards to criminal capacity.

¹ University of Pretoria, News 15 January 2018 available at < http://www.up.ac.za/en/faculty-of-law/news/post_2617084-centre-for-human-rights-granted-observer-status-with-african-childrens-committee- > (accessed 28 February 2018).

² Zambia has enacted and amended various laws to ensure conformity with its obligations. These include a constitutional amendment (*Amendment No. 2 of 2016*), the Anti-Gender Based Violence Act No. 1 of 2011, the Education Act No. 23 of 2011, the Persons with Disabilities Act No. 6 of 2012, the Anti-Human Trafficking Act No. 11 of 2008 and the Gender Equity and Equality Act No. 22 of 2015.

³ Juveniles Act and Education Act no 23 of 2011.

4. The legal age of criminal liability is capped at 8 years⁴ - far below the international and regional standard of 12 years.⁵ Such provision is contrary to article 17(4) of the African Children's Charter and constitutes a continuing violation of children's rights in Zambia.⁶ The customary and statutory legal regimes of Zambia define children differently. The Marriage Act of Zambia, for example, allows for marriage at age 21 and anyone younger, provided that there is consent obtained. Such perplexity has contributed to worsening the child rights situation, especially with respect to child marriage.⁷

Recommendations

- The African Children's Charter defines a child as every human being below the age of 18 years. Zambia did not enter any reservation on the definition of a child under article 2 of the African Children's Charter. It must therefore adopt a definition that prohibits discrimination and treats all children as equal.
- Zambia should align its laws and practice to international standard on minimum age of criminal responsibility consistent with United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules') and article 40(3) of the UN Convention on the Rights of the Child, which Zambia has also ratified.

General principles

5. The most notable issue recorded here is that the State party still distinguishes between children born out of wedlock and children born to married parents.⁸ The African Children's Charter defines children without distinction and guards against discrimination of any kind.⁹

6. The best interests of the child are of paramount importance in all matters involving the child.¹⁰ There are several issues in connection to this principle. The first is that, despite the fact that the State party alleges to uphold the best interests of the child, the definitions it uses for the child do not reflect this.¹¹ Also the State party's laws distinguish between the girl child and the boy child - examples of this can be found in the legal age for marriage and the inheritance law¹². It is also important to note that the State party is vague on how it has ensured that the best interests of the child are treated as being paramount and applied in all matters involving the child. Lastly, the State party records that it has engaged with traditional leaders in an effort to curb child marriage, especially for girls.¹³ However, there is no recorded evidence showing that

⁴ See the Penal Code, chapter 87, sec 14, Laws of Zambia.

⁵ See African Children's Charter art 17(4) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules').

⁶ The African Child Policy Forum 'Minimum age of criminal responsibility: international/regional instruments' available at < http://www.africanchildinfo.net/clr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_4_en.pdf> (accessed 20 April 2018) 18.

⁷ UNICEF 'Qualitative study of child marriage in six districts of Zambia' (2015) 1 available at < https://www.unicef.org/zambia/Qualitative_study_of_child_marriage_in_six_districts_of_Zambia.pdf> (accessed 20 April 2018).

⁸ See the Legitimacy Act, chapter 52, Laws of Zambia.

⁹ See African Children's Charter art 1 & 3.

¹⁰ See African Children's Charter art 4.

¹¹ See, for example, the Penal Code, chapter 87, sec 14, Laws of Zambia.

¹² See, for example, the Marriage Act, chapter 50, sec 17, Laws of Zambia & Intestate Succession Act, chapter 59, Laws of Zambia.

¹³ See Zambia's Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child 14.

the numbers have indeed decreased.

7. Children have a right to life, survival and development.¹⁴ However, Zambian laws are not child specific.¹⁵ Furthermore, the State party does not record what measures it has taken to protect this right for children and to what extent such measures have been effectively implemented. It is notable that the decrease in child mortality, the increase in the number of houses with improved sources of drinking water and the creation of opportunity for early childhood education are improvements envisaged in Agenda 2040.

8. State parties have a duty to respect the views of children in all matters concerning them.¹⁶ The State party under consideration provides no evidence of incidents where it has respected the child's views. Furthermore, while the State party has recorded that it has implemented efforts of mobilisation and sensitisation in various communities,¹⁷ it does not state which ministries have been given this task, in which districts or provinces these efforts have been rolled out or their success rates.

9. Finally, State parties have a duty to provide children with information and promote their participation in decision-making processes affecting them.¹⁸ The State party under scrutiny records that it has made efforts to mobilise the community to respect the views of the child and it has also made efforts to promote child participation in matters which affect children.¹⁹ The State party records that it has formed clubs and platforms in the schools as well as developed and improved amenities such as play parks and reading and recreation centres. However, the State party has failed to provide the areas and schools in which it has implemented these efforts.

Recommendations

- The African Children's Charter defines a child as every human being below the age of 18 years. In line with the African Children's Charter, Zambia should adopt a uniform definition of the child that does not allow any form of discrimination and sees all children as being equal.
- Zambia should harmonise its legislation in order to address the existing discrimination between boys and girls, with respect to marriage and inheritance.

Special protection measures: child labour

10. Child labour is a perilous practice that exposes children to exploitation and risks of death, physical injury and denies them access to education. 41% of children ages 5-14 engage in child labour in Zambia.²⁰ As noted above, variations in the definition of a child increase children's vulnerability to being subjected to the worst forms of child labour and subsequent lack of protection and health risks. According to 2015 UNICEF Annual report, 65% of Zambian children live in poverty, while 47% of children under 5 from poorest backgrounds are stunted. 1 in 9 children with

¹⁴ See African Children's Charter art 5.

¹⁵ See Zambia's Initial Report to the Committee, 14.

¹⁶ See African Children's Charter art 7.

¹⁷ See Zambia's Initial Report to the Committee, 15.

¹⁸ See African Children's Charter arts 4, 7 & 12.

¹⁹ See Zambia's Initial Report to the Committee, 16.

²⁰ UNICEF 'Key demographic indicators' <<https://data.unicef.org/country/zmb/>> (accessed 20 April 2018).

uneducated mother dies before the age of 5.²¹ Children living in poverty are exposed to child labour, including child begging.

11. 1 in 4 children are engaged in some form of child labour in any poorest country.²² Zambia falls amongst bottom half of the poorest nations in sub-Saharan Africa.²³ High prevalence is experienced in urban areas where homeless families and high rates of unemployment are found. Zambia's laws, in particular the Employment Act and the Employment of Young Persons and Children Act provide for a minimum contractual age of 12 years and lower, provided earning is to pursue education.

12. Child labour has direct correlation with unemployment and poverty. Urban children of poor backgrounds are particularly at risk of child labour. The government acknowledges poor indicators of child development,²⁴ but makes no mention of programmes initiated to combat it despite generous donor funding such as from European Union.²⁵

Recommendations

- Zambia should put in place robust laws and policies to combat child labour through awareness creation and increased public investment in education.
- Zambia should repeal and amend the Employment Act Cap 512 and the Employment of Young Persons and Children Act, Chapter 274 to conform to ILO minimum Age Convention (no. 138) and African Children's Charter to afford all children necessary protection from the worst forms of child labour.

Child marriage and other harmful cultural practices

13. Child marriage robs children, especially girls, of their future because it denies them the right to education. Girls who are out of school are more likely to marry or get pregnant than those in school. Education can therefore be used as a tool to fight child marriage. Despite government's launch in 2014 of a national strategy on ending child marriage, the situation in this regard has not changed one year after. Consequently, UNICEF's 2015 report estimates that 42% of children are in some form of marriage in Zambia.²⁶

14. In particular, Zambia's teens pregnancies are among the worst in Africa. According to 2015 UNICEF's annual report, 17% of teenage girls are married in Zambia and 54% of adolescent girls with no education start bearing children very early.²⁷ It follows therefore that despite the institutional arrangements of chieftaincy and development of the national strategy to end child

²¹ UNICEF Zambia Annual Report 2016, 10 available at <https://www.unicef.org/zambia/annual_report_Zambia_web.pdf> (accessed 21 April 2018).

²² UNICEF 2015 Report available at <<https://data.unicef.org/topic/child-protection/child-labour/>> (accessed 20 April 2018).

²³ United Nations Development Index Report (2015) available at <http://hdr.undp.org/sites/default/files/HDR2016_EN_Overview_Web.pdf> (accessed 4 March 2018).

²⁴ Zambia's Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child para 97.

²⁵ UNICEF 'Zambia Annual Report' 2015 available at <https://www.unicef.org/zambia/annual_report_Zambia_web.pdf>

²⁶ UNICEF 'Qualitative study of Child marriage in six Districts of Zambia' 6 available at <https://www.unicef.org/zambia/Zambia_child_marriage_research_report.pdf> UNICEF 2015 > (accessed 20 April 2018).

²⁷ UNICEF 'Qualitative study of Child marriage in six Districts of Zambia' 11 available at <https://www.unicef.org/zambia/Zambia_child_marriage_research_report.pdf> UNICEF 2015 > (accessed 20 April 2018).

marriage, no progress has been practically achieved in terms of changes in the lives of children. The state should therefore adopt a multifaceted approach that encompasses community actions to shift attitudes and to document cases of child marriages in the society.

15. The establishment of chieftaincy and traditional institutions could be harnessed to drive grassroots campaigns in ending child marriage. The engagement of chiefs and community leaders with their communities on child marriage could be an important catalyst in strategic campaigns to end child marriages in Zambia. The state should therefore leverage traditional institutions in the fight against child marriages.

16. Child marriage and other harmful cultural practices deny children their childhood, their right to education and protection. There is also a growing rate of HIV/AIDS amongst teenage girls and resultant increased numbers of child headed households in Zambia. Despite these critical child rights concerns, Zambia's strategic development agenda²⁸ has failed to project children at risk of forced child marriages and other forms of harmful cultural practices in its strategic development thrusts. Of particular concern is the lack of strategy to address the growing phenomenon of child headed households and HIV/AIDS amongst teenagers. In particular, the Central Statistical Office²⁹ states that 3.6% of children between ages 15 - 17 years are HIV positive and that there are over 20,000 child headed households in Zambia.³⁰

Recommendations

- Zambia should adopt a multidisciplinary approach to end child marriage through grassroots campaigns and mobilization, legal reforms and work with traditional institutions that support child marriage to shift their attitudes towards a total ban of child marriages.
- Domesticate the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('the Maputo Protocol') and abolish traditional practices that condone child marriages.
- Put in place legislative, institutional and other measures to protect children from child marriages, consistent with Article 6(b) of the Maputo Protocol and Article 21(2) of the African Children's Charter. The Joint General Comment of the African Commission and the African Children's Committee on ending child marriage in Africa enjoins state parties to put in place effective measures to end all child marriages.

Critical gaps in laws and policies impacting on children

17. Upon ratifying the Children's Charter, the state is obliged to ensure that its national legislative frameworks conform to the provisions of the African Children's Charter so as not to defeat its intent and purpose. The CHR notes that the state has listed a series of amendments to its national legislation; however, it has not developed critical policy frameworks that are envisaged as operative vehicles for the effective implementation of the African Children's Charter.

²⁸ National development plan and national strategy on ending child marriages.

²⁹ See <<https://bettercarenetwork.org/sites/default/files/Demographic%20profile%20of%20children%20aged%200-17%20in%20Zambia.pdf>> (accessed 4 March 2018).

³⁰ Children constitute 53% of the total population, of which 4 million are girls (see n29 above).

18. The Republic of Zambia has achieved tremendous progress in the legislative and policy frameworks since the ratification of the African Children's Charter in 2008.³¹ It has enacted and amended many laws to align to the international law notably the African Children's Charter.³² Notwithstanding such noticeable progress on the legal framework, progress is yet to be made in enacting the Children's Act to consolidate all rights of children into a single document. The state acknowledges this fact and asserts that it is planning to consider such a plan.

19. The review of laws undertaken by the state to consolidate and bring domestic legislation in line the African Children's Charter has not been comprehensively done. For example, section 14 (3) of the Penal Code manifestly discriminates girls by providing that '[a] male person under the age of twelve years is presumed to be incapable of having carnal knowledge' hence denying girls the same protection afforded to the boys. The CHR invites the African Children's Committee to recommend a comprehensive substantive review of this provision in line with international and regional children's rights legal regime.³³

Recommendations

- The Republic of Zambia should urgently enact the Children's Act to ensure all children in Zambia enjoy their fundamental rights and freedoms guaranteed under the African Children's Charter.
- Suspend all laws in force that contravene the African Children's Charter such as the Juvenile Justice Act, which provides differential ages for children in conflict with the law.

Civil rights and freedoms: birth registration

20. Birth registration is a fundamental right of every child as it affects the enjoyment by children of civil and political rights including the right to access social services such as health and education. Article 6 of the African Children's Charter enjoins state parties to ensure that all children are registered at birth and given a name and nationality.

21. Zambia's birth registration is among the lowest in the region. Only 4% of children have birth certificates and less than 20% of them have access to birth registration.³⁴ This reality contributes to the weak policy environment and impedes children's access to socio-economic and cultural rights. The government's 5-year national strategy action plan to improve civil registration is a commendable start to ensuring all children have access to birth registration as a fundamental human right.

22. The lack of birth registration has multiple negative effects on the right to be protected from child marriage, child labour and other forms of child exploitation. The CHR commends the

³¹ Zambia's Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child.

³² Zambia's Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child.

³³ United Nations 'Comparative African legal regime on the age of criminal responsibility' available at <<https://www.crin.org/en/home/ages/Africa>> (accessed 4 March 2018).

³⁴ UNICEF 'Zambia Annual Report' 2015, 9 & 31 available at <https://www.unicef.org/zambia/annual_report_Zambia_web.pdf> (accessed 20 April 2018).

state for issuing the Statutory Instrument No. 44 of 2016, which effectively decentralises the birth registration system.

Recommendations

- Zambia should enhance its cooperation with civil society organisations and development partners to ensure that decentralised birth registration services are available to all children for free.
- Expedite birth registration services by increasing awareness and mainstreaming such services within the health system and other service providers accessible to the communities.
- Empower traditional institutions in rural areas where health services are not readily available to report births and expedite implementation of its recommendations under paragraph 53 of its Initial report.