

JUSTICE FOR CHILDREN



JUSTICE FOR CHILDREN SECTOR ANALYSIS FIELD STUDY REPORT

HARARE

1. INTRODUCTION

The Ministry of Justice and Legal Affairs with support from UNICEF has tasked the Danish Institute for Human Rights working in partnership with Justice for Children Trust to carry out a “Justice for Children Sector Analysis”. Justice for children means ensuring that all children who come into contact with the justice system are served and protected by such system through the application of international and national standards. Children must have redress in criminal and civil matters using the justice system. The study investigates the justice system providing a general analysis of the same as well as focusing on juvenile justice, custody, inheritance and the victim friendly initiative. This report will highlight the methodology and the findings from the Rusape and Harare field researches.

The specific objectives of the justice for children sector analysis are to:

- Undertake an assessment of the situation of children who access the justice system;
- Provide a description of the current structure of the system and its regulatory frameworks;
- Undertake an analysis of the capacity of the system to deliver rights-based justice for children;
- Identify opportunities for further strengthening the system; and
- Provide recommendations for future action.

2. METHODOLOGY

The analysis included interviews and focus group discussions with government officials including Ministry of Justice and Legal Affairs, Ministry of Education, Sport, Arts and Culture, Judicial Services Commission, Legal Aid Directorate and the non governmental organisations such as Child Line, Simukai, Family Support Trust, ZACRO and ICRC, members of the community who included children and a traditional leader. One hundred and thirty six (136) respondents were interviewed from Harare and Rusape interviews. Thirty one (31) people were interviewed in Rusape while three (3) focus group discussions were held with a thirty three (33) participants. Thirty three (33) adults were interviewed in Harare. Twenty six (26) children who have gone through the justice delivery system who are serving at Hwahwa Young Offenders Prison were interviewed through a focus group discussion and thirteen (13) children either serving or on remand were also interviewed individually from

various prisons. The researchers also accessed court records and statistics from other government departments.

3. FINDINGS

3.1. General assessment of the situation of children

Most children who come into contact with the justice system are living in situations of deprivation. They fail to access education because of poverty. Some are orphans, most of their parents having died of AIDS while others have parents who are unemployed. Where parents are deceased, children are usually made to live with relatives who may then abuse or expose them to abuse. Media influence, peer pressure and lack of guidance were noted as some of the factors causing children to commit offences like rape, sodomy, aggravated indecent assault and stock theft among others.

The perception of the public that children should be punished was also contributing to the manner in which children are treated. The judicial officers tend to conform to the society's attitude.

3.2. The Legal Framework

There is general lack of knowledge of the laws protecting children among the people who participated in the study especially in Rusape. Questions which required intimate details of the law, were usually difficult to answer resulting in the researchers changing their approach. Some of the respondents did not have access to the law. This may be contributing to the non-implementation of laws which protect children. The general appreciation among the majority of respondents was that Zimbabwe has enough laws to protect children, the major hindrance is the non implementation influenced by lack of basic knowledge of the law, ignorance by stakeholders in the justice delivery system, poor accessibility of the laws, lack of motivation making personnel focus more on their personal things. This has been largely due to staff turnover of trained and experienced personnel.

Laws like the Children's Act, Criminal Procedure and Evidence Act, Administration of Estates Act and Domestic Violence Act were noted as some of the laws protecting children in both criminal and civil cases.

Most of the adult respondents interviewed in Harare showed knowledge of the law. The children however were not aware of the laws that protect them and queried mainly the trial procedure, medical affidavits and way they are sentenced. The sentences were too long for the children.

3.3. Resources

Most government departments highlighted that they are constrained in delivering justice to children. They do not have transport to carry out their work and this sometimes results in delays in delivering justice. Such delays contribute to the public losing confidence in the justice delivery system. Organisations working with children are also facing financial constraints hence are not operating to full capacity for example Girl Child Network in Rusape was not operating at the time of the interviews.

There are no alternative safe places for child victims and survivors of abuse resulting in them continuing to live in the same abusive environment. Juveniles are also kept with adults in prison while waiting for trial or serving their sentences. A visit to Rusape prison revealed eight (8) cases in which the juveniles were just mixed with the adults. Six (6) juveniles are awaiting trial for rape, one (1) for theft while one is serving for rape. At Harare Remand, there is a separate juvenile section and at Harare Central Prison, juveniles are placed together with mental patients.

Some of the staff members are not well trained for to carry out their duties. For instance, the police are usually rotated resulting in situations where those who have not been trained in handling victims of sexual abuse deal with the cases. When the researchers visited the One Stop Centre in Rusape there was no police officer operating their office there.

During the interviews with regional magistrates at Harare Magistrates Court, only one court was sitting as a Victim Friendly Court and Regional Magistrates had to rotate to use this court. The other Victim Friendly Court was not being used as the equipment was down. This affects the swiftness of cases hence the delay in completion of cases. Both the Civil and Criminal courts had no access to internet and library services. This affected both Rusape and Harare.

3.4. Coordination

The Victim Friendly Committee appears to be the only coordinating mechanism that is functioning. It however has its own challenges of resources and some of the members who showed that they are not adequately empowered to know their roles and responsibilities. The absence of coordinating mechanisms results in a justice system clogged with delays. For instance, the police no longer urgently serve custody applications from the courts resulting in cases being postponed on numerous occasions. The Harare Civil Court no longer accepts certificates of service from legal practitioners and all civil applications are now served by the Messenger of Court. This becomes a challenge for most of the litigants who cannot afford the exorbitant fees resulting in children being denied access to justice in civil cases. Some respondents highlighted that the welfare aspect of children has died down as people concentrate more on politics.

It was highlighted that delays in most cases is affected by the poor service delivery by the Ministry of Labour and Social Services. Some indicated that the Department of Labour and Social Services was a “dead department”. In all the records perused at Civil court, no record had a probation officers` report and magistrates were resorting to passing judgements without the reports so as not to delay the matter further.

3.5. Lack of other Support Mechanisms

Currently there are no vibrant support institutions outside the government departments. Girl Child Network and Simukai, NGOs working in Rusape are also facing financial challenges. The Legal Aid Directorate does not cover Rusape and there is no other institution providing legal aid services to children in that town. The Legal Aid Directorate has offices in Harare and Bulawayo only and these are also affected by resources constraints. They do not have enough human and financial resources as a result they are assisting clients for a fee depending on the means of the person. They assist with the drafting of papers and rarely attend court for legal representation. This defeats the purpose of the Legal Aid Directorate’s mandate of assisting litigants free. Most cases attended to by the Legal Aid Directorate were adult cases.

The criminal justice system (including the Victim Friendly Initiative) appears to use the child as a tool to ensure that the accused is tried. There is no support given to the child after giving evidence. In most cases, children are being abused by people they know, including those they stay with. The accused is sometimes released on bail and they go back to the same environment with the victim and the family may also blame the child for causing the arrest of the accused. There are no alternative safe places for victims and survivors of abuse. For children and the guardians attending court from distant areas, there is no place to accommodate them during trial leaving the burden on the prosecutors and police who will have brought the complainants to court.

3.6. Settlement of Disputes at Family Level

Respondents also highlighted the tendency to resolve cases at family level. This however can lead to children being abused in custody matters where there is no monitoring mechanism and stifle the reporting of child sexual abuse cases. In sexual abuse cases, which mostly involve people known to the victim, the adults tend to protect their family name and in some cases the perpetrator will be the bread winner. This is also being caused by poor delivery of service by the stakeholders with corruption allegations; the society has lost faith in the system. The traditional leader in Rusape indicated that most cases are brought to him initially and if he has no jurisdiction, he will refer the cases to the police. In non-serious cases, they can resolve the matter where the child can ask for forgiveness. In custody matters, it was indicated that children belong to the father in terms of customary law and the father should pay lobola so as to be granted custody of the children.

3.7. Religion

Most of the respondents pointed out the high prevalence rate of child marriages among the apostolic sects. The respondents appreciated that such marriages constitute child sexual abuse but there is a challenge in applying the law to bring perpetrators to book.

3.8. Delays in Delivering Justice

Cases of child sexual abuse and juveniles in conflict with the law take particularly long before they are concluded. The reasons given include the lack of resources to carry out

investigations. Members of the community and some government officials however pointed out the issue of corruption by those involved in the justice delivery system. Whatever the reason, the delays result in loss of confidence in the justice system.

3.9. Lack of Monitoring Mechanisms

The Magistrates who are the Visiting Justice are supposed to monitor the police and the prisons in the manner they are treating accused persons and the living conditions of accused in detention. Prisons Visits are being done with reports produced but there is no follow up mechanisms as to findings. The police visits are not being done. An issue of transport problems was raised as some police stations and prisons are a distance from the courts. Scrutiny and review of records is taking longer than expected making the whole process ineffective. From the records perused, records are not sent to the High Court for review within the stipulated time thus affecting the purpose.

4. JUVENILE JUSTICE

This were some of the issues highlighted by respondents particularly children who have gone through the justice delivery system.

4.1. Police

Most respondents highlighted that police are not treating children in a manner that is rehabilitative in that:

- They were assaulted by the police,
- They are not provided with food,
- Forced to admit to offences they did not commit. Six of the 26 children in a focus group discussion at Hwahwa Young offenders Prison maintained a not guilty plea even after the assaults.
- Children given small blankets or no blankets at all,
- Children are mixed with adults during incarceration,
- Harassed and some were poured water every morning at the police stations,

- No legal representation at the time of arrest. From the 26 inmates serving at Hwahwa Young offenders Prison, no one was represented during trial,
- Parents were not allowed when children were making statements,
- Unlawful detention, children were staying for up to two weeks at the police station.

4.2. Courts

- Courts are intimidating and not child friendly. The Prosecutor will be just talking to the Magistrates.
- Children are still remanded in custody even for petty offences.
- Courts favour the complainants.
- There are delays in cases being dealt with resulting in children turning eighteen years before their matter is finalised and will be sentenced like adults.
- Courts will be full during trial.
- No concealment of identity for children.
- Sentences for children too different and too long. Some children are sentenced to corporal punishment some are sentenced to long-term imprisonment for similar offences.

4.3. Prison

- There is overcrowding in remand cells. They sometimes sleep like spoons.
- There is shortage of prison garb. Children in prison wrapping blankets to cover themselves
- Blankets are dirty.
- Not all children are moved to Hwahwa Young Offenders Prison. Transport constraints, sentence the child is facing, distance where the child was sentenced affect the movement of children to the prison.
- Educational facilities available in most major prisons in cities only and those in small towns are not privileged.
- Some children do not have birth certificates and this affect their sentencing as they are treated as adults. From the records perused, the ages of children vary from the police, courts and prison.

5. CUSTODY

The best interests of the child principle is being applied though its application varies with the circumstances of each case. Factors considered are age of the child, sex, circumstances of the parties and the environment the child will be living among other factors. Wealth is not considered when decisions on custody are being made.

Children's views were consulted but respondents were cynical about this since they indicated that children tend to favour the person whom they are currently staying with and children can be persuaded by small things. Respondents felt that children aged 10 years and above are somewhat reasonable to give objective evidence. No Probation officers' reports in children's cases are being produced.

6. INHERITANCE

People are still solving inheritance matters at family level. The court is involved when there is a dispute. Most respondents did not favour the principle of the surviving spouse inheriting the property in his or her personal capacity and leaving out children. The Harare courts are now adopting a principle to have the surviving spouse and children have 50-50 share of the immovable property.

The Deceased Person Family Maintenance Act is rarely used at the courts. The public and even some stakeholders in the justice delivery system do not know this law.

7. VICTIM FRIENDLY INITIATIVE

It is coordinated by Ministry of Gender and Women Affairs which focuses mainly on gender based violence. This is the most recognised initiative though it is being affected by the resources challenge. It is mainly being used for child victims. The equipment is not functioning properly. Witness expenses for victims are not available and witnesses are spending the day at court with little or no food. There is no follow up mechanisms for children assisted at the One Stop Centre after the first treatment. They do not pay when they come with a police officer but when they come for the second check up, they should pay.

- No safe houses for abused children.
- No post trial support.
- Shortage of human resources for the initiative

8. RECOMMENDATIONS

8.1. Implementation of the law

- Make the law accessible to those in the justice delivery system
- Imprisonment as a last resort
- Separation of juveniles from adults
- Referral of cases of juveniles to the children's court
- Applying inheritance laws in a manner that protects the rights of the child. Most respondents want a situation where the surviving spouse will move out of the house if s/he remarries leaving the children to enjoy their inheritance.

8.2. Resources

- Transport.
- Places of safety for abused children.
- Libraries.

8.3. Awareness Campaigns

- Law must be simplified for the benefit of the public.
- Use Ministries with grassroots presence such as the Ministry of Youth to disseminate information.

8.4. Pre, During and Post Trial Support

- Counselling
- Medical
- Education
- Shelter
- Witness expenses

8.5. Timeous delivery of justice

Build confidence in the justice system

- Diversion of juveniles facing minor offences.

- Make probation officers accessible to the courts.

8.6. Proper Monitoring Mechanisms

- Follow up mechanisms should be adopted to ensure compliance.

9. CONCLUSION

Children are still yet to enjoy the numerous benefits provided for by the existing laws through national institutions due to the challenges highlighted. There is need for an efficient and effective justice system in order to gain the confidence of the public for children to access child friendly justice.