

Human Rights Violations in Zambia

Part III: Child rights' situation

Shadow Report UN Human Rights Committee

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Foreword:

Writing alternative reports is one of the primary activities of the World Organisation Against Torture (OMCT) and a vital source of information for the United Nations Treaty Bodies including the Human Rights Committee (HRC). This activity is complementary to providing direct assistance to victims.

These alternative reports are a valuable source for Independent Experts who analyse the implementation of the United Nations Human Rights Instruments. With these reports, it is possible to see the situation as objectively as possible and to take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

With the support of the European Union, OMCT presented this report on Human Rights Violations in Zambia at the 90th session (9-27 July 2007) of the Human Rights Committee, during which the third Zambian State Report was reviewed.

This report is based on a research and interviews carried out by OMCT during a preparatory mission held in Lusaka from 23rd April to 27th April 2007. It is jointly prepared with three national human rights non-governmental organisations (NGOs):

- HURID – Institute of Human Rights, Intellectual Property and Development Trust
- Wildaf – Zambia
- ZCEA (Zambian Civic and Education Association)

Representatives from these NGOs will attend the HRC session, brief the members of the Committee on the human rights situation in Zambia and present the shadow report.

The World Organisation Against Torture (OMCT) is the world's largest coalition of non-governmental organisations fighting against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. Its global network comprises nearly 300 local, national and regional organisations, which share the common goal of eradicating such practices and enabling the respect of human rights for all.

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1. Introduction: General presentation of the child rights' situation in Zambia

In 2005, with a child population (0-18 years old) of 6'125'000 (among which 2'011'000 are under 5 years old) out of a total population of 11'668'000.¹ Zambia has a very young population, with children under the age of 18 years representing more than 50% of the entire population.

As a consequence, the daily reality confirms that children play an important role in the work force. Other factors that put pressure on children are the rising number of them who have been orphaned², mostly due to HIV&AIDS, the obligation for three quarters of these orphans to live on the street, and the exposition of those street children to harsh forms of labour, which include, among others, illicit drug peddling and petty thieving. The girls' rights are also violated daily, a large number of them being involved in prostitution or forced into early marriages³.

2. Definition of the child

In Zambia the definition of the child varies depending on the context and piece of legislation.

The term "juvenile" includes a "child"-a person who has not attained the age of 16 and a 'young person', which means a person between the ages of 16 and 19.⁴ *The Juvenile Act* refers to persons below the age of 19 years old⁵.

In the particular context of the protection of young persons from exploitation, a "young person" is any person below the age of 15 years⁶.

In relation to marriage, any person below 21 years requires written consent of a parent or guardian before a marriage is contracted. However, customary law allows the contracting of marriage once the child has attained puberty.⁷

The *Penal Code* sets the minimum age for the criminal responsibility to 8 years⁸.

When customary law is applied, the criterion of puberty is often utilised⁹.

NGOs believe that this broad range of definitions of the child¹⁰ gives rise to at least two problems:

- 1) minimum ages are often set to law, and too often the legislation refers to the 'apparent age' of the child,¹¹ which can potentially trigger problems of abuse and discrimination due to a misapplication of the law;
- 2) the definition of the child set forth in customary law, often refers to puberty as a means to establish childhood. Indeed, for instance, 'customary law [, which governs the

¹ Figures provided by United Nations Population Division, available on UNICEF website at www.unicef.org/infobycountry/zambia_statistics.html#0. "Children" means here persons under the age of 18.

² Statistics indicate that, currently more than 500,000 children have been orphaned by HIV&AIDS, Linn Johansen, DRH-Norway.

³ Linn Johansen, *Children in Zambia*, DRH-Norway.

⁴ Helene Lindström and Ida Salomonson, *Juvenile justice in Zambia-An Evaluation of the three pilot projects*, 2005.

⁵ The Juvenile Act, Cap 53, Part I, Section 2(1).

⁶ Article 24.4 of *the Constitution*; see also the 'Employment of Children and Young Persons amendment Act of 2005.

⁷ In this context however, the marriage of the child is subject to parental consent. Chapter 50 of *The Marriage Act*.

⁸ Section 14.1 of the Penal Code, Part I, Chapter 87 of the Laws of Zambia.

⁹ Customary law and custom shall be observed in juvenile cases according to the Juvenile Act Section 1 (2) as long as this is in the interest of the child.

¹⁰ For instance, the term of "young person" is not yet harmonised in the different relevant laws.

¹¹ For example: sections 52(3), 52 (5) c, 59, 60, 77 92 (1) a, 118 (3), etc of the Juvenile Act; Section 102 (2), 134.1 a of the Prison Act.

marriage, divorce, succession and customary land-holding system of most indigenous Zambians,] ¹² allows the contracting of marriage after attainment of puberty, subject to parental consent¹³. In case of inconsistency between custom and legislation the latter should take precedence. This supremacy of legislation over custom was confirmed and applied in the case Chibwe vs. Chibwe,¹⁴ a case of marriage and divorce where Mrs. Chibwe appealed to a Magistrate Court against the decision taken by the Local Court that had applied Ushi customary law. However, because many people live in the rural traditional settings, the law that regulates the lives of a large number of Zambians remains customary law despite contradiction with the statutory law.¹⁵

3. Legal framework protecting the rights of children

In Zambia, laws related to children are disseminated among different statutes. Some Children's basic rights, like the right to citizenship, the protection from exploitation, the right to life of an unborn child, the right to personal liberty of a minor, the right of young persons not to be exploited, etc. are entrenched in the Constitution.¹⁶

In addition, the provisions related to criminal matters are embedded in the Juvenile Act, the Penal Code, and the Criminal Procedure Code Amendment. The dispositions regarding children which refer to civil matters can be found in the Intestate Succession Act, the Widows and Orphans Pensions Act, the Affiliation and Maintenance Act, the Adoption Act and the Employment of Young Person and Children Act.

In addition to constitutional and statutory legislation, customary law also regulates matters concerning children. In Zambia Local Courts employ the principles of customary law, which vary widely throughout the country according to the tribes and traditions attached to them. Presiding judges, who usually are prominent local citizens, have substantial power to invoke customary law, render judgments regarding marriages, divorces, inheritances, other civil proceedings, and rule on minor criminal matters. It may happen that a judgment is not fully in accordance with the statutory law, including the Penal Code¹⁷.

The legislation on children is implemented through programmes: the National Plan of Action to eradicate Child Labour, the Victim Support Unit, the Child Justice Forum, the National Youth Policy and the National Child Policy, and ministries: mainly the Ministry of Sport, Youth and Child Development, the Ministry of Community Development and Social Services, the Ministry of Labour and Social Security and the Ministry of Education.

4. Child right to an effective remedy (article 2§3 ICCPR)

A part of the Victim Support Unit (VSU)'s work is to provide counselling and empathy to victims of rape, incest, defilement and child abuse and give its assistance in order to

¹² Section 12 of the Local Courts Act stipulates that Customary Law would be applied only when it is not inconsistent with natural justice, morality and written law.

¹³ Right to Education Organisation, Zambia, Minimum Age for Marriage, <http://www.right-to-education.org/content/age/zambia.html>.

¹⁴ SCZ Appeal No 38/2000 of Zambia Law Reports.

¹⁵ Khandikile Sokoni Women, AIDS and the Law in Zambia, 1998, <http://einaudi.cornell.edu/africa/outreach/pdf/Women_AIDS_and_the_Law_in_Zambia.pdf>.

¹⁶ Article 5, art 11 c), article 12.2, article 13 f), article 16.2.i), article 18.11.b), article 19, article 24) of the Constitution of Zambia.

¹⁷ Information available at: <http://jurist.law.pitt.edu/world/zambia.htm> .

prosecute the perpetrators at four levels: Police Headquarters Level, Division Level, District Level and Station Level.

According to information received by the OMCT from Inspector Mr. Kasale, and confirmed by local NGOs, one may assess that the Unit works well in Lusaka but faces difficulties in rural areas, mainly due to a lack of means for transportation, logistics and material resources.

Moreover, although they are far from being systematic, cases of financial compensation of child victims exist. The Legal Resources Foundation (LRF) litigated and won ZMK 322.7 million on behalf of a 17-year-old high school boy, who was left paralysed on the street after being brutally beaten by police. This is one of the highest court awards ever won by a juvenile. The boy, together with other pupils from his school, Anoya Boys High School, and children from other high schools in Chipata Town, were protesting against their teachers' strike and demanding that the teachers resume work, when the police came on the scene to stop the pupils' demonstration on June 1, 2001. It is reported that the compensation requested on this occasion was the highest award given in damages by a Zambian Court.

5. Child right to life (article 6 ICCPR)

5.1. Legislation protecting child right to life

The protection afforded to children is basically similar the same as the one applied to adults. There are only few specific provisions explicitly protecting child's life, for example: child detainees who are legally protected from 1) the excessive use of force by officials (rule 71.2 of the Rules by the Minister (Part XVIII-Staff) included in the Juvenile Act), 2) any continued discipline endangering their life, 3) any disease that may diminish their capacity to survive their sentence or to be fit for training.¹⁸

5.2. Arbitrary deprivation of life: police repression and excessive use of force against children

Recently, police repression resulted in several cases of children (including children living in the street) being shot.

Cases:

- In early September 2006, two teenagers were shot dead by police in Lusaka's Ng'ombe compound. Following protests by local residents, the police officer involved in the shooting was arrested and was under investigation at the end of 2006¹⁹.
- In mid-November 2006, a case was reported where three former street children were shot and wounded by police officers shooting into the air to disperse a crowd. The Acting Police Chief of Copperbelt Province condemned the shootings and announced an investigation²⁰.
- Two teenagers were shot dead on September 9, 2006 by a police officer in Lusaka's Ng'ombe Township under non-elucidated circumstances. Eyewitnesses said a police

¹⁸ In the latter cases, article 102 (2) of the Juvenile Act provides a medical officer to be present and to report.

¹⁹ Amnesty International Report 2007, <<http://thereport.amnesty.org/eng/Regions/Africa/Zambia>>.

²⁰ Amnesty International Report 2007, <<http://thereport.amnesty.org/eng/Regions/Africa/Zambia>>.

officer, Zimba, shot the teenagers after they refused to leave a funeral home where they were sitting around a fire.²¹

- In Chipata, the government has awarded K322 million (US\$) in damages to a high school pupil who was paralysed after the police brutally beat him and left him for dead. David Lungu, 17, was among several other pupils from different schools in Chipata Town who were arrested on June 1, 2001, by police, after they protested the teachers' strike demanding that they resume work²².

5.3. Children and death penalty

According to section 25.2 of the Penal Code, a person below 18 cannot be condemned to death penalty. Instead of pronouncing death penalty, the court may sentence the juvenile to be detained at the "President's pleasure"; and when so sentenced the convicted could be detained in such place and under such conditions as the President may direct²³. No limitation in terms of place and time period of detention is précised.

6. Prohibition of child torture and other forms of ill-treatments (article 7 ICCPR)

6.1. Applicable legislation

The prohibition of torture and inhuman or degrading punishment or other like treatment set forth in the Constitution²⁴ applies to everyone, including children. Article 24(2) of the Constitution introduces an additional protection for children by stating that all young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

Moreover as a specific protection, juveniles in detention are protected against the use of unnecessary force by officers.²⁵ However, this does not constitute a separate and specific crime as such, since in case of violation the perpetrator would be guilty of assault and battery.

Furthermore, article 46 of the Juvenile Act protects children from persons who have the custody, charge or care and wilfully assaults, ill-treats, neglects, abandons or exposes them or procures them to be assaulted, ill-treated, neglected, abandoned, exposed, in a manner likely to cause them unnecessary suffering or injury to health. [...] Those responsible may be subject to a fine not exceeding 6'000 penalty units,²⁶ or to imprisonment for a term not exceeding two years, or to both.

6.2. Cases of violations of article 7 against children

The following are cases of torture or ill-treatment of children by police officers:

- On 31 March 2006, a grade 9 pupil named Namata Ndoyoyi of Limulunga High School in Western Province had been sent to Limulunga fish market to buy fish when two police officers accosted him and took him to a secluded place where they twisted his arm until his collarbone broke. This was done for no apparent reason and once the two officers

²¹ *Sunday Post* September 10, 2006.

²² *The Legal Resources Foundation News* May 2006.

²³ Section 25.2 of the Penal Code.

²⁴ Article 15 of the Constitution of Zambia.

²⁵ Rule 71.2 of the Rules by the Minister, Part XVIII (Staff Part) of the Juvenile Act.

²⁶ Each penalty unit is calculated by multiplying it with ZMK180. Therefore, six thousand penalty units are multiplied with ZMK180 which totals ZMK1,080,000, equivalent to USD 269.

realised what they had done they ran away. After reporting the incident to the policemen's superior officers and not getting any remedy, the boy turned to the Catholic Commission for Justice, Development and Peace who referred him to Legal Resources Foundation (LRF), who are still investigating the matter with the aim to sue the officers for assault and seek compensation.²⁷

- The LRF has also secured compensation for a 12-year-old boy who was assaulted by a police officer because the officer suspected the child had stolen ZMK 400,000 from his house. The boy had stopped to pick up and comfort the police officer's baby, who was crying on the door step, when the boy and his friends were passing by the police officer's house, having just come from a football match.

6.3. Corporal punishment against children

The right of parents, teachers and other persons having lawful control or charge of a juvenile to administer lawful punishment to him is recognised by the law²⁸. This lawful recognition jeopardises the protection of the juvenile against any form of ill treatment or punishment.

Moreover, in addition to this legislation restricting the rights and dignity of children, corporal punishment and other forms of humiliating and degrading punishment of children are widely practised in Zambia²⁹ as a means to discipline and educate.

Indeed, according to a study carried out by 'Save the Children Sweden' in 2005 with boys and girls aged from 6 to 18 years in Zambia over a period of two weeks, 24% of children reported being subjected to corporal punishment in the home. Children reported being beaten with hands, sticks and belts. Despite the prohibition of corporal punishment in schools,³⁰ 32 % of the interviewed children confessed of being beaten with a hand and 38 % with an object.³¹ Furthermore, 43 % of children reported being exposed to humiliating punishment³² at home, while 37% have experienced this form of punishment at school.

A. Corporal punishment as a form of sentence

In 1999, the Supreme Court of Zambia used the fact that, according to article 15 of the Constitution, persons have the right to be protected from torture and ill-treatment, and this right can be enforced through the courts' system³³. In the following case, the Supreme Court's aim, in invoking article 15, was to increase the protection against corporal punishment. In 1999 an appeal was lodged before the Supreme Court concerning the case *Banda v. The People*. The appeal aimed at challenging a sentence handed down by a Magistrates' court³⁴ where a magistrate had ordered that a 19 year-old be given ten strokes with a cane after being convicted for damage to property. The Supreme Court of Zambia ruled that corporal

²⁷ More details on the LRF website: <http://www.lrf.org.zm/Newsletter/september2006/grade.html>.

²⁸ Section 46.7 of the Juvenile Act.

²⁹ Save the Children Sweden, Ending corporal Punishment of children in Zambia, May 2005, available at < <http://www.rb.se/NR/rdonlyres/A961DE38-6960-4EF2-B572-7865A18519F6/0/EndingcorporalpunishmentinZambia.pdf> > (04.05.2006).

³⁰ Article 12 of the Education Act-allowing the Minister to make regulations regulating the administration of corporal punishment- was repealed by the Education Amendment Act (2003), though there is no explicit prohibition of corporal punishment.

³¹ Clacherty, G., Donald, D. & Clacherty, A. (2005), *Zambian Children's Experiences of Corporal Punishment*, Pretoria, Save the Children Sweden.

³² Which according to Save the Children constitutes a form of corporal punishment, see Save the Children Sweden, Ending corporal Punishment of children in Zambia, may 2005, available at < <http://www.rb.se/NR/rdonlyres/A961DE38-6960-4EF2-B572>.

³³ This enables the victim to lodge a legal action against those responsible for infringing this article of the Constitution.

³⁴ *John Banda v. The People* (HPA/6/1998).

punishment, as a sentence handed down by a court, was in direct conflict with Article 15 of the Zambian Constitution (this decision is now referred to as the Banda decision).³⁵ The court has specifically declared null and void Sections 24 (c) and 27 of the Penal Code Act (Chapter 87 of the Laws of Zambia), which means that corporal punishment as a sentence imposed by a court was thus declared unconstitutional.

As a consequence of the Banda Decision, several provisions on corporal punishment were repealed. On 16 September 2003, the provisions relating to corporal punishment in the Penal Code were repealed with the Penal Code Amendment Act 1.³⁶ Furthermore, provisions in the Prisons Act (1966) (particularly of article 33 and 98(h)) allowing and regulating the use of corporal punishment as a disciplinary measure in penal institutions, were repealed by the Prisons Amendment Act (2004).

However, some provisions still need to be repealed pursuant to the Banda Decision. For instance, section 73(1)e of the Juveniles Act, which provides that on conviction of an offence, a court may order that the offender be caned, has not yet been repealed. Despite this, an appropriate interpretation of the law should be as follows: the Banda case law should apply and prevail over those provisions. Although a clear overall prohibition (accompanied with penalties) of corporal punishment in the legislation is also necessary.

Zambia Civic Education Association confirmed that corporal punishment of an adult or a child as a form of sentence is no longer ordered by law or courts nor practised in the country.

B. Corporal punishment in institutions and child care facilities

Approved schools and reformatories are covered by the Juveniles Act and Rules (pursuant to articles 90 and 107 of the Juveniles Act) which have yet to be amended in respect to their provisions for corporal punishment. The Reformatory School Rules (1965), pursuant to article 107 of the Juveniles Act, also provide for the caning of detainees³⁷ as a form of discipline. Indeed, the Banda decision only explicitly outlaws corporal punishment as a sentence for a crime, which leaves the question of corporal punishment as a form of discipline open to interpretation. Provisions in the Juveniles Act allowing corporal punishment as a disciplinary action have not been repealed: rule 58.4 of the Reformatory Schools Rules still allows the use of corporal punishment, and demand that whatever caning shall be inflicted with a light cane not more than 835 mm long and not more than 9.38 mm thick and the attendance of the superintendent and the medical officer is requested for all caning within the institution. However, for suitable consistency, the law that still allows for the use of corporal punishment in some child care facilities shall be repealed.

In practice, it seems that corporal punishment in Zambian childcare facilities is at least discouraged by the national authorities³⁸: the Ministry of Community Development and Social Services handbook (*'How to run a child care facility'*) states that children should be disciplined in accordance with the child's individual needs and development, and that disciplinary measures should not include harsh, cruel or unusual treatment such as corporal punishment, abusive language, shouting or threatening.

³⁵ Kassan, D. & Gallinetti J. (2005), Report on the legal status of corporal punishment and other forms of humiliating and degrading punishment of children in South Africa, Swaziland and Zambia, Cape Town, Community Law Centre.

³⁶ Available on Zambian Parliament web site at www.parliament.gov.zm.

³⁷ Global Initiative to end corporal punishment of children, <<http://www.endcorporalpunishment.org/pages/progress/reports/zambia.html>>.

³⁸ Save the Children Sweden, Ending corporal Punishment of children in Zambia, may 2005, available at <<http://www.rb.se/NR/rdonlyres/A961DE38-6960-4EF2-B572-7865A18519F6/0/EndingcorporalpunishmentinZambia.pdf>> (04.05.2006).

Information about the use of corporal punishment and other forms of humiliating and degrading punishment of children in childcare facilities is very limited. However, there have been reports according to which these forms of punishment are practised by some housefathers and housemothers at different shelters and care facilities for children³⁹.

C. Corporal punishment in schools

Corporal punishment in schools has been prohibited since 2003. This was achieved by removing article 12 of the Education Act,⁴⁰ which allowed the Minister to make regulations for the administration of corporal punishment. However, the Education Act does not yet include an explicit provision stating that the corporal punishment of children in schools is prohibited.⁴¹

D. Corporal punishment in private settings

The legality of corporal punishment of children in Zambian homes is debated. Some interpret the Banda decision and changes to the Penal Code as prohibiting all forms of corporal punishment in Zambia. However, there is no law explicitly prohibiting parents to use corporal punishment on their children. This is particularly of high concern because in terms of customary law and cultural beliefs, parents have the right to bring up their children as they see fit, a right that is practiced.

The coalition of NGOs recommend a broad interpretation of the Banda decision by Zambian Courts and also that Zambia enacts legislation which clearly outlaws corporal punishment in all settings, including within the home/family and child care institutions.

6.4. Sexual violence amounting to torture and other cruel, inhuman and degrading treatment or punishment

In Zambia, protection of children against sexual violence is provided for in the Penal Code. Some provisions especially protect children by criminalising and punishing defilement of girls (section 138.1. of the Penal Code), abduction of girls under 16 years old (section 136 of the Penal Code), indecent assault of women and girls (section 137 of the Penal Code), indecent assault of boys under 14 years old (section 157 of the Penal Code) and incest (section 161 of the Penal Code).

As it currently exists, the legislation on sexual violence against children reveals two main shortcomings:

- 1) Most of the provisions mentioned in the previous paragraph state various ages, as a condition of the offence, and protect boys and girls differently.⁴² For instance, in certain cases, children between 14 or 16 and 18 receive only minimum protection, i.e. the same as adults. The law should be amended in order to get equal protection for all children, girls and boys, from 0 to 18 years old.
- 2) Legislation often refers to the 'apparent age,' and states that it is sufficient that the perpetrator proves that s/he had good reason to think that the child was over a

³⁹ Save the Children Sweden, Ending corporal Punishment of children in Zambia, may 2005, available at < <http://www.rb.se/NR/rdonlyres/A961DE38-6960-4EF2-B572-7865A18519F6/0/EndingcorporalpunishmentinZambia.pdf> > (04.05.2006).

⁴⁰ Education Amendment Act (2003).

⁴¹ Kassan, D. & Gallinetti J. (2005), Report on the legal status of corporal punishment and other forms of humiliating and degrading punishment of children in South Africa, Swaziland and Zambia, Cape Town, Community Law Centre.

⁴² Boys are often less protected, since according to local NGOs in Zambia sexual violence against a male is punished as homosexuality.

certain age in order to be acquitted. As a defence, the child victim will have to bring him/herself the evidence of his/her age which limits his/her rights. The law should be revised so that the burden of the evidence of the age of the victim is no longer borne by the victim but instead by the accused.

7. Child slavery, forced or compulsory child labour (article 8 ICCPR)

7.1. Legislation

Zambia ratified the ILO Conventions n°138 on the Minimum Age (in 1976) and n°182 on the Worst Forms of Child Labour (in 2001).

Article 12 of the Constitution protects individuals from slavery and servitude by providing that a person shall not be held in slavery or servitude. This article applies to both adults and children. Article 24 (1) of the Constitution also provides that children under 15 years⁴³ shall not be employed, unless an Act of Parliament provides for the employment of such young persons, under certain conditions. The Constitution adds that “all young persons shall be protected against [...] exploitation [and] no young person shall be the subject of traffic in any form”.⁴⁴

In compliance with the Constitution, the Employment Act sets forth that “no person shall, except under conditions to be prescribed, employ or cause to be employed any person under the age of 15 years.”⁴⁵ The conditions according to which a child under 15 can be employed are set forth in paragraph 3, which permits children under 15 to work if they usually attend school and when they are on school holidays, if they have failed to secure admission to a suitable school, or if their enrolment has been terminated or cancelled by a parent or a school authority.⁴⁶ It appears that the possibility of a parent to cancel or terminate the school enrolment and make the child work instead, weakens the protection of the child under 15 from child labour. NGOs suggest the revision of this provision.

According to the Zambian Civic Education Association, the minimum age of employment is often not respected because there are no enforcement mechanisms.

Moreover, section 17 A of The Employment of Young Persons and Children Act prohibits the employment of young persons⁴⁷ in any type of work detrimental to health, safety and morals and which may constitute a worst form of labour.

However, a child between 13 and 15 years may be engaged in light work that is not likely to harm his/her health or development; or which is not prejudicial to his/her attendance at an institution of learning or participation in vocational orientation.

Forced labour, including in detention, is not permitted for children and is punished by the Penal Code. Section 263 of the Penal Code sets forth that any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour. This also includes children in the absence of any special provision in regard to children.

⁴³ Article 24.4 set forth that ‘in this Article "young person" means any person under the age of fifteen years’.

⁴⁴ Article 24.2 and 24.3 of the Constitution.

⁴⁵ Section 12 of the Employment Act.

⁴⁶ Section 12.3 cap 274 of the Employment Act.

⁴⁷ Part 1 Preliminary of the Employment of Young Persons and Children Act, defines a "young person" as a person who has ceased to be a child and who is under the age of eighteen years.

7.2. Sectors where children are employed

A. Child prostitution and sexual exploitation

Section 110 of the Penal Code prohibits sexual exploitation of women below the age of 21.⁴⁸ Section 142 of the Penal Code provides for a prison sentence up to 5 years if the exploited girl is under the age of 12, unless it can be shown that such person did believe that the girl was of or above 12 years old. Furthermore, if the perpetrator can demonstrate to the Court that he thought the girl was older than 12, he will not be found guilty. This article poses the same concern mentioned above in relation to the indecent assault of women or girls⁴⁹.

There is a large and increasing number of child victims of commercial exploitation, including prostitution and pornography, especially among girls, child orphans and disadvantaged children. Indeed, according to information received by Inspector Mr. Kasale, from the Victim Support Unit, Zambia is a country of source, destination and transit for trafficking in persons. The purposes of trafficking are mainly sexual and commercial exploitation and child labour, with children from rural areas been brought to cities where they are forced to work for relatives and are exploited.

B. Military service

According to Section 14 of the Defence Act, Chapter 106 a recruiting officer can not enlist a person under the apparent age of 18 unless consent to the enlistment has been given in writing by his parent or guardian or where the parents or guardian are dead or unknown, by the Town Clerk or Council Secretary of the district in which such person resides. NGOs deem that protection should be absolute, and no parent should have the possibility to authorize enlistment of children in the army. However, according to the official information from the army no person under 18 years has been recruited and justifies this by stating that unemployment in Zambia is so high that there is no need for the army to recruit children when there are thousands of young adults jostling to be recruited in the army.⁵⁰

8. Security of person and freedom of arbitrary arrest and custodial detention (article 9 ICCPR)

8.1. General principles regulating the deprivation of liberty of children

A. Grounds for the deprivation of liberty of children

According to Article 13 of the Constitution, a person, including a child, can among other things, be detained under an order of a court or with the consent of his/her parent or guardian, for his education or welfare until not later than age eighteen.

Criminal grounds:

In Zambia, the law limits the arrest of children to the necessity depending on the crime committed and the circumstances, and according to particular conditions.⁵¹

⁴⁸ African Charter Periodic Report 2006.

⁴⁹ See comments on section 10.3 related to the indecent assault of women or girls.

⁵⁰ The information was given by the Zambian government, the army headquarter. ZCEA confirmed it, because the advertisement for conscription that appears on newspapers state clearly that soldier needs to be at least 18 years old.

⁵¹ Section 59 of the Juvenile Act: "Where a person apparently under the age of 19 years is apprehended, with or without a warrant, and cannot be brought forthwith before a court, the police officer in charge of the police station to which he is brought shall inquire into the case, and may in any case, and- (a) unless the charge is one of

Social and family grounds:

Children in need of care can be deprived of their liberty and sent to an approved school by a court order. A child may be considered as being in need of care: 1) if his/her parents or guardians are unfit to exercise care or guardianship and therefore jeopardize the situation of the child; 2) if s/he lives in an house used for prostitution; or if s/he is found loitering or begging in the street; 3) if s/he found wondering without any apparent mean of subsistence.⁵²

B. Principles restricting the recourse to detention of children: detention as measure of last resort

Section 72 of the Juvenile Act sets forth that no child (i.e. under 16 years old) should be sentenced to imprisonment in a detention camp, and that no young person (i.e. between 16 and 19) shall be sentenced to imprisonment if he can be suitably dealt with in any other manner. It adds, that a child should not be sent to a reformatory⁵³ unless it is necessary for his reformation and for the prevention of crimes.

The case *Mwula vs. the People* states that the intended purpose of the Juvenile Act is to ensure that “no child should be ordered to prison in any circumstances unless he or she cannot be suitably dealt with in any other manner.”⁵⁴

8.2. Deprivation of liberty of children in criminal context

A. Arrest and police custody

There is no special provision which regulates the procedure of arrest when it comes to children, therefore the ordinary rule embedded in section 33.1 of the Criminal Procedure Code applies, which requires a limit of 24 hours for the presentation before a magistrate.

When a child is arrested, the action of the police need to be closely monitored against well-defined standards and procedures, among which the need to separate juveniles in custody from adults and to place girls in custody under female officers in police stations, the need for juveniles to be kept in a place of safety and the need for the police officer to show to the court the reason why detention of a person under 19 is required.⁵⁵

Moreover, when the child is presented to the judge, the latter may order an assessment of the child's situation gathering information on the personal, social, and family background of the child. This aims at reaching a decision which is in the best interest of the child. This decision should be guided by following the least restrictive measures, minimizing exposure to the hardship of the criminal justice system and due process'.⁵⁶

homicide or other grave crime; or (b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or (c) unless the officer has reason to believe that the release of such person would defeat the ends of justice; shall, release such person on a recognizance, with or without sureties, for such amount as will, in the opinion of the officer, secure the attendance of that person upon the hearing of the charge, being entered into by him, or by his parent or guardian or other responsible person.

⁵² Section 9 of the Juvenile Act.

⁵³ A 'reformatory' means a receiving centre established by the Minister under section 91 of the Juvenile Act, through a reformatory order, with the purpose of correct juveniles who committed crimes⁵³. The conditions of custody in reformatories are set out in the 'Reformatory School Rules', Section 107 of the Juvenile Act. This rules includes parts related to the cleanliness and fitness of the accommodation, clothing and bedding, the quality and quantity of food, health, education, work, etc.

⁵⁴ *Mwula v. The People* (1976), Zambia Law Reports 80.

⁵⁵ Sections 58 to 60 of the Juvenile Act.

⁵⁶ Muntingh L Indicators for monitoring the well-being of children in the criminal justice system, HSRC, Cape Town.

Arbitrary arrests

According to the Zambia Civic Education Association, it happens sometimes that children are arrested and put in a cell without a warrant being issued to the police.

Moreover, the right to inform a relative or a relevant person of his/her arrest is regularly violated. The following is a recent case: on 11 January 2007, one juvenile was arrested and detained for drug dealing without the police informing his relatives nor the social welfare department until 22nd January when the juvenile, with two co-accused adults, appeared in court. The co-accused pleaded guilty and were sentenced, whereas the juvenile pleaded not guilty claiming that he was just in the wrong place at the wrong time and recalling that the drug enforcement officers found no drugs on his person.

Arbitrary arrests of street children:

Police continue to round up street children, a practice that can be described as arbitrary detention.⁵⁷ The Zambia Civic Education Association confirms that arbitrary arrest of street children is carried out for what are known as cognisable offences or loitering.

Excessive use of force by law enforcement officials

According to the study commissioned by UNICEF, 60 % of interviewed children awaiting trial in remand prisons reported that they had been assaulted by the police during arrest and questioning. This included explicit torture for the extraction of information, using handcuffs, pieces of hosepipe to flog the child and a whip.⁵⁸

In addition to that, according to Legal Resources Foundation, few police officers are held responsible for their excessive use of force toward suspects. There are in most cases no sanctions for officials for their unlawful behaviour, although police brutality seems to have been wide-spread in Zambia and this has also affected detained juveniles.⁵⁹

List of police stations where there is no separate cell for children and where juveniles are kept together with adults:

- Prospect police station: there is no special cell for juveniles, who are though usually immediately transferred to Kabwe Central Police Station for custody.
- Kaabwe Police Station: juveniles were remanded at Kasanda Police Station.
- Kasande Police Station: Juvenile is detained together with adults since the cell that was meant for them is occupied by police officers.
- Chowa Police Station: there was no cell for juveniles in 2005.
- Kapiri Mposhi Police station: although there was a cell for juveniles, the Commission found a male juvenile and one female juvenile mixed with adults.
- Liteta Police Station: juvenile suspects were transferred to Kabwe.
- Chisamba Police Station: There was no cell for juveniles at the time the Commission visited the police station.

According to the Zambia Civic Education Association, in Lusaka there were three separate cells set aside for juveniles and the one set aside in Ndola. These cells were created

⁵⁷ Lukas Munting, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 20.

⁵⁸ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, 2005, at 21.

⁵⁹ Amnesty International, Applying the law fairly or fatally p. 6. In one case six youths were detained by police in suspicion of murder. Each of them were tortured with a sledgehammer and plastic whips while being suspended upside down from a metal bar. All six were later released without a charge.

according to the pilot project spearheaded by UNICEF, and the rest of the country's police stations do not have separate holding cells for children who come into conflict with the law, which means that children can potentially be kept together with adults.

B. Pre-trial detention

Place:

Section 62 (1) of the Juvenile Act provides for separation of juveniles detained in custody in remand prisons from adults, or in a suitable dwelling.

Time period. An inappropriate length of pre-trial detention:

According to the section 64 (7) of the Juveniles Act, the Court can order a child to be remanded up to 21 days before a new appearance in the Court must take place. However, since this decision can be renewed indefinitely at the expiration of the 21 days, in reality this provision does not prevent from the extension of detention for an undetermined period of time.⁶⁰ In the worst cases it takes years for a detainee, including juveniles, to have his/her case tried before a court. Difficulties partly lie on the inability of the Courts to handle the amount of cases. This large case load thus causes the individual cases to be constantly postponed. Juvenile cases are not being prioritised and there are no special days set out for the hearings of child cases.⁶¹

C. Detention of convicted children

Limitation of the recourse to detention:

As previously mentioned, according to Section 72 of the Juvenile Act, no child shall be sentenced to imprisonment or to detention in a detention camp, and no young person shall be sentenced to imprisonment if he can be suitably dealt with in any other manner. Furthermore, no court shall order a child to be sent to a reformatory unless it proves necessary for his/her reformation or to avoid commission of possible crimes.

Separation from adults:

In any case, Section 60 of the Prison Act provides for the separation of young prisoners from the other class of prisoners, therefore from adults, under the condition that the accommodation renders it possible.

Legal mechanisms may be deemed appropriate in general, except for the length of pre-trial detention. In this context, the existing provisions do not provide for an absolute limited period of time and should be amended in accordance with international relevant standards.

9. Treatment of children deprived of their liberty (article 10 ICCPR)

9.1. Places specifically receiving children

A. Figures and statistics

In August 2005, out of 14'427 prisoners in Zambia, 79 were convicted juveniles and 230 remand juveniles.⁶²

In 2005, Juveniles were detained in the following prisons:

⁶⁰ Helene Lindström and Ida Salomonson, *Juvenile justice in Zambia-An Evaluation of the three pilot projects* (2005) at 17.

⁶¹ Mr. L.B. Tempo, Magistrate of the CFC.

⁶² Human Rights Commission, Report on Prison and Police Cells Visits, Central Province, 2005 at iii.

- Mukobeko Maximum Security Prison-Male Section
- Mukobeko Maximum Security Prison-Female Section (7 children kept with mothers)
- Ndola Remand Prison⁶³
- Kafinsa remand Prison
- Katombora reformatory School
- Lusaka Central Remand Prison
- Kabwe Medium Security Prison: in 2005, 25 juveniles have been awaiting transfer since 2002 (most of them have not appeared in Court for several years, whereas there were a total of 29 inmates in the Juvenile Section, who were apparently detained in better conditions).
- Mumbwa State Prison: a female detainee had a three-year-old old baby. Sykviy Mukonka, a juvenile aged 16 years, was mixed with adults.⁶⁴
- At Serenje State Prison, juveniles were mixed with adults when the Commission visited it.

B. Types of places

According to section 73.1 of the Juvenile Act, a convicted child may be sent to an approved school or to a reformatory.

An approved school is established for the reception, maintenance and training of juveniles sent thereto under the provisions of the Juvenile Act or any other Act.⁶⁵

The purpose of a reformatory is to correct juveniles who have committed crimes. The conditions of custody in reformatories are set out in the 'Reformatory School Rules', Section 107 of the Juvenile Act. Those rules include parts related to the cleanliness and fitness of the accommodation, clothing and bedding, the quality and quantity of food, health, education, work, etc.

Youth corrective centres receive children and young persons (i.e. persons who have attained the age of 16 years but has not attained the apparent age of 21 years) who are found guilty of an offence not punishable with death and who have been sentenced to corrective training.⁶⁶

The Zambian Human Rights Commission has observed that a considerable number of prisoners in the Condemned Section were juveniles, and recommends that matters involving juveniles at the Condemned Section of maximum security prison be reviewed,⁶⁷ as living conditions in these centres are harsh and not in the best interest of the juvenile, who is more vulnerable and needs education and rehabilitation.

9.2. Treatment of child detainees

Children deprived of their liberty face several problems that should be denounced. In addition to the harsh living conditions in Zambian prisons shared by all prisoners, adults and children,⁶⁸ the latter suffer from:

⁶³ Lukas Muntingh, Evaluation Report on Child Justice in Zambia, 2005, at 16.

⁶⁴ Human Rights Commission, Report on Prison and Police Cells Visits, Central Province, 2005 at 21.

⁶⁵ Any institution or school which affords sufficient facilities for the education and training of persons who could be sent there may be approved by the President and shall be deemed to be an approved school for the purposes of this Act. Section 75.2 of the Juvenile Act.

⁶⁶ Sections 133 and 134 of the Prison Act.

⁶⁷ Human Rights Commission, Report on Prison and Police Cells Visits, Central Province, 2005 at iv..

⁶⁸ The harsh living conditions in Zambian detention facilities pose concern to children due to their vulnerability. For instance prisons are facing a critical food shortage for inmates, indeed often the food is not provided by the police to detainees, and children are dependent on the family or friends. This situation particularly affects children's health and development.

A. No separation from adults

According to Section 58 of the Juvenile Act juveniles shall be kept separated from adults while detained in police stations or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court. However, the protection is limited since the child may be kept in the same cell together with the adult he or she has allegedly committed the crime with, a practice which is contrary to the best interest of the child.⁶⁹

Convicted adults and convicted young prisoners of each sex shall be separated, young prisoners separated from adults as far as the prison accommodation renders it practicable.⁷⁰

In practice, in both remand prison and pre-trial detention, children are not separated from adults.

The study commissioned by UNICEF in 2005 shows that, with the exception of Matero, Lusaka Central and Ndola Central, children were not separated from adults whilst detained at police stations or prior to court appearances⁷¹ - since the cell space available was not sufficient. Moreover, girls were often detained together with adult women. This was confirmed in a joint report by the Human Rights Commission of Zambia (HRCZ) and the Legal Resources Foundation (LRF): remand detainees, including juveniles and convicted prisoners, in Zambian Prisons are often kept in the same cells and juveniles are mixed with adults.⁷² In a recent report, the HRCZ found that in some prisons juveniles were sharing sleeping facilities with adults.⁷³

Moreover, an infant of a female prisoner (commonly known as circumstantial children) may be received into prison with its mother, although when the child has attained the age of four, the officer in charge shall hand the child over to relatives or friends willing to support the child, if there are any, or to a welfare authority authorised by written law.⁷⁴ However, according to local NGOs, most female prisoners refuse to give up their babies even when there are relatives that can look after them, mostly due to the preferential treatment that such female prisoners receive in prison. This poses problems particularly because detention facilities in Zambia are not suitable for the upbringing of children.

B. In practice, detention of children is not used as a measure of last resort

Different factors/causes enable the denunciation of the excessive use of deprivation of liberty of children, both for children in conflict with the law and children in need of care.

Excessive use of the pre-trial detention:

In all remand prisons visited in the frame of a study commissioned by UNICEF, children were found to be detained for excessively long periods⁷⁵. For instance, following a visit at Ndola

⁶⁹ Helene Lindström and Ida Salomonson, *Juvenile justice in Zambia-An Evaluation of the three pilot projects* (2005) at 17.

⁷⁰ Section 60 Prison Act.

⁷¹ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 5.

⁷² Interviews conducted with J. Monde (HRC) and T Ngulube (LRF) for a study by Helene Lindström and Ida Salomonson, *Juvenile Justice in Zambia-An Evaluation of the three pilot projects* (2005).

⁷³ Human Rights Commission, Brief Report on the Commission's visit to Places of detention on the Copperbelt Province (25 march- 8th April 2007) and Human Rights Commission, Report on Prison and Police Cells Visits, Central Province, 2005.

⁷⁴ Section 56 Prison Act.

⁷⁵ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, 2005, at 24.

Remand prison in April 2005, those surveying the facilities found a 13-year-old boy, who had been in custody since January 2001. The same survey undertaken in April 2005 revealed that the boys had been in custody in remand prisons for 175 days or close to 6 months, with the longest period that a boy has been on remand being 2.5 years.⁷⁶

No alternative to detention and no rehabilitation measures:

According to Section 134 of the Prison act, any person who has attained the age of sixteen years but who has not attained the apparent age of twenty-one years, and who is found guilty or convicted of an offence not punishable with death, can be sentenced to undergo corrective training in a youth corrective centre for a period of six months. However, this will only happen if the person has not previously been detained in prison, an approved school or a reformatory or if he has previously already been sentenced to undergo corrective training.

Usual practices are also the absence of juvenile courts and judges, lack of social workers and very limited rehabilitation and integration services for juveniles following judicial proceedings, limited training of judges, prosecutors, staff.

Detention is a repressive and inappropriate treatment of children in need of care

Although the legislation provides for children in need of care to be sent to reformatories, in practice only one such institution exists in Livingstone, one in Mazabuka and a female one in Ndola. However, these last two are the result of interventions of civil society, and are therefore not supported by government as government institutions.

10. The right to a fair trial. Administration of juvenile justice (article 14 ICCPR)

10.1. Minimum age of criminal responsibility

In Zambia a person younger than 8 years old is not criminally responsible for his/her actions or omissions.⁷⁷ However, a person under the age of 12 years is not criminally responsible for an act or omission, unless it is proved that at the time of committing the act or making the omission s/he had capacity to know that he ought not to do the act or make the omission.⁷⁸ Clearly, there is a need to rise the minimal age of criminal responsibility, which is far to low.

Furthermore, a major problem is the difficulty in establishing the real age of the child accused of or having infringed the penal law, since the age claimed by juveniles does not always correspond to the reality or because they sometimes are not aware of it. The difficulty in establishing ages of children coming into conflict with the law is a result of many Zambians whose birth has not been registered.

10.2. Penal procedure: legislation applicable to children

The Juvenile Act⁷⁹ and the Penal Code are the two main pieces of legislation applicable to the administration of juvenile justice in Zambia.

A. 2000 reform of the administration of juvenile justice

⁷⁶ Lukas Munting, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, 2005, at 24.

⁷⁷ Section 14.1 of the Penal Code, Part I, Chapter 87 of the Laws of Zambia.

⁷⁸ Section 14.2 of the Penal Code, Part I, Chapter 87 of the Laws of Zambia.

⁷⁹ Chapter 53 of the Laws of Zambia.

A reform was started in November 2000 in order to transform the juvenile justice system. The starting point was the foundation of the Child Justice Administration System and the Child Justice Forum (CJF).⁸⁰

The objectives of the Child Justice Administration System are: a) to ensure that the Child Justice Administration is in harmony with international standards, b) to ensure that relevant role-players are properly and adequately trained, c) to increase efficiency in the Child Justice Administration and, where appropriate, prevent recidivism.

The Child Justice Forum (CJF) aims to provide an oversight on the coordination and monitoring of all juvenile or child justice activities and programmes in Zambia as well as to promote the establishment of the following three pilot projects:

1) Child Friendly Courts (CFC)

According to this project, trials involving children accused of having broken the penal law should be conducted in a separate courtroom, at Boma Court in Lusaka, in a manner that takes into account the age of the child. The court has a specialised magistrate, prosecutor and probation officer and efforts are made to provide for their rehabilitation and reintegration into the community.

The CFC was in practice until 2004, but mostly due to problems of magistrates' turnover, the centralisation of cases was then suspended. The frequent change in magistrates created problems of inconsistency and a lack of specialisation, and caused the redistribution of cases across all the city courts, which are therefore no longer centralised at the Boma Court.⁸¹

Assessment of the implementation of the CFC by Zambian authorities:

- It permitted to divert 23% of children from the normal criminal justice system over a 44-month period;
- However, it took to the court a very long time to finalise cases, which is probably due to a shortage in staff, transports and inadequate records;⁸²
- 40% of children arrested could benefit of a social welfare officer, which means that many children still appear before a Court and are sentenced without having been assessed by a social worker;
- The condition of custody of children due to appear before the Boma Court is not child friendly, because it is too small (15 m² for 100 people), it has dysfunctional toilets, it has no running water and children are often assaulted by adult prisoners;
- The lack of an operational standard for the child friendliness (i.e. no rules of child juvenile courts were developed).

2) The Arrest, Reception and Referral Services

The Arrest, Reception and Referral Services (ARRS) have been instituted at three police stations in Lusaka and the purpose is to centralise all arrested children to these appointed stations, so that resources are available and concentrated at the correct point in the criminal justice process. The centralisation also enables more accurate monitoring

⁸⁰ Helene Lindström and Ida Salomonson, *Juvenile justice in Zambia-An Evaluation of the three pilot projects* (2005), available at <http://www.mrforum.se/upload/files/1/Utbildning%20och%20forskning/Barns%20r%20Zambia.pdf> (avril 2007) at 2.

⁸¹ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, 2005, at 47 and 49. In 2005, only two of the initial group of 13 people who participated in the training in the UK, are still involved in child Justice.

⁸² The assessment was carried out in two different periods of time: October-November 2004, with 23 cases and January-March 2005, 31 cases; 9 out of 31 cases were finalised in 4.5 months, Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 49.

and prevents children from being *forgotten* in an outlying police station⁸³ and to detain them, if required, under acceptable conditions.⁸⁴

The ARRS has insured that those children who are transferred to Lusaka Central and Matero police stations after arrest were separated from adults. It appears that the ARRS 'functioned reasonably well in terms of case-to-court allocation until it was decided to distribute cases again from the beginning of 2005'.⁸⁵ However, the ARRS faces substantial challenges that relate to the case management and the development of key performance indicators to ensure that service delivery is improved. There appears to be confusion and inconsistency about the processing of cases and dockets from police stations to the two central stations. Indeed, not only do many children not benefit from the system (in Kamwala prison, 39 (equivalent to 26%) boys on remand have been detained for a median of 149 days as on 30 April 2005), but also in cases where children are centralised, their dockets have to remain with, and be investigated by, the arresting officer⁸⁶.

It has also been pointed out that there does not appear to have been any change in the arrest patterns of the police, and children are still entering in the criminal justice system for petty offences.⁸⁷ Furthermore, it cannot be concluded that cases are now progressing more quickly through the system than in the past.

3) Diversion Programmes

The establishment and development of diversion programmes has been entrusted to NGOs (only one in Lusaka). The main component in the diversion system is that the child offender is to be diverted out of the criminal justice system. The child is exposed to programmes designed to educate and change the views of the young person in order to prevent him or her to relapse into crime. The Diversion Programme is used at the magistrate's discretion, and applied to children referred from Chikwa/Boma Court.

The programme is facing a number of challenges, among which are: low referral of children to the programme, low outputs, organisational and skills-related challenges.⁸⁸

One of the shortcomings of the Child Justice Forum is the absence of local level strategies and implementation plans as per the general objectives, rendering difficult the assessment of the forums' effectiveness.

Nevertheless, it has been effective in raising awareness of children's rights in the criminal justice system and this is regarded as a positive development. The Lusaka Forum undoubtedly had an impact in setting up the three pilot projects and contributed significantly to increasing their effectiveness. This increased awareness though, has not resulted in an improvement in the service delivery (especially outside of Lusaka).⁸⁹ It appears though that in other areas the forums had a more limited impact.

⁸³ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 5.

⁸⁴ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 32.

⁸⁵ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 39.

⁸⁶ Interview with VSU member on 3/5/2005, in Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 38.

⁸⁷ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 39.

⁸⁸ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 55.

⁸⁹ Lukas Muntingh, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia, at 69. Evaluation Report: 2005 ZAM: Report on Child Justice in Zambia with reference to UNICEF supported projects < http://www.unicef.org/evaldatabase/index_29617.html >.

B. Jurisdiction of juvenile courts

Juvenile criminal offences are not handled by local courts but by the courts of law. The subordinate courts have jurisdiction to act as juvenile courts when they are deal with a matter involving a child accused of having committed any offence other than homicide or attempted murder.⁹⁰

As regards to the trial of minors, judgments are held private (only relevant and close relatives are allowed to stay in the court room).

C. Right to legal assistance

Children do not have special guarantees to the right to a defence: legally speaking they basically enjoy the same protection as adults. In practice, as previously mentioned, in Zambia most children are not provided with a defence lawyer in order to prepare their defence, since the Zambian Legal Aid Department is severely understaffed.⁹¹ According to the Evaluation report on Child Justice,⁹² access to legal representation 'appears to be a luxury for a very fortunate few'; particularly in local courts whilst on remand.

D. Sentences

As already mentioned above, sections 72 and 73 of the Juvenile Act set out the sentencing options for juvenile offenders, and set forth that no child⁹³ should be sentenced to imprisonment, no child should be sentenced to a reformatory unless it is absolutely necessary, and that no young person⁹⁴ shall be sentenced to imprisonment unless he can be dealt with otherwise.

The court may decide on the following sentences (in case where it has not dismissed the charges):

- make a probation order in respect of the offender;
- send the offender to an approved school or to a reformatory;
- order the offender to be caned (although this provision is de jure abolished by the Supreme Court Banda decision of 1999) ;
- order the offender or his/her parents or guardians to pay a fine, damages or costs;
- order the parent or guardian of the offender to give security for the good behaviour of the offender;
- where the offender is a young person, by sentencing him to imprisonment;
- deal with the case in any other manner in which it may legally be dealt with.

11. Recommendations

The coalition of NGOs recommends the Zambian authorities to:

- repeal the provision (article 25.2 of the Penal Code) enabling the detention of a child who has committed a felony at the President's pleasure for an indeterminate place and period

⁹⁰ Sections 63 and 64 of the Juvenile Act.

⁹¹ Chanda, Gaps in the Law and Policy in the Implementation of the Convention on the Rights of the Child in Zambia p. 15, Zambia Law Journal 2000.

⁹² Lukas Munting, Evaluation Report on Zambia Child Justice System, Government of the Republic of Zambia.

⁹³ According to the preliminary of the Juvenile Act, a 'child' means a person who has not attained the age of sixteen years.

⁹⁴ According to the preliminary pf the Juvenile Act a 'young person' means a person who has attained the age of sixteen years, but has not attained the age of nineteen years.

of time; and replace it by setting clear limitation to child detention, even in case of felony punishable of death sentence;

- ensure the absence of the use of excessive use of force, including torture, by law enforcement officials against children;
- take immediate measures to eliminate corporal punishment as a legitimate measure in its law; and take all necessary measures, like awareness raising campaigns towards both children and adults, to discourage its use in all premises, including in the homes, towards the eventual and effective total abolition of corporal punishment;
- ensure that deprivation of liberty of children is effectively only used as a measure of last resort (particularly for children in need of care and protection); develop alternative to detention as well as diversion and rehabilitation programmes taking into consideration the vulnerability of children and their particular needs in terms of education and social recovery;
- amend the law (section 64.7 of the Juveniles Ac) to set a limited length of pre-trial detention for children for the shortest appropriate period of time;
- ensure that children are effectively separated from adults when deprived of their liberty;
- ensure that all children facing the penal system are provided with legal assistance from their arrest.



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