

AFRICAN UNION

African Committee of Experts on the
Rights and Welfare of the Child



UNION AFRICAINE

Comité Africain d'Experts sur les
Droits et le Bien-être de l'Enfant

الاتحاد الأفريقي

"An Africa Fit for Children"

UNIÃO AFRICANA

P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa, Ethiopia
Tel: (+251 1) 551 3522 Fax: (+251 1) 553 5716 Website : www.acerwc.org

**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS BY THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC) ON THE REPUBLIC OF ZIMBABWE REPORT ON THE STATUTS OF
IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE
OF THE CHILD**

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of Zimbabwe and wishes to acknowledge with thanks the receipt of the initial report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter, the Charter). The ACERWC, during its 25th Ordinary Session, which was held from 20-24 April 2015, considered Zimbabwe's initial report which was submitted in accordance with the State Parties obligation under Article 43 of the African Charter on the Rights and Welfare of the Child.
2. The Committee takes note of the written replies to its list of issues and commends the State Party for its delegation led by His Excellency, Senator Dr. P. D. Parirenyatwa, Minister of Health and Child Care for the open and constructive dialogue.
3. The Committee notes with appreciation that the State Party ratified the African Children's Charter and took various initiatives to implement the rights and duties enshrined in the Charter. However, the Committee regrets that the report was submitted with considerable delay, which prevented the Committee from reviewing the implementation of the Charter by Zimbabwe for some years after the ratification.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

4. The Committee commends the State Party among others on the following achievements;
 - a. For ratifying various international and regional human rights instruments;
 - b. For incorporating the rights of children in the newly enacted Constitution;
 - c. For enacting the Children's Act of 1972;
 - d. For enacting the Education Act of 2006;
 - e. For establishing Food and Nutrition and Security Committees;
 - f. For crafting the Pre-trial Diversion Program, the Victim Friendly System, the National Action Plan for Orphans and Vulnerable children, the Basic Education Assistance Module ; and
 - g. For enacting the Trafficking in Persons Act.

III. AREAS OF CONCERN AND RECOMMENDATIONS

A. General measures of implementation

5. The Committee commends the State Party for incorporating provision to protect the rights of children in its amended Constitution. The Committee also commends the Government of Zimbabwe for drafting the General Amendment Bill in order to align various laws with the Constitution. In this regard, the Committee recommends the State Party to expedite the process of harmonizing the various laws in line with the African Children's Charter and the Constitution. To this effect, the Committee recommends the State Party to promptly table for adoption the General Amendment Bill.

6. The Committee commends the State Party for adopting a National Program of Action for Children (NPAC). However, the Committee is concerned about the lack of coordination among the various ministries and the structuring of the office of Child Care in the Ministry of Health and Child Care. Therefore, the Committee recommends the Government of Zimbabwe to finalize the National Child Rights Policy and to establish a separate ministry to deal with the issue of children. The Committee further recommends the State Party to strengthen collaboration among the various ministries to promote and protect the rights of children.

7. While appreciating the efforts the State Party is employing, in collaboration with civil society and donor organizations, to address the budgetary constraints it is facing, the Committee recommends the State Party to double its efforts to fully address its budgetary constraints and to prioritize the issue of children in budget allocations.

8. Commending the State Party for establishing the National Human Rights Commission (ZNHC), the Committee recommends the Government of Zimbabwe to strengthen the capacity of the ZNHC through trainings on the African Children's Charter. Furthermore, the Committee recommends the State Party to strengthen the capacity of the ZNHC by allocating sufficient budget and creating an enabling environment for it to be an autonomous body that inquires human rights violations.

9. The Committee further recommends the State Party to strengthen its Central Statistical Office and to put in place a comprehensive data collection and keeping system and to include disaggregated statistical data under all clusters in its next periodic report to be submitted for the Committee.

10. The Committee commends the State Party for celebrating the Day of the African Child (DAC) every year and encourages the State Party to continue commemorating and celebrating the DAC with the objective of bringing impact on the life of children and to ensure the participation of children in all parts of the country. Furthermore, the

Committee recommends the Government of Zimbabwe to regularly submit a report to the Committee on the commemoration of the Day of the African Child.

B. Definition of the Child

11. The Committee commends the State Party for defining a child as a person below the age of 18 years under the newly enacted Constitution. However, the Committee is concerned that there still exists a contradiction on the definition of the child in the various laws such as the Public Health Act, the Marriage Act and the Criminal Act. Therefore, the Committee urges the State Party to harmonize the definition of the child in all laws in line with article 2 of the African Children's Charter.

12. In addition, the Committee is highly concerned that the Marriage Act set the minimum age of marriage for the girl child at the age of 16 years old and that the Customary Marriage Act doesn't provide for the minimum age of marriage. The Committee, thus, strongly urges the State Party to provide the minimum age of marriage to be at the age of 18 in all circumstances in accordance with articles 2 and 21 of the African Children's Charter.

13. The Committee is further concerned that the minimum age of criminal responsibility is set at the age of 7 years. Therefore, the Committee recommends the State Party to raise the minimum age of criminal responsibility to at least to 12 year of age which is the acceptable international standard sated bearing in mind the facts of emotional, mental and intellectual maturity of the child.

C. General Principles

Non-Discrimination

14. The Committee appreciates the State Party for its effort to ensure the principle of non-discrimination is observed through the incorporation of the principle in the Constitution. However, the Committee has a concern on the existence of discriminatory provisions under the Marriage Act chapter 5 and the Customary Marriage Act against the girl child. In addition, the Committee noted that there is discrimination between men and women under the Guardianship of Minors Act and the Births and Deaths Registration Act in relation to the custody and registration of children respectively. Therefore, the Committee recommends the Government of Zimbabwe to review and harmonize all laws in line with Article 3 of the African Children's Charter.

15. The Committee further recommends the State Party to continue its efforts to ensure that all children are not discriminated and are enjoying their rights and freedoms

irrespective of their parents' or guardians' race, ethnic group, color, sex, language, religion, political or other opinion, national or social origin, fortune, birth or any other status.

The Best interest of the Child

16. The Committee appreciates the for incorporating in its Constitution he principle of the best interest of the child to be given a primary consideration in matters that affect the child. However, the Committee has concerns in relation to the decision of the Supreme court in the *Cruth vs. Manuel* case whereby the court based on the Guardianship of Minors Act ruled that the welfare of a child born out of wedlock only becomes an issue where the third party is alleging that the mother is doing things which are the prejudicial to the rights of the child. Therefore, the Committee recommends, the State Party to revise the Guardianship of Minors Act and such other laws that are in contrary with article 4 of the African Children's Charter. The Committee further recommends the Government of Zimbabwe to ensure and monitor the full application of this principle overriding other interests in all administrative and judicial decisions that affect children.

The Right to Life, Survival and Development

17. The Committee commends the State Party for putting in place policy, legal and regulatory frameworks to address the chronic food insecurity, undernourishment and malnutrition. The Committee further appreciates the initiatives of the Government of Zimbabwe to coordinate with the private sector and development partners to implement its policies and laws and to invest in agriculture. However, the Committee is concerned by the high rate of baby stunting, infant and child mortality rate, and malnutrition. Therefore, the Committee recommends the State Party to ensure universal access for prenatal and neonatal health services throughout the country; to improve the quality of health services; to mobilize additional and diversified resources to ensure the survival and development of children; promote exclusive breast feeding for the first six months and strictly regulate commercials of supplementary products; and in collaboration with development partners to ensure the provision of micronutrient products in regions where there is moderate and acute malnutrition. In this regard, the Committee recommends the Government of Zimbabwe to make reference to the African Union Regional Nutrition Strategy (2015-2025).

Child Participation

18. The Committee applauds the Government of Zimbabwe for guaranteeing children's freedom of expression in the Constitution and in other laws such as the Children's Act

and the Administration of Estates Act. The Committee commends the State Party for establishing Children's Parliament and Junior's Council. Further, the Committee applauds the Government of Zimbabwe for allocating budget to the Children's Parliament through the National Youth Council. In addition the Committee appreciates the Government of Zimbabwe for holding child consultation during the preparation of the State Party's report to the Committee and the United Nations Committee on the Rights of the Child.

19. In this regard, the Committee recommends the State Party to continue its support to the Children's Parliament and to take into consideration the views of the Children's Parliament in making decisions on policy matters that affect children.

20. Furthermore, the Committee recommends the State Party to establish and strengthen child friendly courts and procedures for child victims and witnesses; ensure that children are heard in civil judicial proceedings that affect them, including divorce, separation, and adoption; ensure that children have the opportunity to use broadcast media to communicate their own views; and set in place confidential reporting mechanisms for children who are victims of abuse and violence. While ensuring that children are exercising their freedom of expression, the Committee recommends the State Party to safeguard children from having access to pornographic and other images or videos that affect their psycho-social wellbeing.

D. Civil Rights and Freedoms

Name, Nationality, Identity and registration at birth

21. The Committee commends the State Party for recognizing the right to name and birth registration under its Constitution. Moreover, the Committee appreciates the measures of the State Party to ensure birth registration by decentralizing registration offices in all provinces and seventy two districts; establishment of registration offices in all major hospitals; computerizing vital registration events; and for setting mobile registrations in remote areas. However, the Committee has concerns on the very low and declining rate of birth registration and the existence of legal and administrative barriers on birth registration such as the requirement of birth confirmation records and death certificate if the mother is dead.

22. The Committee, therefore, recommends the Government of Zimbabwe to circumvent all legal and administrative barriers on access to birth registration through harmonization of the Births and Deaths Registration Act and other laws in line with the Constitution. In addition, the Committee recommends the State Party to conduct data

collection in order to know the ration of birth registration in urban and rural areas disaggregated by age and sex. Moreover, the Committee recommends the State Party to fulfill its obligation of ensuring that every child is registered immediately after birth, is named, and acquired nationality by playing a pro-active role such as launching education and sensitization campaigns on birth registration to parents and community leaders; and ensuring proper coordination between the central civil registration authority and other civil registration offices across the country. To this effect, the Committee highly encourages the State Party to use, as a guideline, the Committee's General Comment on Article 6 of the African Children's Charter.

Freedom of thought, concise, and Religion

23. The Committee commends the State Party for recognizing children's freedom of thought, concise, and religion under the new Constitution and for its effort to ensure the respect of the right in the case of *Dzvova vs. Minister of Education, Sport, Arts and Culture*. In this regard, the Committee recommends the State Party to ensure that parents' right to determine the moral and religious upbringing of their children takes into account the evolving capacity and the best interest of the child in accordance with article 9(2) of the African Children's Charter.

Freedom of Association

24. While appreciating the efforts of the State Party to guarantee children's freedom of association by supporting the Juniors Parliament, Junior Council and clubs, the Committee encourages the State Party to ensure that such rights are limited only in accordance with the applicable law.

Protection of Privacy

25. The Committee applauds the State Party for prohibiting publicizing children in the juvenile justice system under the Children's Act, for establishing a multi-sectoral victim friendly system to protect the privacy of victims of abuse, and for prohibiting virginity testing and female gentile mutilation under the Domestic Violence Act. However, the Committee notes that there are instances whereby the media violates the rights of children due to lack of supervision and monitoring mechanisms and where by virginity testing and female gentile mutilation are practiced in some communities. Thus, the Committee recommends the Government of Zimbabwe to take measures against the Medias that violate children's right to privacy and to put in place monitoring mechanisms to ensure that children's right to privacy is respected and promoted. Further, the Committee urges the State Party to take all necessary measures such as creating

awareness about the multifaceted effects of female genital mutilation and virginity testing on children and to prosecute those who practice the acts.

Protection against abuse and torture

26. While appreciating the State Party for taking various legislative and administrative measures to protect children from abuse and torture, the Committee is concerned of the fact that children could still be sentenced by courts for whipping. The Committee, therefore, recommends the State Party to expedite the adoption of the General Amendment Bill as it has the effect of prohibiting child whipping and to abolish corporeal punishment in all settings and to promote alternative positive disciplining measures.

27. Furthermore, Committee recommends the State Party to set in place a child friendly reporting mechanism for victims of abuse and torture, to increase the work pool of psychologists and social workers in the criminal justice system, to build the capacity of the police to adequately respond to rape cases, to improve the conviction rate of offenders, establish victim support programs, and to promote community outreach efforts with the view of raising awareness.

E. Family Environment and alternative care

Parental Guidance and responsibilities

28. Appreciating the State Party for providing social transfers and psychosocial support to child headed households, the Committee recommends the State Party to conduct a formal public supervision of child headed households and to consider increasing the 20 USD grant.

29. In addition, the Committee recommends the State Party to respect the commitment it made under article 20(2) of the African Children's Charter and to make arrangements for parents to play integral role in the learning process of their children, and to ensure children of working parents are provided with basic services.

30. Furthermore, the Committee recommends the State Party to ensure that parents are discharging their duty of providing maintenance for their children by taking various actions including the enforcement of maintenance claims

Family reunification and children deprived of the family environment

31. While appreciating the State Party for putting in place family tracing, reunification, and reintegration system for children deprived of the family environment, the Committee recommends the State Party to continue and strengthen its efforts of family reunification

through a system of tracing, legal assistance, travel arrangements, and financial support. To address the need of children whose family cannot be traced, the Committee recommends the State Party to increase its social workers work pool, to build the capacity of existing social workers, to strengthen already existing and to establish new public alternative care facilities, to effectively supervise and monitor alternative care institutions, and to collaborate with CSOs. To this effect, the Committee calls the State Party to consult the UN Guidelines for the Alternative Care of Children.

Adoption

32. The Committee appreciates the State Party for inspecting institutions that cater for orphan children twice a year and recommends the State Party to strengthen its monitoring mechanisms. In addition, the Committee recommends the State Party to promote alternative family care systems such as foster care instead of institutional care.

33. In addition, while commending the existing preference of domestic adoption over international adoption by the State Party, in cases where inter-country adoptions takes place, the Committee highly urges the State Party to supervise the practice and to ratify the Hague Convention on Protection Of Children and Co-Operation in Respect of Inter-country Adoption and to consult the Guideline for Action on Inter-country Adoption in Africa.

F. Health and Welfare

Children with disabilities

34. The Committee appreciates the State Party for establishing the National Disability Board to cater for the need of people with disability in general. However, the Committee notes that there still exist barriers on access to health services for children with disabilities. Therefore, the Committee recommends the State Party to continue its efforts to address the need of children with disability through proper implementation of its policies and by establishing orthopedic services and where services are available to ensure their accessibility and flexibility. Moreover, the Committee encourages the State Party to review existing programs essential for children with disability and to improve their coverage, effectiveness and efficiency.

Health and Health Services

35. The Committee applauds the State Party for adopting the Public Health Act and the National Health Strategy. Furthermore, the Committee appreciates the State Party for the measures it has taken to ensure access to health services including in the adoption

of the Expanded Programme on Immunization and the introduction of the Pentavalent and Pneumococcal Vaccine. However, the Committee is concerned by the tenaciously high rate of child and maternal mortality in Zimbabwe that is caused by limited availability of free drugs for children under the age of five in public hospitals; increasing rate of orphan children due to chronic illness of parents; poor access to neonatal care; prevalence of preventable diseases such as pneumonia, measles and malnutrition; and the impact of HIV/AIDS pandemic.

36. Therefore, the Committee recommends the Government of Zimbabwe to create and strengthen public-private health sector partnership to improve the quality of health services; implement monitoring mechanisms on user fees in all public health institutions so as to remove financial barriers to mothers and children; ensure adequate provision of essential medical supplies and other basic equipment from primary level to tertiary level; expand primary health care facilities in underserved areas such as resettlement farms; and provide and sustain outreach services from first level facilities to communities.

37. In addition, the Committee recommends the State Party to build the capacity of health workers, programme managers, health management teams and village health workers to conduct community case management of pneumonia, diarrhea and malaria. Moreover, the Committee recommends the State Party to focus on ensuring household food security in its effort to address malnutrition.

38. In its effort to reduce child and maternal mortality, the Committee recommends the State Party to take into account the Maputo Plan of Action and the African Regional Nutrition Strategy (2015-2025).

G. Education, leisure and cultural activities

39. The Committee applauds the State Party for measures it has taken for the realization of the right to education through the provision of constitutional safeguard for free and compulsory primary education, adoption of the Basic Educational Assistance Module for orphan and vulnerable children, devising quality enhancing programs such as the Better Environmental Science Teachings (BEST), and inclusion of special education programs in the curricula of teachers training. However, the Committee is concerned by the increasing rate of school dropout and low rate of secondary education enrolment as a result of school fee, relocation, marriage, pregnancy, and death; imposition of levies; and restriction on children who do not have birth certificate not to attend schools.

40. Therefore, the Committee recommends the State Party to establish public early childhood development (ECD) centers in urban and rural areas to provide quality and equitable ECD services to all children; to continue improving access to quality education to all children by removing and barriers such as school fees and levies, and requirement of birth certificates. In addition, in order to address the school dropouts and low secondary education enrolment, the Committee highly urges the State Party to take the necessary actions such as establishing pre-school centers; setting in place flexible schooling hours and system; providing free text books, sanitary materials and school feeding program; arranging for scholarship programs; undertaking medical interventions in schools; introducing adult education programs in all schools; providing for alternative forms of education like vocational trainings in collaboration with CSOs; and eliminate child marriage. In addition, the Committee recommends the State Party to guarantee access to education for pregnant girls.

41. In relation to ensuring inclusive education for children with disability, the Committee recommends the State Party to continue strengthening its efforts and to ensure that the manner and form of inclusive education is dictated by the individual educational needs of every child. Moreover, the Committee urges the State Party to cater for the children's specific needs by re-evaluating its education curriculum in order to address challenges faced by children with disability and improve basic infrastructures to be suitable for children with disability.

42. While appreciating measures taken by the State Party to guarantee children's right to leisure, the Committee recommends the State Party to ensure the provision of adequate facilities such as playgrounds, football fields, and indoor playing facilities in schools and youth centers of all the regions.

H. Special Protection Measures

Refugee Children

43. Appreciating the legislative and administrative measure taken to protect the right of refugees in general and that of children in particular, the Committee recommends the State Party to ensure access to basic services for all refugee and asylum seeking children without discrimination and to continue its effort to provide them durable solutions in collaboration with CSOs. Moreover, the Committee recommends the State Party to establish strong and functional legislative and institutional framework to ensure that refugee children did not become to be stateless.

Children in conflict with the law

44. The Committee is highly concerned by the fact that the age of criminal responsibility for children is set at the age of 7 years. The Committee is also concerned about the absence of legal guarantee to protect juvenile offenders from being sentenced to life. The Committee, therefore, restating its recommendation under paragraph 13, urges the State Party to raise the minimum of age of criminal responsibility to the international standard of the age of 12 years and to legally guarantee that children are not sentenced to life. Further, the Committee recommends the State Party to establish juvenile courts throughout the country and strengthen the already existing ones through training of its officials on child rights issues and recruitment of psychologists and social workers.

45. In addition, the Committee recommends the Government of Zimbabwe to facilitate for separate detention of juvenile offenders from adult offenders, to introduce diversion programs in the criminal justice system and to establish rehabilitation centers for children in conflict with the law. In its effort to improve the criminal justice system for children, the Committee recommends the State Party to refer to the Guidelines on Action for Children in the Justice System in Africa.

Children of Imprisoned Mothers and care givers

46. The Committee appreciates the efforts of the State Party to respect the rights of children of incarcerated mothers by discouraging the custody of expecting and nursing mothers, establishment of day care center in the females' prison, and taking the initiative to introduce an open prison. With this regard, the Committee recommends the State Party to make reference and use as a guideline the Committee's General Comment on article 30 of the African Children's Charter in its actions aimed at addressing the need of children of imprisoned mothers.

Economic Exploitation and Child labor

47. The Committee commends the State Party for protecting children from child labor under the Children's Act and the Labor Act. However, the Committee is concerned by the rise of child labor in Zimbabwe including in its worst form. Therefore, the Committee recommends the Government of Zimbabwe to implement the relevant laws by ensuring that the minimum age of child labor and hazardous works is respected; to strengthen its inspection mechanisms; prosecute individuals and companies that engage children in worst forms of child labor; introduce corporate social responsibility for the private sector; in collaboration with development partners to scale up the implementation of social welfare programs; and review existing programs aimed at addressing child labor and economic exploitation of children.

Sexual Exploitation and Abuse

48. The Committee is highly concerned by the lack of reliable data on the situation of child trafficking and sale. The Committee noted from reports that there is high rate of sexual abuse in Zimbabwe whereby females are the main victims and children between 0-5 years of age consisting 25% of the victims. Moreover, the Committee is concerned by the fact that out of 24% reported cases between 2008 and 2010 only 8% are brought before court of law. Henceforth, the Committee recommends the Government of Zimbabwe to urgently undertake an action to gather data on the matter, to set in place child friendly reporting mechanism and to create awareness, to prosecute perpetrators, to establish rehabilitation centers for survivors, and to take all other necessary measures in collaboration with neighboring countries to protect children from the horrific act of trafficking, sexual exploitation and abuse.

Harmful traditional practices

49. Commending the State Party for introducing the Domestic Violence Act to prevent and eliminate harmful traditional practices and for launching the African Union Campaign to End Child Marriage, the Committee recommends the State Party to continue its efforts to end child marriage and other harmful traditional practices that affect the wellbeing of children by partnering with traditional and religious leaders, parents, schools, and CSOs.

I. Responsibility of the child

50. The Committee calls upon the State Party to create awareness among children regarding their responsibility towards their family, the society and the State and to promote the responsibility of the child as it contributes to create a forum of participation for children to be involved in matters which might affect their interests. Further, the Committee recommends the State Party to ensure that the interpretation of the responsibility of the child does not lead to the violation of rights of children enshrined in the African Children's Charter.

J. Conclusion

51. The African Committee of Experts on the Rights and Welfare of the Child appreciates with satisfaction the efforts of the Government of Zimbabwe to promote and respect the rights of children and aspires to the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up Mission to ascertain the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State Party to submit its combined fourth and fifth periodic reports, which the Committee considers as the first

Periodic Report by December 2018 and to include in it information on the implementation of the present concluding observations. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Republic of Zimbabwe, the assurances of its highest consideration.