

INHUMAN SENTENCING OF CHILDREN IN ZIMBABWE

Summary

The death penalty is explicitly prohibited for any offence committed by a person under the age of 18. However, life imprisonment remains a lawful sentence for offences committed by children and males under the age of 18 may be sentenced to corporal punishment.

This report was originally prepared for Child Rights International Network in September 2010 and updated in March 2016. For more information about CRIN's inhuman sentencing campaign, visit www.crin.org/home/campaigns/inhuman-sentencing or contact us at info@crin.org.

Introduction

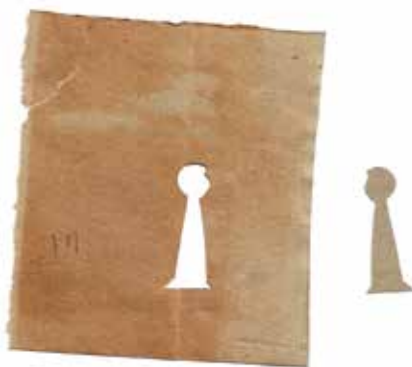
The main laws governing juvenile justice are the Criminal Procedure and Evidence Act 1927, the Children's Act 1972 and the Criminal Law (Codification and Reform) Act 2004. The minimum age of criminal responsibility is seven.¹ The Children's Act defines a child as under 16, a minor as under 18, a young person as aged 16 to 17.² The Act provides for the establishment of children's courts, but they do not hear all cases involving child offenders.

Zimbabwe adopted a new constitution in 2013, which did not retain the provisions explicitly foreseeing the legality of corporal punishment as a criminal sentence.

Legality of inhuman sentencing

Death penalty

The death penalty is explicitly prohibited for anyone who was under the age of 18 at the time of the relevant offence. The Criminal Procedure and Evidence Act states: "The High Court shall not pass sentence of death upon an offender who ... (c) at the time of the offence, was under the age of eighteen years."³ The Criminal Law (Codification and Reform) Act 2004 similarly states that a person convicted of murder "shall be sentenced to death unless (a) the convicted person is under the age of eighteen years at the time of the commission of the crime",⁴ but does not reiterate the prohibition with regard to other capital crimes.⁵



1 Criminal Law (Codification and Reform) Act, 2004, Section 6. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Zimbabwe/zimbabwe_criminal_2004_en.pdf.

2 Children's Act, Section 2. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Zimbabwe/zimbabwe_children_1972_en.pdf.

3 Criminal Procedure and Evidence Act, Section 338. Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Zimbabwe/zimbabwe_criproevi_1927_en.pdf.

4 Criminal Law (Codification and Reform) Act 2004, Section 47.

5 See Criminal Law (Codification and Reform) Act 2004, Sections 20 and 23

Life imprisonment

Imprisonment for life is lawful as a sentence under the Criminal Procedure and Evidence Act, and there is no exemption for child offenders. The Act does not specify the sentence to be imposed on child offenders for offences normally punished by death but states that the High Court may impose “(a) a sentence of imprisonment for life or (b) any sentence other than the death sentence or imprisonment for life, if the court considers such a sentence appropriate in all the circumstances of the case”.⁶

The Criminal Law (Codification and Reform) Act states that a person convicted of murder who was under 18 at the time of the offence “shall be liable to imprisonment for life or any shorter period”.⁷ A number of other crimes under the Act are punishable by imprisonment for life, including attempted murder, treason, insurgency, banditry, rape, kidnapping, robbery and hijacking.⁸

The children’s court, however, has no power to order life imprisonment in cases under the Children’s Act.⁹

Corporal punishment

Corporal punishment is a lawful sentence for males under the age of 18. The Criminal Procedure and Evidence Act lists the punishments which a court may impose on a convicted person, including “where the convicted person is a male person under the age of eighteen years, corporal punishment.”¹⁰ “[M]oderate corporal punishment, not exceeding six strokes” may be ordered in lieu of or addition to other punishments¹¹ and must be “inflicted in private”¹² in a manner, in a place and by a person prescribed by the court. The boy must be certified by a medical practitioner¹³ as fit to receive the punishment, and the boy’s parent or guardian has a right to be present when the punishment is inflicted.¹⁴

The Prisons Act requires that “a moderate correction of whipping referred to in section 353 of the Criminal Procedure and Evidence Act” be carried out in the presence of the “officer in charge” and of the medical officer who certified the boy as fit to undergo the punishment.¹⁵ The medical or

prison officer may halt the punishment “if, in his opinion, the punishment is likely to cause more serious injury than is contemplated in the sentence”.¹⁶ The punishment cannot be inflicted in instalments.¹⁷

The Children’s Act provides for the children’s court to make orders in respect of children and young people in need of care and of those who have been convicted of an offence. Corporal punishment is not listed within the orders that the court is permitted to impose.¹⁸ However, a child or young person aged 12 or older who fails to comply with a court order to attend a treatment centre “shall be guilty of an offence and liable to a sentence of moderate corporal punishment, not exceeding six strokes, in accordance with section 353 of the Criminal Procedure and Evidence Act”.¹⁹

In January 2014, the High Court of Zimbabwe ruled that corporal punishment as a judicial sentence for males under the age of 18 was unconstitutional and therefore prohibited.²⁰ However, findings that a law is unconstitutional must be approved by Zimbabwe’s Constitutional Court before being implemented²¹ and in October 2015, the Constitutional Court indefinitely deferred ruling on the case.²²

Inhuman sentencing in practice

CRIN has been unable to obtain statistical information on the sentencing of child offenders to life imprisonment or corporal punishment. The case of *The State v. C (a juvenile)* [2014] indicates that sentencing to corporal punishment continues, but gives no indication of the prevalence of such punishment.²³

Progress towards prohibition and elimination

Law reform needed

All legal provisions authorising judicial corporal punishment for offences committed while under the age of 18 should be repealed and an explicit prohibition on such punishment enacted. Life imprisonment for child offenders should be explicitly prohibited.

⁶ Criminal Procedure and Evidence Act, Section 337; see also Section 344

⁷ Criminal Law (Codification and Reform) Act, Section 47

⁸ Criminal Law (Codification and Reform) Act, Sections 20, 23, 47, 65, 93, 126 and 147

⁹ Children’s Act, Section 20 specifies the powers of the children’s court.

¹⁰ Criminal Procedure and Evidence Act, Section 336.

¹¹ Criminal Procedure and Evidence Act, Section 353.

¹² Criminal Procedure and Evidence Act, Section 353(2).

¹³ Criminal Procedure and Evidence Act, Section 353(4).

¹⁴ Criminal Procedure and Evidence Act, Section 353(3).

¹⁵ Prisons Act, Sections 101 and 103. Available at: <http://www.icla.up.ac.za/images/un-use-of-force/africa/Zimbabwe/Prisons%20Act.pdf>.

¹⁶ Prisons Act, Section 104.

¹⁷ Prisons Act, Section 105.

¹⁸ Children’s Act, Section 20.

¹⁹ Children’s Act, Section 20(3a), inserted by Act 22 of 2001, in force from 20 May 2002.

²⁰ *The State v. C (a juvenile)* [2014] HH 718-14. CRIN has produced a summary of the judgment, available at www.crin.org/node/41936.

²¹ Constitution of Zimbabwe, Section 167(3).

²² *The Herald*, “Corporal punishment permissible: Concourt” 15 October 2015. Available at: <http://www.herald.co.zw/corporal-punishment-permissible-concourt/>.

²³ *The State v. C (a juvenile)* [2014] HH 718-14. CRIN has produced a summary of the judgment, available at www.crin.org/node/41936.

Law reforms under way

In January 2014, the High Court of Zimbabwe ruled that corporal punishment as a judicial sentence for males under the age of 18 was unconstitutional and therefore prohibited.²⁴ However, findings that a law is unconstitutional must be approved by Zimbabwe's Constitutional Court before being implemented²⁵ and in October 2015, the Constitutional Court indefinitely deferred ruling on the case.²⁶

In 2015, the State reported to the Committee on the Rights of the Child that efforts were underway "to come up with a comprehensive child Juvenile Justice Bill."²⁷

National campaigns

CRIN is not aware of any national campaigns on the issue.

National and international law conflicting with inhuman sentencing

The Constitution

A number of provisions under the Constitution (2013) protect the physical integrity of all persons and specifically that of children. Provisions of the the Constitution (1979) that explicitly foresaw the legality of corporal punishment were not replicated in the 2013 Constitution.

Section 19. Children.

1. The State must adopt policies and measures to ensure that in matters relating to children, the best interests of the children concerned are paramount.
2. The State must adopt reasonable policies and measures within the limits of the resources available to it, to ensure that children:
 - e. are protected from maltreatment, neglect or any form of abuse

Section 20. Youths.

The State and all institutions and agencies of government at every level must take reasonable measures, including affirmative action programmes, to ensure that youths, that is to say people between the ages of fifteen and thirty-five years:

- e. are protected from harmful cultural practices, exploitation and all forms of abuse.

Section 53. Freedom from torture or cruel, inhuman or degrading treatment or punishment.

No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.

Section 56. Equality and non-discrimination.

1. All persons are equal before the law and have the right to equal protection and benefit of the law
2. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
3. Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.
4. A person is treated in a discriminatory manner for the purposes of subsection (3) if:
 - a. they are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected; or
 - b. other people are accorded directly or indirectly a privilege or advantage which they are not accorded.
5. Discrimination on any grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.
6. The State must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and:
 - a. such measures must be taken to redress circumstances of genuine need;
 - b. no such measure is to be regarded as unfair for the purposes of subsection (3).

International human rights treaties

Zimbabwe has ratified or acceded to the following international human rights treaties:

- Convention on the Rights of the Child (in 1990)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (in 2013)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (in 2012)
- International Covenant on Civil and Political Rights (in 1991)

²⁴ The State v. C (a juvenile) [2014] HH 718-14. CRIN has produced a summary of the judgment, available at www.crin.org/node/41936.

²⁵ Constitution of Zimbabwe, Section 167(3).

²⁶ The Herald, "Corporal punishment permissible: Concourt" 15 October 2015. Available at: <http://www.herald.co.zw/corporal-punishment-permissible-concourt/>.

²⁷ List of issues in relation to the second periodic report of Zimbabwe: Addendum (Replies of Zimbabwe to the list of issues), CRC/C/ZWE/Q/2.Add.1, 16 November 2015, para. 100.

- International Covenant on Economic, Social and Cultural Rights (in 1991)
- Convention on the Elimination of All Forms of Discrimination against Women (in 1991)
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Rights of Persons with Disabilities (in 2013)

Zimbabwe is yet to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

International communications/complaints procedures

Zimbabwe has ratified or acceded to the following complaints/communications mechanisms:

- African Charter on Human and People's Rights (in 1986)
- African Charter on the Rights and Welfare of the Child (in 1995)

Zimbabwe has also accepted the inter-state complaints mechanism under the International Covenant on Civil and Political Rights.

Status of treaties

Zimbabwe has a dualist legal system, with aspects of common and civil law alongside aspects of customary and religious law. International treaties become part of domestic law only when they have been explicitly incorporated by an Act of Parliament.²⁸

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(Concluding observations on the second periodic report of Zimbabwe, CRC/C/ZWE/CO/2, 29 January 2016, paras.42, 43, 76, 77)

“The Committee welcomes the Constitutional guarantee of freedom from torture or cruel, inhuman or degrading treatment or punishment. However it remains deeply concerned (CRC/C/15/Add.55, para. 18) that corporal punishment remains legal and widely practised in the family, in schools and in other settings. The Committee notes with serious concern legislative provisions and Government policy allowing the administration of “reasonable” or “moderate” corporal punishment.”

“With reference to its General comment No. 8 (2006) on corporal punishment, the Committee reiterates its previous recommendation (CRC/C/15/Add.55, para. 31) and urges the State party to:

- (a) Repeal or amend, as needed, all legislation and administrative regulations in order to explicitly prohibit corporal punishment in all settings as a correctional or disciplinary measure;
- (b) Sensitise and educate parents, guardians and professionals working with and for children, particularly teachers, on the harmful effects of corporal punishment and the need to end the culture of silence on cases of violence against children;
- (c) Promote positive, non-violent and participatory forms of child-rearing and discipline in all settings, including through providing teachers and parents with training on alternative discipline measures.”

“The Committee commends the Constitutional guarantee of children not to be detained except as a measure of last resort and welcomes the Constitutional and legislative provisions guaranteeing the right to legal aid and other strategies to improve children's access to justice. It further welcomes the statement by the delegation during the dialogue that the Pre-trial Diversion Program will continue, fully financed by the State party. The Committee, however, remains concerned (CRC/C/15/Add.55, para. 21) about the:

- (a) Very low age of criminal responsibility set at seven years of age;
- (b) Lack of a clear legal prohibition of life imprisonment without possibility of release and the indeterminate sentencing of children;
- (c) Recourse to whipping as a disciplinary measure for boys;
- (d) Inadequate budgetary allocations to ensure the implementation of programs to support juvenile justice and access to legal aid services for children in conflict with the law;
- (e) Absence of national mechanisms to independently monitor places where children are deprived of their liberty, and, to receive complaints, in a child-sensitive manner, regarding ill-treatment and torture.”

“In the light of its General comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. The Committee reiterates its previous recommendation (CRC/C/15/Add.55, para. 33) and urges the State party to:

- (a) Raise the minimum age of criminal responsibility in accordance with international standards;
- (b) Harmonise existing laws with the new Constitution and

²⁸ Constitution of Zimbabwe, Section 327(2). Available at: https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf?lang=en.

- ensure that children are not sentenced to life imprisonment or to indeterminate sentences;
- (c) Adopt a comprehensive policy for juvenile justice based on restorative practices and guided by the right of the child to have his or her best interests taken as a primary consideration;
- (d) Increase the number of adequately trained professionals working in the juvenile justice system, designate specialized judges for children and ensure their appropriate education and training, and strengthen specialised juvenile court facilities and procedures, with adequate human, technical and financial resources;
- (e) Ensure the provision of qualified and independent legal aid to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings by increasing the allocation of human and financial resources to the Legal Aid Directorate;
- (f) Continue the pre-trial Diversion Program and ensure that children have access to alternative measures to deprivation of liberty such as probation, mediation, counselling or community service, ensuring that detention is used as a last resort;
- (g) Establish child-sensitive complaints mechanisms regarding ill-treatment and torture of children in police custody and detention;
- (h) Ensure the independent monitoring of places where children are deprived of their liberty;
- (i) Make use of the technical assistance tools developed by the Interagency Panel on Juvenile Justice and its members, including the United Nations Office on Drugs and Crime, OHCHR, UNICEF and non-governmental organizations, and seek technical assistance in the area of juvenile justice from members of the Panel.”

(Concluding observations on the initial report of Zimbabwe, CRC/C/ZWE/CO/1, 7 June 1996, paras. 21 and 33)

“The Committee is concerned at the present system of juvenile justice, including the lack of a clear prohibition of capital punishment, life imprisonment without possibility of release and indeterminate sentencing, as well as at the recourse to whipping as a disciplinary measure for boys.”

“In the field of juvenile justice, the Committee recommends that the State party raise the minimum age of criminal responsibility and incorporate in the legislation a clear prohibition of capital punishment, life imprisonment without possibility of release and indeterminate sentencing as well as of the use of whipping as a disciplinary measure.”

Human Rights Committee

(Concluding observations on the initial report of Zimbabwe, CCPR/C/79/Add.89, 6 April 1998, paras. 20 and 21)

“The Committee recommends that the State party review its laws with a view to reducing the number of offences for which capital punishment can be imposed, in compliance with article 6 of the Covenant and with the Committee’s general comment thereon.

“The Committee is concerned about recent amendments of section 15 of the Constitution which inter alia authorize corporal punishment. The Committee reaffirms its position that corporal punishment is incompatible with article 7 of the Covenant.”

Universal Periodic Review

Second cycle

Zimbabwe is scheduled to be reviewed during the 26th session of the Universal Periodic Review in October 2016.

First cycle

During the first cycle of the Universal Periodic Review, Zimbabwe accepted the following recommendations:²⁹

“Prohibit corporal punishment as a form of sentence as well prohibit corporal punishment in all other settings.” (Austria)

“Ratify the CAT, clearly criminalise torture and ban all kinds of corporal punishment.” (Portugal)

²⁹ Report of the Working Group on the Universal Periodic Review: Zimbabwe, A/HRC/19/14, 19 December 2011, paras. 94.22, 95.5; Report of the Human Rights Council on its 19th session, A/HRC/19/2, 16 August 2012, paras. 706 to 710.

About CRIN (www.crin.org)

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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