

AN EXAMINATION OF THE FACTORS THAT PREVENT SEXUAL ABUSE CASES FROM BEING EFFECTIVELY PROSECUTED IN ZAMBIA

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KEVIN MWEEMBA

A paper presented in partial fulfillment of the requirements for the Award of the Degree of Bachelor of Laws of the University of Zambia.

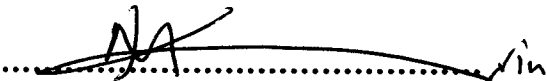
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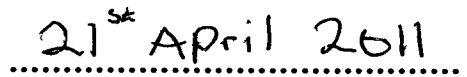
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THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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KEVIN MWEEMBA

Entitled

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Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to format as laid down in the regulations governing obligatory essays.

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MRS ANNIE CHEWE CHANDA

ABSTRACT

This dissertation considers the factors which prevent sexual abuse cases from being effectively prosecuted. In approaching the subject matter of the research, the research starts by examining the extent of sexual abuse in Zambia and looks at what causes this scourge. The research goes on to look at how society views this scourge and what has been done by the government and other stakeholders to deal with this problem. The dissertation thereafter examines the factors which prevent the scourge from being effectively prosecuted and therefore eliminated.

The dissertation, through research and interviews found that there are a lot of problems and hiccups within the Criminal Justice System which prevent a lot of sexual abuse cases from reaching the courts. According to the findings of this research, the Courts which are a formal and last structure in which offences of sexual abuse are adjudicated have a number of problems such as technical procedures, delays and language, which have the effect of discouraging a lot of victims from approaching them. Other problems which were identified as contributing to inefficiency in the fight against sexual abuse include low awareness levels amongst people of their rights, early marriages, withdrawal of cases by victims, geographical inaccessibility and the lack of resources and infrastructure on the part of the Victim Support Unit to deal with all the cases that arise. Accordingly, unless all these problems are ironed out, there is no hope of sexual abuse cases being effectively dealt with.

As such, this paper makes recommendations to the effect that there is need for the adoption of a different approach to the fight against sexual abuse. The laws and the protective institutions in their form cannot adequately deal with sexual abuse cases. The dissertation has called for the enactment of laws which are victim-friendly but which at the same time do not jeopardize the protection that the law offers to the accused person. Such laws will deal with those factors within the court structure which intimidate victims from seeking recourse to the courts of law. The law moreover should be used as an instrument of proscribing those acts such as the withdrawal of cases and early marriages which are retrogressive to the fight against sexual abuse. Finally, the essay has called for public awareness on the subject. In this regard, there is need to educate people about the evils of sexual abuse and enlighten them on the importance of reporting these offences. Their rights and the institutions to which they can report violations must be told to them.

ACKNOWLEDGEMENTS

Heartfelt thanks go to my Supervisor, Mrs. Annie Chanda, for her supervision and guidance without which, it would not have been possible to put up this scholarly work. Many thanks also go to Mutinta Chilufya, Luyando Chuulu, Yvonne Saina and Chilwana Iliampu for proof reading this piece of academic writing and ensuring that all the corrections that were highlighted by Mrs. Chanda are taken care of.

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DEDICATION

To my wonderful family which has had to forego so much, financially and that quality time of being with me in the vacation, in order to enable me realize my dream. God bless you all! I would certainly not be here without your support. To my God who has guided me throughout my life and has enabled me to become a lawyer, I will always cling to you even when I start earning my millions. Thank you for all the blessings that you have bestowed on me.

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African Charter on the Rights and Welfare of the Child

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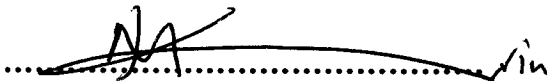
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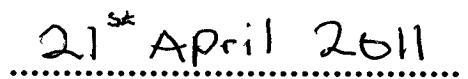
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People v. Chinjamba 5 N.R.L.R 384

Sibande v. The People (1975) ZR 101(SC)

Zimba and Another v. The People (1973) ZR 127

Katundu v. The People (1967) ZR.181

Zulu v. The People (1973) ZR.230 (SC)

LIST OF ACRONYMS

AIDS	Acquired Immuno Deficiency Syndrome
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CRC	Convention on the Rights of the Child
FAWEZA	Forum for African Women Educationalist of Zambia
HIV	Human Immuno-deficiency virus
LADA	Law and Development Association
SIDA	Swedish International Development Agency
UNICEF	United Nations International Children Emergency Fund
USAID	United States Agency for International Development
NGOs	Non-Governmental Organisations
VSU	Victim Support Unit
WHO	World Health Organization
WILDAF	Women in Law and Development in Africa
WLSA	Women and Law in Southern Africa
YWCA	Young Women Christian Association

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CHAPTER ONE

1.1 Introduction

This chapter covers the basic aspects of the research. These are the introduction, statement of the problem, research questions and objectives and the importance of the study. A conclusion will then be drawn.

1.2 General Introduction

The concept of sexual abuse is not subject to a single or universal definition and understandings differ from one society to another. Generally however, sexual abuse refers to a wide range of acts of sexual aggression directed at a person based on their sex. It therefore applies equally to men and women. Understood this way, the term abuse goes beyond 'using physical force' as narrowly defined in the oxford dictionary. Broadly defined, abuse extends to entail any attempt to control, manipulate or demean another person using physical or sexual tactics.¹ This conceptualisation encompasses acts committed by and against women, acknowledging the possibility that women can be perpetrators of sexual abuse within intimate social settings.

Overwhelmingly, however, women rather than men, are the major victims of sexual abuse. Reporting on a research on Femicide, the Young Women Christian Association (YWCA) revealed that one of the most common forms of gender violence in Zambia is sexual violence against women. This abuse against women often takes the form of sexual harassment, rape, defilement, incest and other crimes of a sexual nature.² Sometimes the concept of sexual abuse is broadened to include pornography and prostitution, all of which constitute the harsh struggles that women face.

Whatever form sexual abuse takes, it has catastrophic consequences. It impacts negatively on nations' moral, economic and spiritual values. It also has severe, long term and even life threatening effects on a victim's physical, psychological, emotional and social development.

¹ C Himonga et al., An Outline of the Legal Status of Women in Zambia, in J., Stewart et al. (eds), Women and Law in Southern Africa, Harare (1990)

² Human Rights Interview at YWCA on 31st May 2002

Realising the seriousness of this crime and the need to eradicate it, many nations including Zambia have come up with deliberate measures to eliminate the scourge. These state responses have however been lacking in certain elements as evidenced by the fact that sexual abuse remains a problem of epidemic proportions. This research therefore has sought to investigate the various impediments to the effective prosecution and therefore elimination of sexual abuse in Zambia.

Background

According to the World Health Organisation (WHO)³, sexual abuse happens where any person does any sexual act, attempts to obtain a sexual favour, or makes unwanted sexual comments or advances regardless of the relation to the victim, in any setting, including but not limited to home and work places. Various studies, including media reports have shown an increase in the number of cases of abuse of women and children in Zambia. In response to the public outcry over the increase in the abuse of children especially sexual abuse, the Penal Code was amended in July 2005 to provide for stiffer punishment. Section 138 of the Penal Code amendment Act No. 15 of 2005 provides that any person who unlawfully and carnally knows any child is liable to imprisonment of not less than 15 years and may be liable to imprisonment for life. Abduction; indecent assault and rape are all punishable under the Penal Code.⁴

Zambia is also a state party to many human rights instruments aimed at fighting and eliminating sexual abuse. In 1985, she ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which brings together, in one comprehensive document, the rights of the child as they were formulated in many international treaties and declarations. Article 34 of CEDAW requires states to undertake to protect children from all forms of sexual exploitation and abuse. Apart from that, the government has also set up various institutions such as the Victim Support Unit under the Police Service and the Child Protection Unit under the Ministry of Community Development and Social Welfare, in order to ensure that cases of sexual abuse are properly handled and that culprits are accordingly punished.

³ World Health Organisation, 'Common Country Assessment: Zambia 2000,' December 2000, 'page 17

⁴ The Penal Code Chapter 87 of the Laws of Zambia

Despite this, there is still a problem somewhere as evidenced by the fact that sexual abuse remains a problem of epidemic proportions. This research therefore has sought to investigate the various impediments to the effective prosecution and elimination of sexual abuse.

1.3 Statement of the Problem

The subject of sexual abuse has become a contentious one in the recent past as its prevalence has exercised the minds of the stakeholders such as the government, the church, non-governmental organisations and other co-operating partners. Frantic efforts aimed at addressing the scourge, for example, the enactment of the 2005 Amendment Act to the Penal Code and the creation of various policies and institutions, have been made in an effort to deal with the scourge. In spite of all these efforts, addressing sexual abuse has remained a challenge and the scourge, as shown in various studies and media reports, is still rampant in Zambia today. The question is, why in spite of all these measures, has sexual abuse not been properly dealt with? Put another way, why is this scourge not being properly fought?

1.4 Research Objectives

- A. To find out what structures address issues of sexual abuse; how complaints of sexual abuse are addressed and in what time frame.
- B. To bring to the fore practical difficulties faced by victims in reporting sexual abuse.
- C. To show practical difficulties faced by law enforcement authorities in prosecuting sexual abuse.
- D. To show what should be done to eliminate barriers to the effective prosecution of sexual abuse.

1.5 Research Questions

- 1. How prevalent is sexual abuse in Zambia?
- 2. What are various causes of sexual abuse in Zambia?
- 3. What are practical difficulties faced by law enforcement authorities in prosecuting sexual abuse?
- 4. How is the treatment of the victims of sexual abuse by law enforcement institutions such as courts, the police and other institutions?

5. What has been society's response to sexual abuse?
6. Has the law done enough to protect women from sexual abuse?
7. What should be done to eliminate impediments to the effective prosecution of sexual abuse in Zambia?

1.6 Methodology

This research has utilised both desk research and field investigation. Under the former, research has been done through the collection of information from law books, reports, journals, dissertations, as well as available literature from the internet. Field work has been done through obtaining interview data from various organisations and persons involved in the fight against sexual abuse. Interviews were in particular done with personnel from Women and Law in Southern Africa (WLSA), Young Women Christian Association (YWCA), and Women for Change. Interviews were also conducted with a number of government officials including representatives from the police service, the child affairs department of the Ministry of Sport, Youth and Child Development and the Victims Support Unit under the police service.

1.6 Rationale and Justification of the Research

The importance of this study cannot be overemphasised. An alarming and increasing number of women and girls are abused in Zambia but are frequently reluctant to disclose the abuse they suffer due to a number of factors. An analysis of the situation of vulnerable children and women in Zambia undertaken by the Zambian Government in cooperation with the United States Agency for International Development (USAID), United Nations International Children Emergency Fund (UNICEF), and the Swedish International Development Agency (SIDA) painted a grim picture of the problems confronting women and vulnerable children.⁵ It reported that some 4.1 million children and women are sexually abused in various types of setting. The reports noted that Zambia faces a silent crisis. The suffering of women and children is contained within the confines of the family and the community. Daily, children and women suffer from the ill effects of abuse. Their suffering is seldom seen outside their immediate surroundings while those not affected continue without knowledge of the plight of these innocent victims. The study

⁵ Government of the Republic of Zambia, 'Orphans and Vulnerable Children: A Situation Analysis, Zambia 1999, Joint USAID/UNICEF/SIDA Study Fund Project, November 1990, Page 8

is therefore important because it identifies the areas in which sexual abuse is perpetrated and highlights the reasons why these victims rarely come out to report. In this way, the study will act as a direction to policy makers on what policies to put in place in order to curb the widespread prevalence of sexual abuse in Zambia.

The study is also important for Zambia because it is a developing country that has been affected by the HIV/ AIDS pandemic. The implications of sexual abuse include physical consequences such as unwanted pregnancies and sexually transmitted diseases including the deadly HIV/AIDS disease. Therefore, women and girls are threatened by not only sexual abuse but also by other factors that emerge as a result of abuse especially HIV/AIDS. A study by Women in Law and Development in Africa (WILDAF) noted that 45 per cent of victims of sexual abuse have ended up contracting the deadly HIV/AIDS diseases. Addressing the scourge of sexual abuse will therefore go a long way in stopping the spread of HIV/AIDS amongst women and men.

In addition, children need to be protected because they are the building blocks of the nation. Since Zambia is a state party to the Convention on the Rights of the Child (CRC), it is tasked to provide a protective environment where children can develop to their potential. According to UNICEF⁶, creating a protective environment based on the ideals of the CRC is not only about changes in laws and policies but also altering attitudes, customs and behaviours.

1.7 Layout of the Chapters

CHAPTER ONE

INTRODUCTION

This chapter introduces the research paper and deals with the basic aspects of the research. These include the statement of the problem, objectives, research questions, significance and rationale of the study, the methodology and the chapter layout. The chapter is designed in such a way as to give a broad outlook on the study and to pave way for the main elements to be discussed in the research paper. It therefore introduces the subject matter in general terms.

⁶ UNICEF/UNAIDS,'Children on the Brink 2002,'Page 3.Available at www.unaids.org/barcelona/presskit/childrenonthebrink/introduction.pdf (retrieved on November 17,2010)

CHAPTER TWO

THE SITUATION OF SEXUAL ABUSE IN ZAMBIA

This chapter discusses the problem of sexual abuse in Zambia. It identifies the prevalence, causes and consequences of this vice in Zambia. Secondly, it considers the attitude of society towards the scourge and examines what has been done so far to deal with it. The aim of the chapter is to provide a comprehensive understanding of the problem of sexual abuse in Zambia and look at what has been done to deal with the problem

CHAPTER THREE

IMPEDIMENTS TO THE EFFECTIVE PROSECUTION AND ELIMINATION OF SEXUAL ABUSE

This chapter looks at some of the factors which hamper the successful prosecution of sexual abuse cases. It examines the difficulties that victims as well as law enforcement officers face in dealing with sexual abuse cases and shows how these barriers prevent this vice from being effectively prosecuted.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

This chapter summarizes the important points that are raised in the research and gives recommendations and possible areas of reform in dealing with sexual abuse cases. After that, a conclusion to the subject under research is given.

1.8 Conclusion

In conclusion, this chapter has dealt with the basic aspects of the research and given a prelude to the subject matter at hand. It has given a general overview of the concept of sexual abuse and outlined the statement of the problem which has necessitated this study. The chapter has also stated the objectives that the research sought to achieve as well as research questions that have helped in achieving the objectives. Besides this, the chapter has also given the methodology that

has been employed in getting information on the topic under research. It has also explained the importance of the study and highlighted the salient features of the subsequent chapters. In the next chapter, the research considers in detail the situation of sexual abuse in Zambia.

CHAPTER TWO

THE SITUATION OF SEXUAL ABUSE IN ZAMBIA

2.1 Introduction

The preceding chapter discussed the concept of sexual abuse in a broad sense. It looked at how the scourge, despite major efforts from various sections of society, has not been curbed. This chapter gives the situation of sexual abuse as it exists in Zambia. It looks at the nature and prevalence, causes and consequences of this scourge in Zambia. Thereafter, the structures that deal with the issue of sexual abuse are critically examined and it is determined first whether the structures respond to this problem at all and how they do so. The second issue is whether there is any diversity in the way they deal with sexual abuse or whether the diversity lies inherently in their very different nature or their differences in jurisdictions or scope of work, as the case may be.

2.2 National Situation

One of the major challenges regarding the issue of gender based violence in general and sexual abuse in particular, concerns the availability of reliable and consistent sources of data. The very nature of sexual abuse makes it a very sensitive matter which victims are reluctant to report. The stigma that is attached to sexual abuse forces victims to remain quiet. The very nature of the offences constituting sexual abuse therefore makes it difficult to collect data on the widespread nature of sexual abuse.⁷

Despite this, researches conducted by different organisations as well as media reports have shown that cases of sexual abuse against women and children have continued to rise despite the stiffer punishments that are being imposed on offenders. Nearly every day, a woman is raped or defiled by either a stranger or someone close to her. Defilement and rape cases are steadily increasing in Zambia. According to statistics from the police and advice centres of the Legal Resource Foundation (LRF), there are at least 5 cases reported per month. Newspapers are full of stories of a father, relative or even an alien caught molesting helpless girls. Such reports have been on the upswing from around the mid 1990s.

⁷ Central Statistical Office. Zambia Sexual Behaviour Survey .April 2005,Page 35

According to a report by WLSA, sexual abuse is widespread in Zambia and takes place almost anywhere including within the home, which is supposed to be the safest place.⁸ This offence is committed in nearby bushes, in streets, police cells and in schools. It may be between people who know each other or strangers. It may be done consensually or without consent. Presented below are illustrative descriptions of various settings in which sexual abuse is committed in Zambia.

a) Sexual abuse Within the family

An alarming and apparently increasing number of abuses against women and children come from members of their own families. According to findings by the office of the Commissioner for Children under the Human Rights Commission, 79% of the abuse that women and girls face comes from within the home/family.⁹ A lot of women and girls are sexually abused by uncles, step fathers, fathers, cousins, brothers, and husbands. An example that can be given of this is one that appeared in the Post Newspaper headed ‘Mazabuka Cops arrest man for defiling daughter’. The story read that the police had arrested a 42 year old man of Zambia Sugar’s Nkabika Township for defiling his daughter. The man later confessed to having been sleeping with his daughter because his wife was refusing to have sex with him.¹⁰

This is just one of the examples of sexual abuse within families and which is reported to the relevant authorities. According to Human Rights Watch, a lot of abuses by relatives often go on in families but are not reported. In some cases, girls are threatened with physical abuse if they tell anyone while in others the shame and stigma associated with sexual abuse prevents them from reporting.¹¹

This apparent increase in cases of abuse by family members has in turn been linked in part to the massive problem of orphans and vulnerable children, which is stretching the traditional extended family structures to the breaking point. The problem of caring for these children permeates all sectors of society. Throughout the country, families are either taking in children who have lost one or both parents or are supporting them in other ways, such as paying school fees. Eric

⁸ Women and Law in Southern Africa Research Project, “Inheritance in Zambia: Law and Practice, page 78-79

⁹ Office of the Commissioner of Children, Findings of the 2008 Public Hearing on Violence against Children, page 10

¹⁰ The Post Newspaper, August 3,2010

¹¹ J Csette and J Kipperg (2006) Suffering in Silence: the Link between human rights abuses and HIV transmission to girls in Zambia. Washington DC, November 2002. Page 15

Sakala, a legal Assistant at Young Women Christian Organisation described the particular burden that falls on girls. According to him,

“Most vulnerable families are made more vulnerable by new orphans being brought in, so they all become vulnerable. They lack adequate shelter, so they send some children away. Or they share a room with adults, and some may be molested.”¹²

b) Sexual abuse Risks for girls at school

The Forum for African Women Educationalist of Zambia (FAWEZA) has focussed considerable attention on the issue of girls’ safety and security on their way to and from school. The length of the girls’ journey to school is an important factor here, because some of them are sexually abused by mini bus drivers or conductors, if they take transportation, or abused by others along the road, if they walk. In some cases, the long distance to school makes some girls stay in insecure and unsafe structures nearer to school or colleges during the week, which then exposes them to abuses by men who can walk in at will.¹³

Even school environments are not always safe, with sexual abuse all too frequent. Teachers and Lecturers themselves may prey on the vulnerable girls, exchanging answers to the tests or higher grades for sex. In February 2006, only three months before the Zambian government ratified the African Union’s Protocol on the Rights of Women in Africa, a young girl was calculatedly raped by her greatest authority figure, her own teacher. The minor and her guardian sued the teacher, along with the school and the Ministry of Education one year later, achieving a first ever court victory in Zambia on June 30, 2008. Presiding Judge, Phillip Musonda in giving judgment observed¹⁴:

“A teacher has moral superiority over his pupils. A girl saying that she loved a teacher does not mean that she consented to sex, when she is below 16 years of age. This teacher manipulated the girl by deliberately forgetting her past examination papers in order to create an opportunity to sexually abuse her at his home. There can be no consent by a child under 16 years of age.

To characterise a (child’s) valentine card as consenting is legally, morally and psychologically flawed.

It is contrary to the ethics of a teacher to sleep with school girls. It is psychologically wrong. A child under 16 is not cognitively developed enough to consent to sex. When children are left at school, a teacher becomes a parent. The standard of care, managed by a headmaster of a school, is

¹² Interview with Eric Sakala, the Legal Assistant at Young Women Christian Association on 3rd December 2010 at Lusaka

¹³ Forum for African Women Educationalist of Zambia (FAWEZA), “Report on Workshop for developing Guidelines and a Tracking and Monitoring System for a Re-entry Policy,” Lusaka, February 2002, Page 1.

¹⁴ Rosario Mashita Katakwe v. Edgar Hakasenke and Others 2006/HP/0327

one of a careful father towards his own children. The chances of millions of girls being infected with a (HIV/AIDS) 'death sentence' by unscrupulous teachers and/or headmasters cannot go unabated. Diseases (in Zambia) such as HIV/AIDS have no cure."

Having made this statement, the judge went on to award K45 million (approximately \$13 000) to the Plaintiff, a girl who was only 13 at the time of the crime. Cosmas Musumali, National Coordinator for FAWEZA notes that apart from rare cases like this one, most abuses by teachers and lecturers are not reported, and few teachers and lecturers are penalised: "The laws are strict but there is no real attempt to find out what goes on."¹⁵ Constance Lewanika of WILDAF noted that abuse by teachers at schools is "a crime that is emerging. It's not a new crime; it just has come to light and is now being reported."¹⁶

(c) Sexual Abuse on the Streets

Girls who are orphaned, often taking care of younger siblings, or who have fled their homes due to abuse, neglect or poverty often find themselves having to trade sex to survive, having nothing else to trade, and in some cases engaging in more regular sex work. This puts them at great risk of suffering from a range of sexual abuses including rape, defilement and sexual harassment. An example can be given of Agatha, a former sex worker at Tasitha who stated,

"My step mother treated me like an animal and daddy said 'You are just a liar.' He said there was no money for school and so I started selling fritters for neighbours. Then I met a group of people, prostitutes, who all stayed in a one-room house. They said they would buy all my fritters if I would clean and cook for them. Then they said I should join them. So I ran away and started sleeping with them. They brought me men to sleep with. They bought me clothes and shoes so I could go to the street."¹⁷

Increasingly, poverty in Zambia has contributed to a rise in the sexual abuse and exploitation of girls. The National AIDS Council summarised the situation as follows: "In order to cope, households, especially in rural areas, pull their children particularly girls, from school, reduce their food intake and in some cases resort to begging. In the Circumstances, some women and girls are forced to engage in sex for money to meet their household expenses."¹⁸ Joe Kaunda, the deputy Managing

¹⁵ J Csette and J Kipperg (2006). *Suffering in Silence: the Link between human rights abuses and HIV transmission to girls in Zambia*. Page 49

¹⁶ Interview with Constance Lewanika, the Country Coordinator for Women in Law and Development in Africa on 21 December 2010 at Lusaka

¹⁷ J Csette and J Kipperg (2006). *Suffering in Silence: the Link between human rights abuses and HIV transmission to girls in Zambia*. Page 36

¹⁸ J Csette and J Kipperg (2006). *Suffering in Silence: the Link between human rights abuses and HIV transmission to girls in Zambia*. Page 43

Director of the Post newspaper, an independent newspaper in Zambia, described the burdens placed on girls and women:

“They have no access to money to start their business or whatever. They need to make money to support their siblings. Some go to the streets, where older men offer them more money. These men prefer young ones, and they will pay much more without a condom.”¹⁹

2.3 Causes of Sexual Abuse in Zambia

It has to be stated that there are a number of factors which are responsible for sexual abuse. In some cases, one factor may be the main reason for the occurrence of an incident such as rape while in other cases; it may be the combination of more than one factor. The following are the causes of sexual abuse.

Poverty-Both the Victim Support Unit officers and staff from various Non Governmental Organisations identified poverty as one of the factors contributing to sexual abuse. They indicated that in most cases, the offender acts as guardian of the victim, living with her in his home. This usually occurs where the parents are too poor to educate or maintain their child. Therefore, to enable her to attend school, they entrust her to a blood relative who is financially better off. In the situation of single mothers, such guardians are often maternal uncles who take care of their unmarried sisters, children. In some situations, poverty forces families to send girls to do certain activities such as selling vegetables. This exposes them to risks of being sexually abused especially where they are outside the home at awkward hours (night hours).

Blended Families-Blended families, also referred to as compounded or melded families are mainly the result of remarriage after divorce or separation. They represent families in which at least one parent has been previously married. A blended family includes children from one or both of these marriages. As such, it is characterised by a complicated system of blood relations between parents and children; sometimes one family may be characterised by two sets of step-relationships simultaneously. Blended families, for example, may include stepfathers/mothers, stepchildren, stepsisters/brothers and cohabiting boyfriends/girlfriends. Because of the high rate of divorce and

¹⁹ The Post Newspaper, May 31,2002

subsequent remarriage, blended families are on the rise in most societies. ²⁰According to Mrs Chileshe of WLSA, the factor of divorce or separation is compounded further by the high percentage of children born to single women. When these women eventually get married or enter into a cohabitation relationship, the man in most cases takes on the care of the children. In most cases, the man sexually molests his partner's children. Furthermore, he may justify his behaviour by stating that they are not his biological children.²¹

Shared Accommodation/Poor Housing-The issue of shared accommodation in poor families has proven to one of the facilitating factors of sexual abuse. Male relatives, friends and visitors often end up sharing a room with young children due to lack of adequate space. This renders the girl-child susceptible to sexual abuse. In one of the cases, a 15 year old girl was sexually abused by her brother's housemate while her brother was sleeping in his own room. Though the perpetrator admitted having sexual intercourse with the girl, the case was dismissed as not having sufficient evidence because the girl did not cry out for help.²²

Poor Parenting-The issue of poor parenting was also raised, particularly by the Assistant Woman Chief Superintendent at the VSU headquarters. She asserted that a lot of children grew up with bad parenting. Some parents prefer it when their daughter brings home a working 'son-in-law' and so called son-in-law are often older men who are working, and who subsequently defile these young girls.²³ In addition, some adults often practised absentee parenthood. For example, in one case, a young single mother with teenage children went away for days on end visiting a boyfriend. When she got back home, she discovered that her 14 year old daughter had also been away from home for the same number of days as she had been away. She went to the police to report that her daughter had been defiled.²⁴

²⁰ R M Gwaba et al, Root Causes of Sexual Abuse of Children. Zambia Civic Education Association, Lusaka, 2009. Page 20

²¹ Interview with Priscilla Chileshe, the Research Associate for women and Law in Southern Africa on 16th December 2010 at Lusaka

²² Lusaka Subordinate Court case of 2002. Full citation not available

²³ Interview with Agnes Chilembo, Deputy the National Director for the Victim Support Unit on 5th December ,2010

²⁴ R M Gwaba et al, Root Causes of Sexual Abuse of Children. Lusaka: Page 21

Eric Sakala of YWCA also felt that where parents were not working, girls were forced to have sex for money. Some children are abused by neighbours because of lack of certain amenities like televisions in their households, which pushes them into the neighbour's house. Nevertheless, according to Mr Sakala, if there had been more parental responsibility and guidance, such things could be avoided despite the increase in sexual abuse cases nowadays.

Early Marriages-Culture has a great influence on people's lives and literature suggests that Zambia is a culture of men, in which women are raised to be obedient and submissive to men and in which children are raised to be subservient to adults and not to assert themselves.²⁵ In Zambia, it is men who marry, women only get married, and therefore the consent of women to traditional marriages is perceived as not that important.

Zambia has a dual system of law in which both statutory law and customary law currently operate. Under statutory law, the legal age of marriage is 21 years for both males and females. Under customary law, the family controls and consents to sex on behalf of the girl child. Thus, provided she has attained puberty, she may be married off and she is considered old enough to engage in sex. Therefore, if a person has sex with a girl below the age of 16 years, provided he is married to her, under customary law, this is permitted. According to a survey by the office of the Commissioner for Children, nationwide 42 per cent of girls are married before they are 18 years old, 32 per cent in urban areas and 49 per cent in rural areas. The younger the bride, the larger the age differences between her and her spouse.²⁶

According to the survey, the mean age difference between spouses in rural areas is 8 years if the wife marries before age 15, compared to 7 years if the wife marries at age 20. The age gaps show that older men are marrying younger girls.²⁷ Thus even though the Convention on the Rights of the Child defines a child as a person aged 18 years or below, this is not necessarily so under local custom. This is an important issue regarding child abuse, especially sexual abuse of the girl-child.

²⁵J Csette and J Kipperg (2006). *Suffering in Silence: the Link between human rights abuses and HIV transmission to girls in Zambia*. Page 58

²⁶ Office of the Commissioner of Children, *Findings of the 2008 Public Hearing on Violence against Children*, Page 8.

²⁷ Office of the Commissioner of Children, *Findings of the 2008 Public Hearing on Violence against Children*, Page 9

These traditional practices whereby girls who have reached puberty can be married off and the lack of any legal impediment to the marrying of more than one wife under customary marriages exposes children between the ages of 10 to 16 years to sexual abuse.²⁸ It is also used a justification for child sexual abuse as evidenced by the prominence of the reason ‘she was my girlfriend and I wanted to marry her.’ In a case which appeared in the Post Newspaper, for example, a 16 year old girl was retrieved from a forced marriage in Lubombo area by four NGOs comprising the Law and Development Association (LADA), Young Women Christian Association (YWCA), Youth Alive and Plan International Zambia. The girl was sent back to school in Siavonga where she was doing her grade 10. Her husband meanwhile physically harassed teachers and asked them why they admitted his wife back into school.²⁹

Alcohol Abuse-The lack of strict regulations as to the sale of alcohol in Zambia has also been cited as a major cause of sexual abuse. Allan Hanworth explains that the use of alcohol, which is a mind altering drug, has very devastating effects as it contributes to some of the worst cases of sexual abuse against women in Zambia.³⁰

Almost one in four of the female victims of sexual offences were involved with the offenders and the offenders had been drinking. Alcohol abuse is on the increase in Zambia today although very little research is carried out to back this assertion. However, it stands to be concluded as such. This can be attributed to the state of hopelessness in which a lot of Zambian men find themselves in as a result of joblessness, inadequate recreational facilities and increased freedoms they have in the era of liberalism. Coupled with this is the liberalisation of the market which has resulted in many breweries being established, making alcohol more readily available.³¹

In this regard, the contention that alcohol is one of the leading causes of sexual abuse can be supported by the case of *Zimba and Another v. The People*³². The appellants were convicted of rape.

²⁸ C Kamuwanga, "A Study to determine how Cultural Practices and Beliefs influence the Spread of HIV/AIDS in Lusaka". Page 18

²⁹ Zambia Daily Mail, 5th July 2007

³⁰ A Haworth, Lusaka-based Consultant Psychiatrist. Times of Zambia, September 25, 2003.

³¹ T Daka. The Prevalence of Sexual Violence in Zambia: Are Existing Laws adequate to curb the Vice. Obligatory Essay Submitted in Partial Fulfillment of the Award of the Bachelor of Laws Degree 2010. Page 29

³² (1973)ZR 127

The complainant said that she and her husband had been drinking at a beer hall with the appellants and shortly after her husband had left to go on duty, she also left and proceeded home. On the way, she alleged that the appellants overtook her and each raped her in turn. Similarly, in the case of *Katundu v. The People*³³, the appellant stated, “My committing of the offence is due to circumstances that I was drunk and could not act in actual order of sexual intercourse although I had some arrangement with the woman which she later refused”

(g) **Peer Pressure among Girls**-Some girls, perhaps the majority may know that they are legally protected by the law but will still go after older men and engage in sexual intercourse with them. Their excuse for engaging in this practice is that ‘everyone is doing it’. They may say “Jane has a boyfriend and she is having it, why shouldn’t I?”

(h) **Belief that Sex with virgin cures AIDS**-The number of children being defiled in Zambia has continued to increase dramatically because of a widespread belief that having sex with a virgin will cure HIV/AIDS. This misinformation is mainly spread by local traditional leaders. Partial indicators reveal that defilement cases are on the increase with the leading cause being the belief that having sex with children will cure them from the deadly HIV/AIDS disease, followed by the traditional belief that men can be rich due by sleeping with young girls. Many HIV/AIDS positive people believe this false advice and this has led to rampant increases in sexual abuse cases in Zambia. According to Professor Michael J Kelly, ‘These myths have led to the HIV infection of the highly vulnerable girls who are incapable of defending themselves.’³⁴

2.4 Consequences of Sexual Abuse

The scourge of sexual abuse has negative consequences on the survivor and even the survivor’s family as a whole. Some victims end up contracting HIV and other sexually transmitted infections (STIs).Some of the victims have since died and others are still nursing their psychological wounds. Another unfortunate aspect of sexual abuse is that it does not exist in isolation but is usually accompanied by force, which leaves painful cuts on the victim’s private parts. Apart from that,

³³ (1967)ZR.181
³⁴ M Kelly, *Education for an Africa without AIDS*.Butterworth,London,2008.Page 25

victims of sexual abuse may suffer long time effects such as extreme fear and anxiety, nightmares and bed-wetting since they are sometimes too scared to get up at night, even when fully awake.

Experts say some school children may suffer from attention deficit disorders while others may engage in prostitution or resort to drug-related substance abuse. Some Psychologists even suggest that on a global level, ninety five per cent of the total number of defiled children stand high chances of becoming abusers in future. They claim that ninety five per cent of prostitutes and 80 per cent of substance abusers were abused as children, eighty per cent of children who run away from homes cite abuse-related reasons seventy eight per cent of the total prison population in the world were abused as little children.³⁵ These pictures paint a gloomy picture for the future of the country and thus there is need to find ways of dealing with sexual abuse.

2.5 Response of the Criminal Justice System.

The response of the criminal justice system has been to come up with certain measures, all in a bid to arrest this scourge and ensure that cases are effectively prosecuted. Some of these measures are;

Enactment of the Penal Code (Amendment) Act of 2005

Zambia has amended the Penal Code in order to domesticate in part, the Convention on the Rights of the child and to provide stiffer penalties in respect of sexual offences committed against children and women so as to deter offenders from committing such crimes. Under the new law, defilement under section 138 is now applicable to both boys and girls under 16 years of age. The Act introduces a minimum sentence of 15 years for defilement and 14 for an attempt. Additionally, the statutory defence has been removed. Besides this, the minimum sentence for incest has been increased from 15 to 20 years under section 161.

Establishment of the Victim Support Unit

The Victim Support Unit is the main government mechanism tasked with providing legal protection for girls subjected to sexual abuse. The idea for a VSU dates to 1994 with a Police reform program initiated by women’s NGOs. The Unit began its work in 1997 and is tasked with

³⁵ S Dahlgren, Review of Zambia’s Legal Framework Protecting Children from Social Abuse and Exploitation, Sweet and Maxwell,London,2004.Page 31

handling cases of physical or sexual abuse, including child abuse, violence against Women, property grabbing, and victimization of the elderly. According to the Victim Support Unit National Coordinator Madam Agnes Chilembo, where a complaint of abuse has been made, the VSU officers will investigate the case and have the accused arrested if evidence point to him as having committed the offence.

The VSU works hand in hand with hospitals to whom they refer victims for examinations as they prepare dockets and investigate cases which are then submitted to the court for prosecution of suspects. To a large extent, they also collaborate with other Government Organizations and NGOs in matters relating to sexual abuse.

According to the Victim Support Unit in Lusaka, 97 cases of abuse were reported to them in 1997, 1,954 in 1998, 2,232 in 1999, 3,845 in 2000 and 7,815 in 2001. The creation of his institution has therefore assisted in the increased reporting of these cases.

Creation of the Child Protection Unit

The child protection unit was created in 2005 in order to deal with the increase in the number of crimes committed against children. The unit has the responsibility of promoting and safeguarding the well being of children, assessing and responding to the concerns about them and developing ways of strengthening families and helping communities to care for children and young people. Some of the functions include receiving and investigating reports of child abuse and neglect; provision of services of families who need assistance in the protection and care of their children; making arrangements for their children to live in kin or with foster families if they are not safe at home and finally the prosecution of child sexual abuse cases.

Any concerned person can report suspicions of child sexual abuse to the Unit. These reports are received by the child protection unit officers and are either screened in or screened out. A report is screened in if there is sufficient information to suggest that an investigation is warranted. A report may be screened out if there is no enough information on which to follow up or if the situation reported does not meet the legal definition of abuse or neglect. In these instances, the officer may refer the person reporting the incident to the other community service providers or law enforcement agencies for further action. Child protection unit officers, often known as investigators, respond within a particular time period, which may be anywhere from a few hours

to a few days depending on the complaint made, the potential severity of the situation, and the requirements under the Penal Code. They may speak with the child alone or in the presence of caregivers, depending on the child's age. At the end of an investigation, officers will make one of the two findings, substantiated or unsubstantiated. An unsubstantiated finding means that there is insufficient evidence for them to conclude that the child was abused or neglected, or that what happened does not meet the legal definition of child sexual abuse. A finding of substantiated means that an incident of child abuse or neglect is believed to have occurred. The unit will then initiate a court action if it determines that the authority of the court is necessary to punish the offender who has committed the abuse.

Non-Governmental Organisations

Many NGOs are involved in responding to cases of sexual abuse. Usually victims go to these organizations at times when they are frustrated with getting help from the police and other sources. In Monze, the Law and Development Association (LADA) works as a support group to victims of abuse. Being in a rural area, the organization not only refers the victims to higher authorities in the police service but also offers shelter to sexually abused children and women.

LADA has worked closely with women and Law in Southern African Trust (WLSA) which gives professional legal advice to victims of abuse. Both are also involved in the advocacy for the enactment of the Gender Violence law which, if it comes into effect, will provide for civil remedies to the victim such as compensation, in addition to the custodial penalties under the Penal Code.

Lastly, the Young Women Christian Association has also provided support to victims of sexual abuse. It is one of the few organizations with branches in most rural provinces of Zambia. They are present in three urban areas of Ndola, Lusaka and Livingstone. In Lusaka, they provide the only shelter for abused women in the country. In Ndola, they work closely with the police, the social welfare department and other Non Government Organisations.

Department of Social Welfare

The Department of Social Welfare is mandated to provide various services to the communities, which include counselling and sensitization. The department is the main actor in identifying

children in need of care and placement of those children with childcare institutions. For example, field visits in Lusaka indicated that the principal residents at the Kabwata Orphanage comprise children that are received mainly from the department of social welfare.

The department also has a mandate to remove sexually abused children from homes where they are abused and place them in homes of safety. Finally, the Department also has statutory responsibilities under the Juveniles Act, to prepare welfare reports to guide the courts in handling offences committed by Juveniles. In all cases, the social welfare officers are only concerned with recommending the appropriate sentence or punishment which should be imposed on an offender of a sexual offence.

2.6 Conclusion

In conclusion, this chapter has shown that sexual abuse is a widespread problem in Zambia and that there are number of reasons why this is so. This chapter has also highlighted the protective mechanisms that have been laid down with the scourge in Zambia. The next chapter will look at why, despite these measures, sexual abuse has not been effectively prosecuted.

CHAPTER THREE

IMPEDIMENTS TO THE EFFECTIVE PROSECUTION AND ELIMINATION OF SEXUAL ABUSE CASES IN ZAMBIA

3.1 Introduction

The preceding chapter looked at the issue of sexual abuse in Zambia and examined the protective mechanisms which have been created to deal with this scourge. This chapter looks at some of the factors which hamper the successful prosecution of sexual abuse cases in Zambia. It examines the difficulties that victims as well as law enforcement agencies face in dealing with sexual abuse cases and shows how these barriers prevent this vice from being effectively prosecuted.

There are various means and forms of protection offered to women like the ones discussed in the previous chapter. However, despite these forms of protection, there are still a significant number of cases of sexual abuse occurring in Zambia today and attempts to have such cases tried have not proved to be very successful. The reasons for this are numerous. The following are some of them.

3.2 Early Marriages under Customary Law

The first factor, which is an obstacle to the effective prosecution of sexual abuse cases in Zambia, is early marriages under customary law. In customary law and practice, the physical development of an individual determines whether they can be regarded as a child or an adult. This physical development entails the attainment of puberty and undergoing initiation ceremonies particularly for girls. Adulthood is further marked by the ability to procreate and a person who has a child at whatever age is considered an adult.³⁶

Puberty usually takes place much earlier than a girl's eighteenth birthday and as a consequence early customary marriages are not uncommon in Zambia despite the existence of statutory law provisions making marriage illegal below a certain age and providing penalties for defilement of girls below 16 years irrespective of their consenting to sexual relations. The concept of early

³⁶ R M Gwaba et al, Root Causes of Sexual Abuse of Children in Zambia. Zambia Civic Education Association, Lusaka, 2009. Page 18.

marriages conflicts with the principle of consent in that a child, even though she may have reached puberty may lack the ability to make a mature decision in her best interests.

Under customary law, a man can marry a girl under 16 years as long as she has attained puberty and all the requirements for the customary marriage are met. ³⁷Once a girl is married, the man can have sexual relations with her. At customary law, the man who marries a girl under 16 years and carnally knows her, is at no peril of prosecution under Section 138 of the Penal Code since he lawfully has sex with his under 16 year old wife.

In the *People v. Chinjamba*³⁸, a villager Fulai Njamba married a girl under the age of 16 years and lived with her as man and wife. The accused, who was the village headman, knew of these facts and took no steps to prevent or report the matter. He was charged with being an accessory after the fact to defilement of a girl under the age of 16 years and he was at first instance convicted. On review it was held that it was not unlawful for a man to have carnal knowledge of a girl to whom he is lawfully married despite the fact the girl is under 16 years of age. Woodman J. said,

“At the time when the carnal knowledge took place there was a valid marriage subsisting between Fulai Njamba and the girl in question according to native customary law. The carnal knowledge must be unlawful and it is not unlawful for a man to have carnal knowledge of a girl to whom he is lawfully married.”

This judgment has never been overruled by any other court to make defilement in the traditional setting a crime. In fact, it was upheld in *Sibande v. The People*³⁹, when the judge said,

“In Zambia it is not general unlawful for a man to have carnal knowledge of a girl under the Prescribed age if he is lawfully married to her. Lawfully here means that both the parents and the girl have consented to the marriage.”

This clearly is not in line with section 138 (I) of the Penal Code in that defilement does not seem to exist under traditional settings provided that the man proves to be married to the girl. This exposes children between the ages of 10 to 16 years to sexual abuse and unfortunately there is no legal protection for them as the law recognizes customary marriages provided that all the formalities relating to bride price and consent from the girls' parents have been met.

³⁷ J Daka, *Sexual Offences and how to deal with them*. Ndola : Mission Press, 2005. Page 16

³⁸ 5 N.R.L.R. 384

³⁹ (1975) Z.R.101(SC)

It is important to note that some local leaders (chiefs) have spoken against child marriages and taken steps to discourage them. Chief Zombe of Mbala District in Northern Province for example stopped 14 early marriages in his chiefdom and punished 14 parents involved by making them cultivate three acres of land each.⁴⁰ Chief Mbuluma of the Senga people of Luangwa District also withdrew a 15 year old minor from marriage two days after she was married off. Despite this, the success of the actions by the traditional leaders is still limited and the practice of child marriages has continued to be practiced by people and some chiefs have condoned it in their chiefdoms. Chief Mbuluma stated⁴¹:

“I have been talking about early marriages for years now but my subjects do not listen. Sometimes they insult me telling their children that I am not their father. In 2005 a meeting was held with my subjects and it was resolved that once a school girl or any other teenager is married off, she could be withdrawn from the marriage, but the trend has not stopped.”

In addition, falling under the directive principles of state, the right to education “may be observed only in so far as state resources are able to sustain its application or if the general welfare of the public so unavoidably demands as may be determined by cabinet”,⁴² and a lack of the law in terms of protection of child rights placing a specific obligation upon a parent to ensure that a child gets education within the parent or guardian’s means entails that such a parent or guardian cannot be prosecuted or otherwise be brought to task for stopping a girl child from going to school and marrying her off.

3.3 Low Awareness Levels

Another impediment to the effective prosecution of sexual abuse cases is that awareness levels about the availability of formal justice mechanisms as well as protective measures are quite low among women. Knowledge is power. Therefore, if there is low awareness among the members of the general public, then it is hard for these cases to be dealt with as they are not reported. Paradoxically, the laws of the land are of general application (apply to all) and yet the public is largely ignorant about the existence of the laws and their content.

A study conducted by Women and Law in Southern Africa in 2002 revealed that people in Peri-urban and rural areas were more aware of the informal mechanisms of settling disputes than they

⁴⁰ The Post Newspaper, Saturday 27th December 2008

⁴¹ The Post Newspaper, Thursday 18th December 2008

⁴² GRZ (1991/1996) “Constitution of Zambia” Cap 1 of the Laws of Zambia

knew of protective institutions like NGOs and the Police. For example in a Chipata peri-urban compound in Eastern Province, both women and men testified to the use of religious institutions, their family members and an informal gender court existing in their community to settle various types of disputes including those of a sexual nature. Apart from these mechanisms, interviewees reported having utilized the local courts a number of times. None of them spoke of other courts. In rural areas, matters are usually reported to chiefs and dealt with in traditional courts. In western province, for example, interviewees stated that they utilized the KUTA (traditional courts) mostly when they had differences.⁴³

One key outcome of the study was that people tended to feel comfortable with the types of dispute resolution mechanisms they were used to than going to formalized courts. They were aware of the channels and therefore they utilized them more than any other channel. The added advantage was that these informal mechanisms rarely involved people to travel beyond their own areas of residence. Although some people saw the need to go to court when they had a dispute, they categorically stated that they used family or community or church members as the first channel of resolving their disputes.⁴⁴

Low awareness among people has proved to be a problem in sexual abuse cases because most institutions working in the legal area are not known by many people. The result is that a lot of cases are dealt with by the informal mechanisms and are never reported to the police or courts for prosecution. Low awareness levels of available services and rights can be attributed to factors such as geographical location of most service providers in urban areas, the inadequate access of most remote rural areas to the media, low literacy levels among many people in Zambia, use of technical jargon in the published documentations on sexual abuse and lack of translation into local languages.

3.4 Capacity and Infrastructure in Relation to the VSU

While the creation of the Victim Support Unit has been a huge step in fighting sexual abuse, there are several challenges that the unit faces and which limit its options in dealing with abuses against girls and women. The officers in the Victim Support Unit indicated that they lack enough

⁴³ M B Chuulu et al. Gender Violence the Invisible Struggle: Responses of the Delivery System in Zambia. Women and Law in Southern Africa, Lusaka, 2001. Page 21

⁴⁴ M B Chuulu et al. Gender Violence the Invisible Struggle: Responses of the Delivery System in Zambia. Page 23

transport to enable them follow up some of the cases especially where they occur in the remote parts of the country. In Senanga for instance, the victim support unit officer who is based at the district office is required to cover places outside the district which have no Victim Support Unit.⁴⁵

Transport is also important because of the need to transport victims to major health centres which handle rape and defilement cases. According to Madam Chilembo, the unit has since inception, been relying on transport donated by donor agencies such as the Royal Danish Embassy and even this has not been sufficient. This has seriously affected operations of the unit. In a case reported to WLSA, a woman complained that when her niece had been raped, the police told them there was no transport for her to be taken to the University Teaching Hospital. The police said they were relying on a central police station vehicle which apparently had broken down. The woman ended up booking a car and it was expensive.⁴⁶ Such an incidence is unfortunate as many Zambians are poor and cannot afford transport to and from the hospital.

Another difficulty that the victim support unit faces, like other police departments, is that of remuneration. Many a time, calls have been made by members of the general public, the police inclusive, to the government to review the conditions of service for police officers. One recent call was made by the former Inspector General of Police, Zunga Siakalima, to the Ministry of Home Affairs to look at the conditions of service for police officers as these were people who were charged with the responsibility of maintaining law and order.⁴⁷ Poor remuneration has affected the operations of the victim support unit as the officers have not been motivated to work hard and in certain cases have been subjected to temptations of money through corruption by culprits of sexual abuse. In a story which appeared in the post newspaper headed “Mazabuka cops arrest defiler over attempted bribery” two police officers were offered K1.8million by a suspected defiler so that they could destroy the evidence of his case. Fortunately, the officers turned down the bribe and arrested the man.⁴⁸ This case illustrates the point that a lot of officers are exposed to corruption in their dealings with sexual abuse cases. While some may turn down

⁴⁵ Interview with Agnes Chilembo, the Deputy National Coordinator for the Victim Support Unit on 5th December 2010 at Lusaka

⁴⁶ Interview with Madam Chuulu, Regional Coordinator at Women and Law in Southern Africa on 10th January, 2011 at Lusaka

⁴⁷ Police News, New Horizon Printing Press, Issue No.2 April-June 2005, p.20

⁴⁸ The Post Newspaper, 5th August, 2010

the offer as in this story, many, because of the pittance they get, usually give in to corruption and a lot of cases do not proceed to court.

Besides this, there is a problem of rank structure of the officers serving under the unit. For example, the National Coordinator of the Victim Support Unit, the overseer of all operations of the unit throughout the country is a superintendent who is based at police service headquarters. It is clear that the promotional ladder of these officers is stunted and not inspiring at all. Findings also revealed that the victim support unit lacks the necessary skills to enable them to adequately deal with sexual abuse. They lack basic legal training in child protection and human rights, as well as the Convention on the Rights of the Child. They lack child-friendly resources that aim to address the needs of abused girls. At the moment, they can remove a girl from her family or from the street, but there are few safe places to send her to.⁴⁹ Given all these negative factors, it is rare that cases of sexual abuse are investigated or come before a court.

3.5 Withdrawal of Cases

The blame for failure to follow up in sexual abuse cases does not exclusively reside with the Victim Support Unit. Sometimes, the family may not want to press charges and will often attempt to withdraw cases which have already been reported to the victim support unit. For instance, a mother lodged a complaint with the police that her 15 year old daughter was sexually involved with a man aged 30 years. The accused was actually caught defiling the victim. On arrival at the police station after some days, the victim made a written statement requesting the case to be withdrawn. The reasons for the withdrawal were stated to be her “unwillingness to take the accused to court as the accused had proposed to me and I accepted.” What was fascinating in this particular case was the victim’s parents supported her request for the withdrawal arguing that “a trial would psychologically affect their child who was still young and in school.” To this statement they added, “The matter has been resolved between the two families at home.”⁵⁰

According to the police, reasons for withdrawal of cases are varied, but are often that the perpetrator is the breadwinner and sometimes because of pressure from the perpetrator, his

⁴⁹ J Csette and J Kipperg (2006) .Suffering in Silence: the link between Human Rights Abuses and HIV transmission to Girls in Zambia. Page 68

⁵⁰ M B Chuulu et al. Gender Violence the Invisible Struggle: Responses of the Delivery System in Zambia. Page 15

relatives or the family of the victim who may not want their family name “tarnished”. Sometimes the victims will settle for some money from the perpetrator and therefore not want to go on with the case. This, as the police said, causes problems because the perpetrator will continue to abuse the victim. It also interferes with the right of women to access justice.⁵¹

There has been a debate within the feminist movement on whether compelling the witness does take away the woman’s choice as to whether to prosecute or not. The question here is, if the women do not want to prosecute sexual abuse cases, who then can force them to do so? As one police officer put it, “you can take the horse to the river, but you cannot force it to drink.” As such in sexual offences, including rape and defilement, the law allows withdrawal of cases from the police as long as there is a reason to do so, even if the reason is vague.

3.6 The Requirement for Corroboration

There is a requirement in the Criminal Procedure Code Chapter 88 of the laws of Zambia that a child’s testimony or indeed that of any sexual offence victim, has to be corroborated to be admissible as evidence. There are a number of reasons for this. First, complaints are sometimes motivated by spite, sexual frustration or unpredictable emotional responses. Secondly an allegation concerning the commission of a sexual offence is easily made but difficult to defend. Offences such as indecent assault often leave no visible traces. In rape cases not only the alleged act of sexual intercourse by the complainant but also the question as to whether or not the victim consented to the act, sometimes depends upon the word of the victim as against that of the accused.⁵²

While this rule was intended to provide justice to the accused, it has not helped in the prosecution of sexual abuse cases because it is difficult to obtain evidence in sexual abuse cases. The courts usually require evidence of blood, semen or physical injury but this is usually unavailable as victims who may be ignorant of the need for corroboration, will usually take baths and clean themselves, and therefore wash away the evidence before going to court.⁵³

⁵¹ Interview with Agnes Chilembo, Deputy National Coordinator for the Victim Support Unit on 5th December 2010 at Lusaka

⁵² J Daka, sexual offences and how to deal with them. Page 16

⁵³ Interview with Eric Sakala, the Legal at Young Women Christian Association on 3rd December 2010 at Lusaka

In cases of defilement and rape, there is general requirement that the victim must have a medical report done within 48 hours of the defilement. This creates problems because not all victims of sexual abuse report the incidences immediately but are delayed by such factors as fear, shame distance and red-tape. In addition to this, even after the medical examination is done, some doctors are unwilling to go to court to testify. This puts the victim in a very awkward position because there is no one to corroborate her evidence.

The requirement for corroboration constitutes an impediment to the effective prosecution of sexual abuse cases in that when a victim is sexually abused, and is unable to undergo a medical examination, there will be no evidence to pin down the perpetrator apart from the child's story. What this entail is that the perpetrator will be aware of the fact that the victim is unable to have evidence to confirm his acts and he will go free. This creates an attitude among would be offenders that lack of evidence will prevent their arrest and/or conviction and so they will go to great lengths to destroy all crucial evidence.

Another way in which corroboration has affected the prosecution of sexual abuse cases can be illustrated by the case of *The People v. Godden Bola*⁵⁴. In that case, Bola was accused of having forced sexual relations with his secretary on three occasions in 2002. He was tried for the offence of indecent assault and acquitted in July 2004 after a long trial that captured the headlines. The Times of Zambia, quoted statements made by the trial magistrate in acquitting Dr Bola. The Magistrate stated that,

“It was highly questionable for an old woman to be forced into having sex on several occasions without revealing to anyone. Silence raised concern and showed that she consented to the alleged offence. The complainant had not hallucinated, showing that she had not been traumatized.” Further he noted that “the complainant had continued to work in the some office long after the events occurred without feeling demolished. Accordingly, her complaint should be dismissed as there was no evidence of external bruising in the medical report.”

These remarks lie at the core of criticism of the requirement for corroboration. The criticism encompasses the fact that the victim in rape cases has to prove that she did not consent through medical proof of injury sustained in a struggle. Dr Mbewe, a professional doctor at the University Teaching Hospital, is of the opinion that the Victim might not have had genital injury or haemorrhage, but that does not mean that the victim was not raped. If proper DNA tests were conducted to look for blood types, sweats, finger nails or spermatozoa, then better tests would be

⁵⁴ Lusaka Subordinate Court case of 2002

found.⁵⁵ This facility is however only available in the major hospitals in provincial areas. He mentioned that travelling to major urban areas for such a purpose can destroy crucial evidence.

3.7 The Requirement for a *Voire Dire*

In defilement proceeding, accused persons have been acquitted because of inadequacies of the law arising from legal technicalities. For example there is requirement imposed on the court to conduct a *voire dire* where a witness is a child. This means that the court must not convict the accused if the witness testifying is of a tender age. Therefore in *Zulu v. the people*⁵⁶, the court held that before a conviction if the court is faced with a witness of the tender years, it must inquire whether the child understands the nature of an oath and the importance of telling the truth. If it decides that the child understand the nature of the oath, it then must satisfy the reception of her evidence. But if the court is not satisfied of the foregoing matters, the child's evidence may not be received at all.

What this entails is that the need to conduct a *voire dire* accords more protection to the offenders to the detriment of sexual abuse victims. This problem is made even more severe due to the fact that the judge can also use his discretion to determine whether the child is competent and therefore whether his or her evidence is admissible. The problem with applying the strict rules of evidence to the victims of sexual abuse of the tender age is that the child is likely to be afraid especially if the accused is close to her. There is therefore, a possibility of the child telling different stories especially on cross examination. A child of tender age also is likely to be intimidated, especially where the case is not held in camera or where she was given something by the accused before the parents realized the sexual assault.⁵⁷

3.8 Problems of Delay in Cases of Sexual Abuse

The issue of delay in disposing of cases is one of the most serious concerns in Zambia. In dealing with these cases, the courts are ordinarily the last structure in the criminal justice system. This can be explained by the fact that there are many role players involved in the prosecution of a

⁵⁵ J Csette and J Kipperg (2006) .Suffering in Silence: the link between Human Rights Abuses and HIV transmission to Girls in Zambia. Page 69

⁵⁶ (1973)ZR.230(SC)

⁵⁷ T Daka.The Prevalence of Sexual Violence in Zambia: Are Existing Laws Adequate to Curb the Vice. Obligatory Essay Submitted in Partial Fulfilment of the Award of the Bachelor of Laws Degree 2010.Page 41

sexual abuse case. From the stage of reporting, there are a lot of processes which have to be done for instance the medical examination of the victim, conducting investigations and securing witnesses. The result of all these processes is that a great deal of time elapses and the case may drag on for years before it is finally heard by the courts of law.

Secondly, delays may result from court procedures themselves in the form of remands, adjournments, applications and granting of bail. Court records at the High Court show that rape cases can take as long as a year or more before completion due to reasons as cited above. On the basis of these reasons, it can be contended that delays have a bearing in the effective prosecution of sexual abuse cases. This may happen firstly by affecting the victim and other witnesses' recollection of events so that their evidence may end up sketchy and weak due to the lapse in time. This can create room for the accused to be discharged on the basis of the witnesses' credibility or lack thereof. Secondly, delays deter young women from pursuing cases as going through the court process is seen to be stressful and traumatic for them. Most of them would rather sit and settle the matter outside court.

3.9 Language and Court Procedures

The language and procedures employed in the Subordinate Court, High Court and Supreme Court are formal. The language barrier is however mitigated by the availability of language interpreters. Translation presents the problem of distortion of evidence provided by the victim, the accused or other witnesses. The procedures in the courts of law are rigid. The aura in the court rooms is simply intimidating to the uninitiated. The authority of the judicial officers is viewed with reverence. As a result, it is not uncommon for the majority of people to avoid higher courts in preference to the local courts where they are able to express themselves more freely in the local languages.⁵⁸

The problem that victims face in court is compounded by defence lawyers who, in pursuit of the interests of their clients, harass victims through the use of insensitive language and a demeaning attitude. This has on occasions affected the confidence of the victim and thereby affected their credibility and demeanor as it appears to them that they are the ones on trial. Because of the

⁵⁸ M B Chuulu et al. *Gender Violence the Invisible Struggle: Responses of the Delivery System in Zambia. Women and Law in Southern Africa*, Lusaka, 2001. Page 26

conduct of defence lawyers, who are willing at all costs to win the case, as opposed to the concept of real and substantial justice, a lot of victims do not want to pursue cases because they do not want to be seen to be lying.⁵⁹ Most of them would thus prefer local courts where legal practitioners are not permitted to represent a party or parties before them. Most abuse cases therefore end up being treated as civil matters and may result in compensation for the victim's family.

3.10 Lack of Properly Trained Prosecutors

Public prosecutors in Zambia are mainly trained at the National Institute of Public Administration. The training is divided into two parts. There is basic prosecutions program that runs for 4 months and offers 6 courses namely criminal procedure, criminal law, interpretation of statutes, general principles of law, the law of evidence and communication skills. After the basic course, a prosecutor undergoes an advanced program whose duration is 9 months.⁶⁰ The ideal situation is that a prosecutor is trained in one of these courses. In practice however, police officers who actually prosecute sexual abuse are in three categories.

The first category is that of trained officers sponsored by the police. These undergo both the basic and advanced training and, upon completion are transferred to prosecutions where they are promoted to sub-inspector. In this category, some have only done the basic training but have worked for years without attending the advanced course.

The second category is that of officers who use their initiative to study privately with different institutions for a certificate in law, legal studies or criminal investigations. When awarded these certificates, they present them to police command which then transfers them to Prosecutions where they undergo job on training and thereafter start prosecuting. The third category is that of officers who are untrained but because they are identified to be sharp, are transferred to prosecutions and are mentored by senior officers till they become efficient.⁶¹

⁵⁹ N Muller and N Hollely, *Women and Children as Witnesses in Cases of Gender Based Violence*. Printrite, Port Elizabeth, 2009. Page 113

⁶⁰ Interview with Agnes Chilembo, the Deputy National Coordinator for the Victim Support Unit on 5th December 2010 at Lusaka

⁶¹ J Mulaye, *Prosecutions in Zambia: Why the Failures*. Obligatory Essay Submitted in Partial Fulfilment of the Award of the Bachelor of Laws Degree 2003. Page 37

Such low academic qualifications pose a serious weakness in the Criminal Justice System as reliance is placed on personnel who are either ill trained or untrained to conduct such a grave task of prosecuting. This is especially so when it is appreciated that these prosecutors come up against defence lawyers who may not only be well paid but are by far more qualified (with degrees) than police officers are. Admittedly, these ill-qualified officers find it hard to argue With qualified Lawyers. In fact, the former Attorney General, Mr. Malila alluded to the fact that most accused persons in the subordinate court get acquitted on technicalities as a result of poor training. He cited the example of a case where he himself was appearing before a magistrate with an ill-qualified prosecutor on a charge of theft. Upon using a Latin maxim, the police officer was at a loss, and that is how the accused was acquitted.⁶² This trend is disastrous in the sense that people who ought to suffer punishment escape. The result is that incidences of crimes are always on the increase; and people shift the blame on the ineffectiveness of punishment when in fact punishment is not actually employed or is employed improperly.

Victims of sexual abuse, like all other victims of crime, are entitled to have their best interests taken into account by prosecutors who are obliged to use their best endeavours and skill to prosecute such offences. If this does not happen, people lose confidence in the courts and resort to other alternatives which may either not be in their best interests or which by their very nature make sexual abuse invisible and are therefore counter-productive in properly addressing this issue.

3.11 Geographical Inaccessibility/Long Distances

The other constraint which prevents the effective prosecution of sexual abuse cases is the physical inaccessibility of courts. In Zambia, the three higher courts whose job it is to administer statutory law are located in the major provincial towns. Thus, those living in rural areas or in the periphery of the main towns find it difficult to access these courts.

The research undertaken by WLSA found that most of the magistrate courts with sufficient jurisdiction over most sexual offences are centralized in district headquarters and most

⁶² This was a narration by Mr. Malila, former Attorney General, Republic of Zambia.

magistrates refuse to be deployed to rural areas.⁶³ Sexual abuse victims thus have to travel long distances in order to access courts in the nearest districts. Even those with courts within their districts have to travel long distances to district centres to access courts with ample jurisdiction. The road network in the rural areas is poor or sometimes non-existent. Consequently, most people in the rural areas have no, or very limited access to public transport. As a result, they have to walk on average six to eight hours to access the nearest court. The only fortunate people are those who can afford bicycles. Parties also have to spend a lot of money in paying transport costs for their witnesses. In view of these problems, it is not uncommon, as one Magistrate observed for parties to stop coming to court in the middle of their cases because of the distances.⁶⁴ In other cases, they will simply go to local courts which are much more decentralized than the other three courts.

3.12 Lack of Confidence and Trust in the Justice System

The professional integrity of the justice system is directly connected to the public's perception, satisfaction and confidence with various institutions and judicial officials.⁶⁵ According to the research by WLSA, the public perception about the justice system in Zambia is rather negative. A lot of people in Zambia believe that justice can only be achieved by rich people. According to findings from amongst people in North western province, 66% of people believe that the legal system is ineffective, and almost 40% of them believe that this ineffectiveness is due to corruption. According to another important study among people in Eastern province, about two thirds believed that Judges treated rich and poor differently and some were of the view that there was one type of justice for the poor and a different one for the rich.⁶⁶

The courts are not the only institution which people do not trust. The police also tend to be seen to be unable to deliver justice because of certain factors such as corruption. According to the WLSA findings in the Eastern Province, 79% of respondents were of the view that some police personnel were corrupt while more than half (53%) were of the view that most policemen are corrupt. Given the fact that most, if not all, Victim Support Unit offices are located at police stations, a lot of people do not appreciate the difference between the officers in the VSU

⁶³ M B Chuulu et al, Gender Violence the Invisible Struggle: Responses of the Delivery System in Zambia. Page 14

⁶⁴ M B Chuulu et al, Gender Violence the Invisible Struggle: Responses of the Delivery System in Zambia

⁶⁵ M B Chuulu et al, Gender Violence the Invisible Struggle: Responses of the Delivery System in Zambia. page 16

⁶⁶ Human Rights Watch Interview on 20th May 2002 at Lusaka.

department and other police officers. In most people's eyes, these are persons of the same kind: unhelpful, crooked and corrupt. Very few victims therefore will take their cases to them unless of course the victims want the offender to be taught a lesson (beaten), which is a reputation that police officers have come to be known for.

Given this negative perception of the justice system, it is rare that all cases will be reported or come before a court. Most women will therefore shun away knowing that it will be a fruitless exercise if they attempted to seek justice.

3.13 Conclusion

In conclusion, this chapter has shown that despite the existence of laws that punish sexual abuse, there are a lot of impediments which prevent cases of sexual abuse from being effectively prosecuted. Law enforcement agencies are unable to effectively deal with cases of abuse because of factors like the practice of child marriages which are practiced in most rural areas and are not reported because they have been accepted as culturally sound, the withdrawal of complaints by the victims for reasons of personal benefit and the lack of resources and infrastructure so that cases of abuse are quickly responded to and the court process is set in motion. For their part, victims are reluctant to seek criminal prosecutions because they do not believe that they will get any justice from the courts. The insensitivity of the court officials in the way they ask questions as well as the public perception of a corrupt judiciary, usually results in many potential complainants shunning from taking cases to court, but opting instead to have the matter settled by way of reconciliation. Other factors which were also identified as having an effect on the victim's decision not to seek criminal sanctions included the low awareness levels among most people as to their legal rights, cultural considerations and the trauma and stress that is associated with the court process. The next chapter gives a conclusion to the research. It also offers recommendations as to what needs to be done in order to deal with these challenges and ensure that cases of sexual abuse are dealt with effectively.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 General Conclusion

The focus of this study has been to bring out the impediments that prevent the effective prosecution and elimination of sexual abuse cases in Zambia. The study has shown that sexual abuse is a problem in Zambia. Findings from the field revealed that there have been various reasons advanced as causes of sexual abuse in Zambia. The advent of the HIV/AIDS pandemic has posed a dynamic challenge to all concerned in that there are many people masquerading as traditional healers and prescribing sex with a virgin as some kind of cure for HIV infection. In addition, traditional healers have greatly contributed to the increase in the prevalence of sexual abuse cases in Zambia in that they have continued to prescribe sex as a means to increase the wealth of their clients.

Secondly, this dissertation has identified inadequate housing as another factor which is responsible for the high prevalence of sexual abuse cases in Zambia. Male relatives, friends and visitors often end up sharing a room with young children due to lack of adequate space. This renders the girl-child susceptible to sexual abuse. This factor of poor housing is further compounded by the issue of blended families, which represent families in which at least one parent has been previously married. A blended family is characterized by a complicated system of blood relations between parents and children. It may include step fathers or mothers, step sisters or brothers or cohabiting boyfriends and girlfriends. The study determined that blended families are also responsible for the high levels of sexual abuse cases in the Zambian society. Finally, peer pressure and alcohol abuse were identified as the other causes of sexual abuse cases in Zambia.

The study found that while there are a number of measures which exist to deal with cases of sexual abuse and ensure that they are prosecuted, it has been difficult to do so. It came out clearly that in instances where the victims try to seek justice in dealing with these cases, they encounter problems. One of the problems they encounter was found to be the attitude of some

families towards sexual abuse cases. It was established that in some families sexual abuse is perceived as a wrong for which there must be compensation. The study revealed that in certain instances where sexual abuse cases take place, the family is perceived to be the one wronged rather than the victim herself. Compensation will therefore be sought for by the family rather than criminal sanctions for the victim. This, it has been shown, has the effect of excluding the woman from the process of seeking justice for a crime that has been committed against her. Another problem which victims face was found to be the lack of knowledge or/and availability of the formal institutions which are there to deal with sexual abuse. It was pointed out that most of these institutions are based in urban areas and are largely inaccessible to people in rural areas. Other problems which were identified as constituting a bar to the prosecution of sexual abuse cases include long distances to health centres, police stations and courts, and corruption amongst law enforcement officers.

It was further argued that the courts which are a formal structure in which offences of sexual abuse are adjudicated upon, have a number of problems such as technical procedures, delays and language. As regards language, it was found to be both technical and at times unacceptable to victims because of its crudeness. Secondly, it was found that court officials are insensitive in the way they ask victims questions. They do it in such a way as to make victims feel that they are the ones on trial. The result is that most women have been seeing the courts as a place where they get harassed by defence lawyers, rather than a place where they can get justice.

Apart from the problems faced by victims, it was found that law enforcement authorities also face a lot of challenges which impede their efforts in fighting the scourge. It was found in particular that the Victim Support Unit lacks all the necessary tools to fight sexual abuse. They have no proper offices, they lack resources and equipment. They need transportation, since the VSU is unlikely to respond to a case that is some distance away. The officers also need to be paid well so that they can be motivated to work hard and be shielded from the influences of corruption.

4.2 Recommendations

Having discussed the prevalence of sexual abuse in Zambia and the constraints that are faced by victims and enforcement agencies alike in curbing the abuse, there is need for concerted efforts by all sectors of society to establish a nation free from sexual abuse against women and girls. It is against this background that measures be taken in the following ways:

4.2.1 Evidence of a Child

It has been shown that evidence that is required to prove sexual abuse is often difficult to find as the offence occurs in secrecy. Where the victim is a child, there is a tendency to subject the child to a *Voire dire* in order to assess whether or not her evidence will be admissible. Even in cases where the evidence will be admitted, it will be treated with suspicion because of lack of corroboration or because of a weak explanation as to what really transpired. To deal with these problems, it is submitted that a number of measures that are aimed at making the physical presence of the child in court as the last option should be taken. Firstly, there must be the use of an intermediary or surrogate witness. This is someone who presents the evidence on behalf of the child. The surrogate witness can be a parent, a court official or a skilled worker with experience in handling sexual abuse cases. He or she can record the evidence of the child and present it as evidence-in-chief. The accused, or his advocate, should, if he pleases, be allowed to cross-examine the surrogate witness.

Secondly, the evidence of the child can be obtained at a preliminary hearing before a magistrate. This evidence can be video-recorded and shown at trial. Here too a psychologist, a medical doctor or indeed any worker with experience in sexual abuse should be used to determine if the child can be cross-examined without causing any emotional harm. The implementation of these suggested procedures will entail effectively dispensing with the '*voire dire*' procedure described in chapter three. This is so because there will be no need to determine whether the victim is a child of tender years or not so as to determine whether he or she will give evidence on oath or not. Any evidence of the child obtained in either of the two ways must be admissible

At times though, a child's presence in court cannot be dispensed with. If the child is required to be physically present in court, then the atmosphere in court should be as friendly as possible. Prosecutor must be obliged to acquaint the child witness with how a court looks like, who shall

be present and how trial is conducted. The Juveniles Act requires that the child should be accompanied by a parent or guardian at all stages of the proceedings. It has, however, been shown in this paper that perpetrators of sexual abuse are sometimes parents and guardians. Thus it is submitted that if the alleged offender is a parent or guardian of the person, the child can be accompanied by another person close to her or any social worker that the child can trust.

When testifying, the girl may be required to describe the abuse in detail. To assist children to do this, it is suggested that anatomical dolls be used. A report by the South African Commission observed that⁶⁷;

“Many foreign jurisdictions allow the use of anatomical dolls to assist children in relating to their allegations of abuse. An anatomically correct doll is one equipped with parts resembling genitalia. One normally finds a set of adult dolls consisting of each gender and child dolls of each gender. The child may demonstrate activity by using the dolls when verbal skills are limited.”

Medical evidence at times corroborates the child’s testimony. But in many cases this is unavailable. One Source, however, offers a very helpful suggestion⁶⁸:

“In many cases there is no physical evidence, yet a physician may assist a Magistrate by informing him that lack of medical evidence does not rule out abuse. Magistrates may expect that certain types of sexual abuse may necessarily cause physical injury. For example, Magistrates may believe that sexual intercourse necessarily damages the hymen. Damage to the hymen does not always occur however. When the defence argues that abuse did not occur because there is no injury, expert medical testimony should be admitted to help the Magistrates to understand that lack of injury does not mean that the child was not abused.”

A medical doctor with expertise in this field can be summoned as an expert witness to explain the above. Since victims of sexual abuse sometimes exhibit changes in their behaviour, an expert psychologist or psychiatrist can be summoned to testify as to the victim’s state of mind or changes in behaviour which arise as a result of sexual abuse. We have abundance of medical personnel in Zambia who can be used for such purposes. This is not to say that medical doctors have to testify in all cases. Since their evidence is used to corroborate the testimony of the victim, they will be used when the court cannot convict on the unsworn evidence of the victim.

⁶⁷ [Http://geocities.com/Wellesley/5850/medical.htm](http://geocities.com/Wellesley/5850/medical.htm) (Accessed on 7th March 2011)

⁶⁸ L Chaka-Makhooane, Sexual Violence: The Constraints Women Face in Accessing Justice, Women and Law Southern Africa Research and Education Trust, Lesotho, 2004. Page 72

4.2.2 Early Marriages

In Chapter three, it was mentioned that a man can, under customary law, marry a girl under sixteen years and have sexual relations with her without any peril of prosecution under section 138 of the Penal Code. Some parents in Zambia have under the umbrella of customs, opted to have their daughters married before the age of sixteen years. Customary laws are however not static and the dynamic element in customary law could be influenced to work towards protecting children. The starting point would be education and awareness building. In particular, there is need to promote awareness of the dangers of cultural practices that put girls at risk of sexual abuse. The Government and Non Governmental Organisations dealing with sexual abuse must work in close collaboration with traditional leaders (chiefs and headpersons), parents and other guardians of customary law in increasing knowledge on the rights of the child as it relates to child protection. Traditional leaders, healers, parents and other guardians of customary law should be convinced to refrain from and prohibit the practice of early marriages by teaching them about the evils of sexual abuse. Secondly, there is need for the government to come up with a strong position against practices relating to early marriages by removing the use of puberty as a determinate for marriageable age for the girl child. The law should unequivocally fix the age of marriage to be 21 years and prohibit all marriages under that age, whether they are customary or statutory marriages. The new law should be widely disseminated to increase knowledge and compliance.

4.2.3 Community Education to Promote Awareness

Recent developments, and particularly the establishment of the Child Protection Unit and the enactment of the penal code amendment Act of 2005, are to be commended. However, findings about the limited awareness by members of the public of their rights and the functions that these institutions play show that improvements are needed with regard to public awareness on people's rights and to which institution they can go to in cases where these rights are violated. Legal awareness is the foundation for fighting sexual abuse. Women and girls cannot seek remedies from the criminal justice system when they do not know what their rights and entitlements are. The government should work with Non Governmental Organisations to disseminate information targeted at raising awareness among women and girls to be able to report situations that expose them to abuse, and, to know how and where to report when they are abused. These information

packages must be tailor made to cater for both in school and out of school children, and must be provided to the public in a language that they can all understand.

4.2.4 Reporting Obligations

Sexual abuse cases go unreported and some offenders go about their exploits with impunity. It is therefore suggested that parents and guardians must be obliged, by law, to report any incidence of abuse to the Police or any relevant authority, such as an authorised NGO. Failure to do so should attract criminal penalties for being an accessory to the crime of rape or defilement as the case may be. A legal obligation to report is an important element for gaining knowledge about the problem. But most importantly, it will ensure the protection of the victim from further abuse and the punishment of the abuser. Finally, it will prevent informal settlements of sexual abuse related offences by families without resort being had to the criminal justice system.

In the same line, once the matter has been reported to the police, they should be obliged to bring the case to court within a specified time. Sexual abuse should be treated with the same seriousness as that accorded to murder (which cannot be withdrawn) and should not be withdrawn by the victim or her relatives.

4.2.5 Judiciary

The judiciary should rebuild its image. A campaign should be carried out by the judiciary itself to alert the public to the fact that the judiciary is independent of the government, and that it exists to protect the rights of the people. The government should also help in securing the confidence of the judiciary by ensuring that adjudicators are paid well (and are thus not susceptible to corruption). There is also need to build a lot of court rooms across the country and ensure that these are manned by properly qualified personnel. Besides that, there is need to improve case management within the judiciary. Some of the excessive delays in disposing of cases in the judiciary are as a result of the absence of effective case management techniques. Electronic systems should be introduced to monitor the disposal of cases in the three higher courts. Finally, there is need to simplify procedures for filling cases and publicize them widely in all major languages

4.2.6 Improving the Effectiveness of Other Institutions dealing with Sexual Abuse

Institutions presently providing services to victims of sexual abuse such as the Victim Support Unit, the Child Protection Unit and Non-Governmental Organisations should be strengthened and decentralized to rural areas. There is need to inject sufficient resources in the Victim Support Unit. The myriad of problems experienced by the police is a clear manifestation of the need for adequate funding. The issue of resources needs to be addressed as a matter of urgency. Police work requires investigation and they need effective communication and transport, which they do not have. The functioning of the police is severely compromised by working in such a difficult environment. Due attention should be paid to providing the basic necessities for the whole justice delivery system to function for people to access justice and human rights. This is because the entire formal justice system is not functioning well. For instance basic necessities such as telephones, transport and fuel are not available even in urban areas. The Government must also offer assistance to Non-Governmental Organisations such as Law and Development in Africa (LADA) and Community-Based Organisations (CBOs) which work in rural areas and consolidate the work that they have embarked on so far.

4.2.7 Training Programmes

Training programmes should be launched to improve the skills of personnel involved in the delivery of criminal justice in general and in matters relating to gender, juvenile and human rights in particular. Teachers, social workers and counsellors must also be trained to identify vulnerable or abused children and to take steps to provide protection. It is further suggested that such programmes should not be undertaken by an organization for its members, but should involve all stake holders (lawyers, doctors, police officers and other officials) from both the private sector (such as NGOs and law firms) as well as the government. Efforts must also be made to ensure that as many people as can be accommodated, attend.

4.2.8 Punishment

Despite the opposition advanced by Human Right activists, castration is recommended as the only avenue through which such offence will be completely eliminated. Sexual abuse is not only the invasion of the victim's privacy but amounts to the infringement of one's sexual autonomy and this is regarded by many as a fundamental freedom. Therefore, sexual abuse takes away the

victim's fundamental freedom and perpetrators of such offences need to be castrated in order to protect women's fundamental freedom.

4.3 Conclusion

In conclusion, this chapter has concluded that sexual abuse is a very big problem in our country. Efforts have been made and are being made to deal with the scourge. However until the factors which have been raised herein as impediments to the effective prosecution of sexual abuse are addressed, the vice will continue to pose a serious challenge to the government and all stakeholders who are interested in eliminating it. It is therefore important that the recommendations herein are implemented for it is only then that incidences of sexual abuse will drastically reduce.

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