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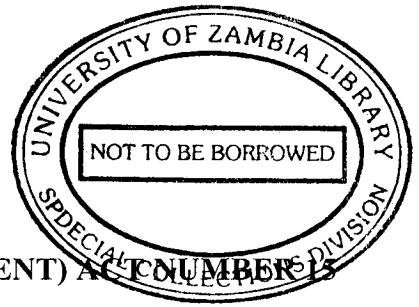
**THE EVALUATION OF THE PENAL CODE (AMENDMENT) ACT NUMBER 15
OF 2005 CHAPTER 87 OF THE LAWS OF ZAMBIA.**

BY

TEMBO SIMON M.

UNZA

2007



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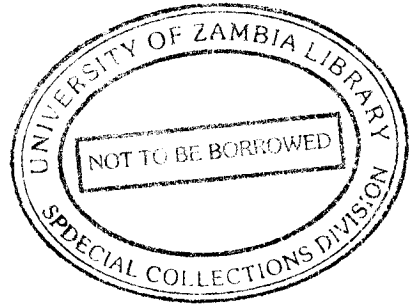
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School of Law

Lusaka.

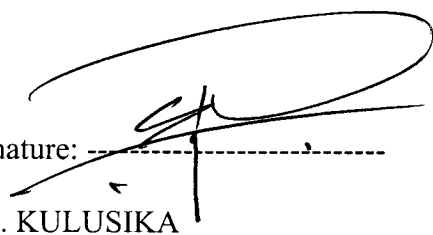


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SCHOOL OF LAW

I recommend that this obligatory essay prepared under my supervision by Tembo Simon M. (21008591) entitled;

**THE EVALUATION OF THE PENAL CODE (AMENDMENT) ACT NUMBER 15
OF 2005 CHAPTER 87 OF THE LAWS OF ZAMBIA.**

Be accepted for examination. I have checked it thoroughly and I am satisfied that it fulfils the requirements relating to the formant as laid down in the regulations governing directed research.

Signature: 
S. E. KULUSIKA

DATE: 06.02.2008

Senior Lecturer-in-Law (Supervisor).

DECLARATION.

I, Tembo Simon M. of computer number 21008591, do hereby declare that the contents of this Directed Research Paper are entirely based upon my own findings and that I have not in any respect used any body else's work without acknowledging the same to be so.

I therefore bear the responsibility for the content, errors, defects and omissions therein.

DATE: 06/02/2008

Signature: 

DEDICATIONS.

To my beautiful lady Agnes, for your prayers, encouragements and for being so patient and loving. You have caused me to believe the saying that “behind every successful man is a woman.”

To my parents Mr. Festus L. Tembo and Mrs. Josephine Banda Tembo for the love and to my Grandparents, the late Mr. Levision Tembo (1928-2007) and Mrs. Fatness Z. B.Tembo for bringing me up in-to a responsible person.

PREFACE.

Ordinarily, studies of new laws which have just been passed by Parliament or indeed judgments handed down from the superior courts should occupy the centre stage in the legal fraternity. This is because the new laws will normally affect the public either positively or negatively and thus Lawyers must have a full understanding of the implications of the new laws so that they may help both the law makers, in making the laws which are responsive to the social problems of the time without bringing unnecessary hardships to the public and the public by raising awareness of that new law.

Certain criminal acts or omissions could be reduced in our society if the law makers responded quickly to the needs of the general public by making laws dealing with those particular social problems in society and by making the general public aware of the existing and new laws so that the would be offenders may be deterred by the likely consequences of their intended acts.

The object of this paper is to evaluate the Penal Code (Amendment) Act no.15 of 2005 chapter 87 of the laws of Zambia which was enacted in order to deal with the increase of cases of sexual violence against women and children. It is also the aim of this paper to raise awareness of this Act to the public, Police officers, Lawyers and other Organizations concerned.

TEMBO SIMON M.

SCHOOL OF LAW, UNZA, 2007

LUSAKA.

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STATUTES.

The Constitution of the Republic of Zambia Chapter 1 of the Laws of Zambia.

The Criminal Procedure Code Act Chapter 88 of the Laws of Zambia.

The Penal Code Act Chapter 87 of the Laws of Zambia (including The Penal Code (Amendment) Act No.15 of 2005).

LIST OF ABBRIVIATIONS.

AIDS means Acquired Immuno Deficiency Syndrome.

CRC means United Nations Convention on the Rights of the Child.

CEDAW means United Nations Convention on the Elimination of Discrimination against Women.

ABSTRACT.

In the recent years, there has been an increase in the incidences of child sexual abuse and gender based violence in general in which women and girl children in particular have been victims of all sorts of sexual abuses. This has been a source of concern among the women activists, the church, the civil society in general, the politicians, the Government, most of the traditional leaders have also expressed their concern and indeed the public at large. All the sections of the society have been demanding for the enactment of tough laws with stiffer penalties to deal with this situation. In response to this problem, Parliament in the year 2005 moved in and enacted (the new law) the Penal Code (amendment) Act No. 15 of 2005 Chapter 87 of the laws of Zambia. Despite the enactment of the new law however, there is still an alarming increase in the number of cases of sexual offences in Zambia, hence the need to find an effective and lasting solution to this social problem.

It is therefore the intention of this research to evaluate whether the response by Parliament is adequate and appropriate to deal with the problem at hand and also to suggest other measures and how best the criminal justice system can implement the new law to achieve the desired results.

CHAPTER ONE

1.1 INTRODUCTION

In every society the law is seen as an instrument of social control. It is used to achieve the needs of the society and to balance between public and individual interests. Therefore, law is always resorted to in order to either deal with any unacceptable social occurrences or further the interest of the society. A good law must be able to achieve the intended purpose. The constitution of the Republic of Zambia in part III provides for a range of rights for children though some are not particularly rights of children. In addition there are other Acts of Parliament such as the Penal Code Act Chapter 87 of the laws of Zambia which prohibits violation of rights of children such as sexual abuse.

Besides, Zambia is a party to the Convention on the Rights of the Child (CRC) signed in September 1990 and ratified on the 6th December 1991. This entails that Zambia must bring her national policies and laws in line with the principles of the convention. Some of the provisions of the CRC which are of importance to this research are; Article 34 which provides that;

“The state shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography”.

and Article 35 provides that;

“State parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction or the sale or traffic in children for any purpose or in any form”.

In the recent years there has been an increase in the occurrences of some socially unacceptable incidences of child sexual abuse and gender based violence which sparked off calls from all walks of life in Zambia to amend and/or enact relevant laws to deal with the situation. In response to these calls and in order to confirm to some of the provisions of the CRC, Parliament in 2005 enacted the Penal Code (Amendment) Act No.15 chapter 87 of the laws of Zambia (here in after referred to as the new law). It is the intention of this research to evaluate whether or not the new law is the best possible law to deal with the problem at hand in so far as it relates to sexual violence against females particularly children who are the weakest victims of sexual offences and also briefly looks at how Zambia has implemented the CRC provisions relating to child sexual abuse. The research is presented in five chapters. Chapter one is basically an introduction which includes the background, the statement of the problem, the review of what other scholars have written on the subject, research objectives and the rationale for the research. Chapter two discusses the law as it was before the amendment, some of the factors which might have led to the increase in the incidences of child sexual abuse and how the public reacted to that increase. Chapter three looks at the action taken by Parliament and examines or evaluates the Penal Code (amendment) Act No.15 of 2005 which is the response of Parliament. Chapter four focuses on the process of handling cases involving sexual violence against children which includes reporting of cases to the police, arrest of offenders, prosecution and protection of the victims. The last chapter consists of recommendations and the conclusion.

1.2 BACKGROUND

In the past ten years, there has been an increase in the incidences of child sexual abuse and gender based violence in general in which women and girl children in particular have been victims of all sorts of sexual abuses. This has been a source of concern among the women activists, the church, the civil society in general, the politicians, the Government, most of the traditional leaders have also expressed their concern and indeed the public at large. All the sections of the society have been demanding for the enactment of tough laws with stiffer penalties to deal with this situation. In response to this problem, Parliament in the year 2005 moved in and enacted the new law which introduced mandatory minimum sentences and stiffer penalties.

1.3 STATEMENT OF THE PROBLEM

Despite the enactment of the new law, which has introduced stiffer penalties than before and mandatory minimum sentences, there is still an alarming and continuing increase in the number of cases sexual offences against girl children in Zambia. This shows that the problem might be more complex such that stiffer punishments for offenders may not be the solution, or probably there are other issues that needs to be addressed in order for the stiffer penalties to be a real deterrence or there should be some other solutions altogether. This therefore calls for a continuous search for a more comprehensive and effective solution to this social problem.

1.4 PURPOSE OF THE STUDY

The objectives of this research shall be to determine whether the new law is the appropriate solution to the problem of increasing sexual abuses against female in the light of the fact that even after its enactment the number of cases of sexual abuse has continued to increase. The research will also endeavor to highlight the causes of the increase of sexual offences against children and suggest other measures to control the prevalence of these offences and how best the criminal justices system can enforce the law in order to achieve the desired results.

1.5 SPECIFIC RESEARCH QUESTIONS

The specific questions which this research attempts to answer are;

(a) What were the inadequacies of the Penal Code in dealing with the sexual offences against females particularly the under age before its amendment in 2005?

(b) What are the causes of the increase of number of incidences of sexual violence in the recent years?

(c) Is the enactment of the new law the solution to the problem of increasing sexual offences?

(d) Does the Zambia Police Service have the capacity to effectively deal with sexual cases in order to prevent the occurrences, bring the offenders before the law and protect the victims?

(e) Are there any weaknesses in the criminal justice system which may make the implementation of the new law difficult and thus fail to yield the results which were intended by Parliament?

1.6 JUSTIFICATION/RATIONALE

This research may be justified on the following grounds;

1.6.1 Promotion of the Rights of Children and Women

Sexual abuse and gender based violence are a violation of human rights and puts victims at the risk of contracting HIV/AIDS. Therefore it is necessary to advocate against such vices in order to promote the rights of women and children.

1.6.2 Highlighting the Causes of the Increase of Sexual Abuses Against Children

The issue of sexual abuse and gender based violence has become a source of concern to every right minded person in this country hence the need to find an effective solution to the problem. However a meaningful solution can not be found without understanding the causes of the problem to be addressed, therefore it is important to highlight some of the causes of the increase in the number of offenses of sexual abuse so that society may be aware of these causes when attempting to find effective solutions.

1.6.3 Evaluation and Raising Awareness of the Penal Code (Amendment) Act No. 15 of 2005

There is need to evaluate the new law which is presumed to be the answer to the problem at hand so that its strengths and weakness are exposed in order that the weaknesses can be worked on by the law makers. It will also serve the purpose of raising the awareness of this new law to the lawyers, law enforcement officers and the society at large.

1.6.4. Examination of the Role of the Law Enforcement Officers

Laws if not enforced or if not properly enforced can be meaningless therefore the need to examine the role played by the law enforcement machinery in respect of the sexual offences and gender based violence so that if there are any flows they can be addressed in order to win the fight against sexual offences and gender based violence.

1.7METHOD OF STUDY

This research will take two methods namely; desk research and to some extent field research. The desk research will be conducted at the University of Zambia, Great Road main campus main Library while the field research will be conducted at the National Assembly, the High Court of Zambia and the Zambia Police Service Headquarters in order to obtain relevant materials, court decisions statistics and conduct some interviews on the subject. The main aim of this research will be to establish the appropriateness of the new law.

CHAPTER TWO

2.1 THE PRE-EXISTING PROVISIONS AND THEIR WEAKNESSES

Previously the Penal Code criminalized various sexual conducts most of which were regarded as serious crimes. However, the greatest weakness with the law as it was then was that the punishments provided for such offences did not match with the seriousness of such crimes.¹ This was aggravated by the fact that there were no minimum mandatory sentences, especially that most of these offences are tried by subordinate courts most of which are presided over by Magistrates of class three or two who have very limited powers of sentencing, as such they could give sentences which were within their powers since there were no mandatory minimum sentence provided.

Some of the provisions of the law relating to sexual offences before the enactment of the new law which require consideration for the purposes of this research are;

Section 132 which provided that;

“Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed "rape".

Section 133 provided that;

“Any person who commits the offence of rape is liable to imprisonment for life”.

¹ Kulusika, S, E. Legislative and Criminal Justice Response to Sexual Violence in Zambia. Zambia Law Journal. Volume 38 2006.

The law provided protection to both women and under age girls from involuntary sex and even an attempt was punishable. The law did provide clearly what amounts to consent. However, the weakness of this law is that there was no minimum sentence therefore; offenders could walk away with sentences not commensurate to the offences passed by Subordinate Courts, which lacks the power to pronounce sentences which are stiff enough befitting of the nature of the offence committed considering the physical and psychological harm and the risk of contracting sexually transmitted diseases which the victim is exposed to. This problem was compounded by the fact that the law does not outlaw sexual relations under customary laws in certain circumstances such as sexual cleansing when one spouse dies or in the case of young girls if the parents or guardians consent to her being married, even if it is against her will as long as the parents or guardians have consented.

Section 136 provided that;

“Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour”.

This offence was a misdemeanour as such the offender who is convicted could only be punished in accordance with the general punishments of misdemeanour. The provisions of the law also meant that in order for the prosecution to succeed they needed to show that there was (a) unlawful (b) taking of (c) a girl under the age of sixteen. This means that if a girl under the age of sixteen is taken and sexually abused in the name of customary marriage with the consent of the parents or guardians, such an act will be regarded by law as lawful and therefore not punishable. This is what was held in the case of *Rex V Chijamba*² in which a village headman was convicted for concealment of a felony since he knew that a girl under sixteen was married and did not report the matter. The court held that he could not have committed such an offence because sex in marriage was lawful regardless of the fact that the girl was below the age of sixteen. This

² (1949) NRLR. 384.

relaxation in the law was a very serious weakness and contributed to the rise in the number of cases of sexual abuse because every offender who can show the existence of a customary marriage is protected from prosecution when in fact the law should have protected the interests of young girls who can not give valid consent and are not fully developed physically and psychologically. However, as we shall see even the new law has not addressed this problem, probably in order to validate customary marriages.

Section 137 provided that;

(1) “Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment for fourteen years.

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of twelve years to prove that she consented to the act of indecency:

Provided that it shall be a sufficient defence to any charge under this subsection if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe, and did in fact believe, that the girl was of or above the age of twelve years”.

This provision of the law could be said to have been good, in that in order to give the required protection to the young girls, consent of the young girl was immaterial which was fine though the law by expressing stating that “...any woman or girl...” it denied similar protection to boys who of late have also fallen victim of the same vices. The weakness of this provision of the law was that although it provided for a maximum sentence of up to fourteen years, the law did not provide for any minimum sentence as a result courts were meting out sentences not equivalent to the nature and serious of the offences because most of the Magistrates trying these cases have limited powers.

Section 138 was very critical as far as the protection of the young girls was concerned as it created an 'age based sexual offence'³ to specifically protect young girls who are not mature and can not give valid consent. The law provided for an offence to have unlawful sexual intercourse with a girl who is under the age sixteen at the time the crime is committed, consent of the girl is immaterial and the offender if convicted may be liable for up to life imprisonment. What the prosecution needed to prove in order to secure a conviction was that; the girl who is the victim or complainant was at the time of the crime under the age of sixteen and that the sexual intercourse was unlawful, whether or not the girl consented was immaterial.

The most serious weaknesses of this provision of the law are; lack of minimum mandatory sentence. Although the law provided for a maximum of life sentence, such sentences were never meted out instead extremely lenient sentences were being passed. For instance out of four cases of child sexual abuse (defilement) reported at Mpulungu police station in the year 2003, one accused namely Chazya Sikazwe was sentenced to ten (10) month imprisonment, while Wick Sikazwe was also given a similar sentence in a different case with similar facts. Joseph Sichiondwe and Webby Sinkala were given five years jail term each in two separate cases of defilement⁴. This shows the problem of having the law that does not specify the minimum sentence especially that the Subordinate Courts which deal with these offences have limited powers and are not under obligation to refer the case to the High Court for sentence were it is within their power to

³ Kulusika, S, E. Legislative and Criminal Justice Response to Sexual Violence in Zambia. Zambia Law Journal. Volume 38 2006.

⁴ Mpulungu Police Station Victim Support Unity, Annual Reports. (2001-2005)

pass a lesser sentence allowed by law. Stiffer penalties were rear and meted out only when the cases went to the High Court which was not a common practice. In the case of *The People v Hara*⁵ the High Court sentenced the convicted accused to twenty fives with hard labour for defiling a girl under the age of sixteen which was one of the those very rear occurrences.

The law as it was then was also weaken by the relaxation which allowed for the child abusers to go unpunished if the accused can show that the sexual intercourse was lawful by reason that there was a valid customary marriage as it was held in the case of *Rex v Chijamba* (supra). There was also a statutory defence under this section. It was a defence for the accused person if he could adduce evidence to show that he had reasonable grounds to believe and did in fact believe that the girl at the time of the crime was committed was above the age of sixteen. In the case of *D (a juvenile) v Rex*⁶ in which the appellant was convicted for defiling a girl under the age of sixteen and he appealed on the ground that he had reasonable course to believe and did in fact believe that the girl was above the age of sixteen, it was held that if the accused person does a prohibited act without caring to consider what the truth is as to the facts, he runs the risk. In such a case it is necessary for the defence to prove that the accused had reasonable cause to believe and did in fact believe that the girl was over sixteen year of age and that mere ignorance of the law prohibiting a man having carnal knowledge of a girl under the age of sixteen years can not be a defence. In the case of *Nsofu v The People*⁷ in which the appellant was convicted on three counts of defilement of girls under the age sixteen two of which were

⁵HJ/07/2004.

⁶(1960) R & N 755.

⁷(1973)ZR 287 (SC).

nine years and seven years respectively, his appeal failed because the accused under the circumstances of the case did not have reasonable cause to believe that the girls were above the age of sixteen. The defence was only available to an accused person who acted honestly and reasonably under the circumstances.

Some may argue that this statutory defence weakened the legal protection of young girls since it allowed some abusers to plead that they were misled to believe that the girl was over sixteen years. Others however, may argue that in criminal law the defence was necessary in that the law requires that for an accused person to be convicted, must have both the '*mens rea*' and the '*actus Reus*'. If the accused was misled in to believing that the girl was above the age of sixteen and the circumstances are such that any reasonable man would have been misled, it would be unjust to convict such an accused person because he lacks the necessary *mens rea*. The good part of this statutory defence was that it did not offer protection to a man who did not take reasonable steps to know the true age of the girl. Section 139A provided for the protection of female imbeciles of any age, no much discussion is necessary on this provision of law since it is very clear and nothing much may be brought in issue.

2.2 FACTORS FOR THE INCREASE OF CASES OF CHILD SEXUAL ABUSE.

Apart from the weaknesses in the law discussed above there are a number of factors which might have led to the increase in the occurrences of sexual abuse. A lot of attempts have been made to ascertain the causes of the increase of case of sexual abuse, however no exhaustive list of causes may be given since social dynamics came with its

own kind of human conduct. For instance the increased access to modern technology such as computers, internet, television, and ease movement of people from one place to another which makes it possible for people of different cultural backgrounds to meet and share information good or bad, resulting in to different factors which may influence people to get involved in different activities which factors will keep on changing since society is not static.

What is interesting is that research has shown that in most cases of child sexual abuse or indeed sexual abuse in general, is that the abusers are in most cases persons who are close or well known to the victims.⁸ This makes it difficult to know the motive behind such acts of violence by persons who ordinarily are suppose to protect the people who they victimize. Since it is difficult to know the motive of the offenders except in cases where the accused person so confesses, what is needed is know the possible stimulus or circumstances which influence the offenders motives to commit such offences or conditions which makes the victims more vulnerable so that effective measure can put in place to deal with those stimulus, circumstance or condition in order to reduce the prevalence of sexual violence. Nicholas Banda a former Deputy Minister in the Ministry of Community Development and Social Services believes that the cause of the increase of child sexual abuse (defilement) is the weak family structures in the country today. The Minister believes that the best care a child can receive is from within the family structure and their own communities⁹. However, in the light of recent media reports in Zambia which indicates that most of the children are abused by their close family members or

⁸ Kulusika, S. E. Text, Cases and Materials on Criminal law in Zambia. Lusaka, UNZA Press(2006)

⁹ Kaluba, B. "State against Alms to Street Kids" Zambia Daily Mail. Tuesday December 26, 2006.

people from within their community who ordinarily are suppose to be protecting them, one may find it very difficult to agree with the assertion that children are better protected in their own homes and communities. For instance in Chawama a father defiled his two year old daughter while the mother was out, in Libala a fifteen year old girl was defiled by her Teacher, while in Garden Compound a three year old girl was defiled by a house maid.¹⁰ However, it is expected and it does normally happen that where there is a strong family relation, children receive the protection they deserve. Related to the issue of weak family relations prevailing today are conditions of single parent homes and poverty which in most cases puts the children under the risk of being abused.

Vera Chiluba Tembo a Member of Parliament in the current National Assembly is of the opinion that the increase in the number of defilement cases is due to lack of sensitization on the part of the parents on issues such as the importance of education and the badness of early marriages. She is of the view that defilement even in the name of customary marriage should not be allowed in now days.

“Even if I got married to Chiluba at fifteen and gave birth at sixteen years a long time ago, I can not allow my child to be married off at a tender age today.”¹¹

One may be tempted to agree with Vera Chiluba Tembo, that most of the defilers especially in rural areas promise marriage to their victims either before so that the girl can easily give in or after the offence has occurred in order to prevent the girl from reporting the matter to the police, hence the need to find a solution to this problem.

¹⁰ Nundwe, P. M. Child Defilement: The Need for Stiffer Punishment. Obligatory Essay, UNZA. (2003) Unpublished.

¹¹ Miti. C. “Vera Calls for Solution to Early Marriages” The Post. Thursday, January 11, 2007.

Some people have attributed the increase in defilement cases to the weaknesses on the part of law enforcement officers in relation to the operation of bars and night clubs which at night illegally operate as brothels and take advantage of the disadvantaged, poor young girls. The Northern Province Liquor Licensing Board in Nakonde discovered a number of brothels which were operating as bars, but had rooms with pornographic pictures of young girls.¹² Alex Chola an Mpulungu Businessman says the tendency of operating brothels in the name of bars and night clubs is so common in Zambia especially in boarder towns of Mpulungu, Nakonde, Livingstone, Chilundu and Kasumbalesa. The operators of these premises use these girls as sexual workers and also to attract customers to their premises and it appears law enforcement officers from the Police, Local Government and even some senior government officials know about it, but it is just because of corrupt practices.¹³ The religious organizations on the hand attribute the increase of the cases of sexual abuse to the lack of the fear of God in the world today.

Some people commit these offences upon the advice of sorcerers and witchdoctors who deceive them in to believing that they would be cleansed of their sins and incurable diseases like HIV/AIDS upon having sex with a minor. The other reasons include lack of self esteem by the abusers who can not negotiate with their fellow adults and end up abusing children. The culture that men are to be respected in the community has also been cited as another contributing factor and in most cases they are not even reported as they are the bread winners. Inadequate housing is yet another cause as males and females

¹² Zulu, K. N/Province Liquor Licensing Board Seeks Closure of Nakonde Brothel. The Post. Saturday December 16, 2007.

¹³ Interview with Mr. Chola 2nd October 2007.

are forced to sleep in one room.¹⁴ The other reason is the failure by the police to effectively investigate cases of sexual violence in order for the prosecution to secure convictions and as such criminals continue committing the same offences since they can get away with it. However, whatever the reason may be the defilement of young girls or young boys (after the introduction of the new law) is bad with far reaching effects on the victims, ranging from social, physical and psychological effects.

2.3 PUBLIC REACTION TO THE INCREASE IN SEXUAL ABUSE.

Different sectors of the society have reacted differently to this social problem. Common among the reaction are the demands for stiffer penalties, especially after the death of the eleven year old girl Nyarai Seke who died of multiple sexually transmitted diseases contracted after she was defiled by her step brother.¹⁵ Women organizations called for the strengthening of the law relating to sexual abuses and introduction of penalties such as castration of the offenders and mandatory life imprisonment. Other sectors of the society including some Traditional leaders called for the Legislature to outlaw some traditions which put girl children and women at a risk of being sexually abused and also to outlaw early marriages. The question is how did the law makers respond? Did they provide the suitable solution to remedy the mischief taking into account the causes, the weakness of the old law and other social circumstances which have come on the scene due to the new social dynamics?

¹⁴ Nundwe, P. M. Child Defilement: The need for Stiffer Punishment. Obligatory Essay. UNZA. (2003) Unpublished.

¹⁵ opicit

CHAPTER THREE.

3.1 RESPONSE OF PARLIAMENT TO THE INCREASE OF SEXUAL ABUSE.

Public attitude towards criminals is usually an aggressive and defensive one. Based on the public reactions as seen in the preceding chapter, one could see that the public desire is that of vengeance especially from the women organization, probably as a result of a feeling of insecurity. However, it is important that the community's cry for vengeance give way, and in its stead a concern and desire for knowledge of the causes of crime and the methods be calculated to limit the incidences is, what must prevail. It is therefore the duty of Parliament to understand the causes of the problem and provide a balanced way of ensuring the prevention of crime by enacting appropriate laws.

In taking this role, Parliament enacted the Penal Code (Amendment) Act no.15 of 2005. Introducing the bill in Parliament, Justice Minister George Kunda stated the reasons and aims for the amendment of the Penal Code in the following terms;

“This amendment has been necessitated by the increased reports on child related sexual offences, these offences have resulted in children suffering serious injuries, and in some cases dying at the hands of criminals who have committed these abhorrent crimes.

The proposed Penal Code Amendment Bill seeks to domesticate, in part, the convention on the rights of the child and provide for stiffer penalties aimed at deterring offenders who commit heinous sexual offences, the Bill also seeks to implement provisions of the convention on the elimination of all forms of discrimination against women as they relate to sexual offences committed against women, the Bill amends the Penal Code in order to make the offence of abduction of all children a

felony. Currently, the law states that abduction of girls under the age of sixteen years is an offence and the offence of indecent assault has been extended to the boy child as well”¹⁶.

It must be stated here that it is one thing to desire to do something and another thing to actually do it. While government desires to deter offender of sexual offences have been expressed through the Minister of Justice in Parliament, the question before us now is whether Parliament other than mere partial implementation of the Convention on the Rights of the Child (CRC) and Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) as they relate to sexual offences committed against women had the necessary knowledge as to the causes of the problem at hand i.e. the high increase of sexual violence against children and females generally and whether or not the new law was well calculated to be the solution to the problem, which solution is well balanced in the interest of protecting the society and also doing justice to the accused persons. It is clear however, from media reports and official statistics that even after the enactment of the new law, there has been no noticeable change in the prevalence of the sexual offences against children, in fact the number of incidences has continued to increase. Early this year (2007) the Copperbelt Province Police Commanding Officer Antoneil Mutetwa when he was commenting on a case of defilement of an eleven year old girl of Luanshya who was defiled by a 61 year old man, he expressed concern over the rise in the number of defilement cases in the area.¹⁷

Statistics obtained from the Zambia Police Headquarters and two different Police Station one in the rural Zambia (Mpulungu) and the other one in the urban Zambia

¹⁶ Official Parliamentary Debates No. 130, Tuesday, 9th August, 2005

¹⁷ Zumani, K and Nalumango, N. 61-year-old man defiles girl 11, The Post. Thursday, January 18, 2007.

(Lusaka), all shows no considerable reduction in the number of incidences in Lusaka while Mpulungu and Zambia as whole shows an increase in the number of defilement and other offences of sexual violence even after the enactment of the new law as shown on the tables below.

NATIONAL STATISTICS

FIGURE 1¹⁸

NUMBER OF OFFENCES REPORTED.								
YEAR	RAPE	ATTEMP.RAPE	DEFILEMENT	ABDUCTION	DEFILEMENT (IDIOT)	INCEST	INDECENT ASSAULT(FEMALES)	INDECENT ASSAULT(BOYS)
2001	198	19	366	22	2	16	—	3
2002	198	11	865	35	5	21	—	20
2003	308	30	1233	52	4	36	196	8
2004	179	25	1612	74	22	29	123	18
2005	290	24	1375	44	11	34	—	23
2006								
2007								

¹⁸ Source Zambia Police Headquarters (Victim Support Unit). At the time this information was obtained the statistics for 2006 though available were not yet compiled and presented to government hence not authorized, however there are indications that the cases had increased in 2006 and 2007 statistics for the whole country which though not available at Police Headquarters could be obtained from individual Police Station on the authority of Police Headquarters which statistics go up to the most latest.

SELECTED RURAL POLICE STATION (MPULUNGU)

FIGURE 2¹⁹

YEAR	RAPE	DEFILEMENT	INDECENT ASSAULT(FEMALES)	ABDUCTION
2001	3	1	3	1
2002	–	3	–	-
2003	1	4	1	–
2004	1	5	–	–
2005	–	5	1	–
2006	1	7	1	1
2007	1	12	2	–

¹⁹ Mpulungu Police Station Victim Support Unity Annual and Monthly Reports and Station Crime Register (Northern Division/Province). No copies of the Crime Registers, Annual and Monthly Reports were allowed to be taken since they include other information which was not requested for/or permitted, therefore they are not included in the appendix.

SELECTED URBAN POLICE STATION (KANYAMA)

FIGURE 3²⁰

YEAR	RAPE	DEFILEMENT	INDECENT ASSAUT(FEMALES)	ABDUCTION
2001	4	2	7	-
2002	1	3	-	-
2003	3	6	3	-
2004	3	4	4	-
2005	4	-	-	2
2006	-	5	4	-
2007	2	6	3	1

²⁰ Kanyama Police Station Victim Support Unity Annual and Monthly Reports and Station Crime Register (Lusaka Division/province). No copies of the Crime Registers, Annual and Monthly Reports were allowed to be taken since they include other information which was not requested for/or permitted, therefore they are not included in the appendix.

3.2. EVALUATION OF THE AMENDMENT ACT NO. 15 OF 2005.

3.2.1 Abduction of Children.

The new section 136 provides that;

“Any person who unlawfully takes a child out of the custody of the child’s father, mother or other person having lawful care or charge of the child, and against the will of such father, mother or other person, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding ten years.”

This provision of the law has been strengthened by the new law in many respects. The new law sets a minimum sentence of seven years imprisonment and ten years as the maximum. This underscores the seriousness of the offence of child abduction. Parliament deserves to be commended for this positive step in bringing to the end such violent acts against female children. The new law provides its protection to ‘a child’ which ordinarily includes young boys since section 131A defines a child for the purposes of this Act as a person below the age of sixteen. The law however does not expressly include a boy child under this section unless the section is interpreted widely to cover boys in situations where a boy is a victim of this crime, which situations are relatively rare than usual. If this section was to be interpreted widely it would be good because there have been a considerable number of incidences in which young boys have been sexually abused after being abducted most of which are not reported.

However the terms in which the new law is couched still leaves much to be desired. The section under consideration reads “any person who unlawfully...and against the will of

such father or mother or other person...”couched in such terms, if interpreted in its strict sense, it denies protection to children who live by themselves in child headed families or those who lives on the streets “street kids” who have lost their parents and they do not have guardians which is common today because of HIV/AIDS. This means that a person who abducts a child who lives by herself or in a child headed family can not be charged with this offence even if it was against the will of that child since there was no parent or guardian against whose will the child was taken. The law should have criminalized any form of taking away a child from her usual life whether with or without the consent of the parents or guardian. The issue of the law allowing the consent of the parent or guardian to absolve the criminal liability of offenders is also another weakness. Most of the parents will consent to such things either because they are not well informed on the danger of such acts as against the children or because of poverty and they hope to receive something in return; in which case, the best interest of the child are not even taken in to account. Therefore the law should have protected the best interest of a child in line with the CRC which was one of the intentions of Parliament as expressed by the Justice Minister that the bill also aimed at complying with the CRC²¹. The law has thus failed to comply with the standards of the CRC.

3.2.2 Indecent Assault.

Section 137 of the new law provides that;

“(1) Any person who unlawfully and indecently assaults any child or other person commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty.

²¹ Official Parliamentary Debates No. 130, Tuesday, 9th August, 2005

(2) It shall not be a defence to charge of an indecent assault on a child to prove that the child consented to the act of indecency.”

This provision of the law has been strengthened firstly, by increasing the sentence with the minimum sentence being fifteen years and a maximum of twenty years unlike the old provision of the law which did not provide for any minimum sentence but only provided for a maximum sentence of fourteen as a result of which a lot of offenders walked away with suspended sentences or some such sentences not befitting of the nature of the offence. This is very important in order to show the seriousness of the offence. The other important element of this provision is that consent unlike in the former law, is not a defence in offences of indecent assault on a child. This is very important because children can easily be persuaded in to consenting to acts which he or she does not understand and in most cases such indecent acts have ended up in to more serious sexual offences such as Rape and Defilement. Therefore it is necessary to prevent such acts in strongest terms possible in order to prevent greater evil. The extension of the protection of this section to boys was a necessary step due to the increase in the number of indecencies of indecent assault on boys.

It is also important to note that for an assault to amount to an indecent assault all what is required is that the assault must be ‘unlawful’ and ‘indecent’. This means that the act or assault must be one regarded by law as not acceptable and must have been committed under some circumstances which may be said to be of some indecency. In the case of *Mwanza v The People*²² it was held that the word indecency must be given a wider

²² (1976) ZR 124

meaning than pure sexual indecency. Therefore, sexual motive of the offender need not to be proved though in most cases such acts are accompanied by some desires for sexual gratification of some kind. The new law as regards indecent assault is generally good, since it does not leave notable gaps which may allow for the violation of other people's rights especially children. The other sub section needs no much attention as they are clear and do not raise issues of concern.

3.2.3 Age Based Sexual Offences²³ (Defilement)

The new Section 138 provides that;

- “(1) Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.
- (2) Any person who attempts to have unlawful carnal knowledge of any child commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fourteen years and not exceeding twenty years.
- (3) Any person who prescribes the defilement of a child as cure for an ailment commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.
- (4) A child above the age of twelve years who commits an offence under subsection (1) or (2) is liable, to such community service or counseling as the court may determine, in the best interests of both children.”

The age based²⁴ sexual violence has been the major concern in the recent past years. The response of Parliament which is contained in this section to some extent addresses the

²³ Kulusika, S.E. Legislative and Criminal Justice Response to Sexual Violence in Zambia, Zambia Law Journal, Volume 28 2006. Page 15.

²⁴ *ibid*

concerns of the society. The new law provides for a minimum sentence of fifteen years with a possible life imprisonment. This obliges the Subordinate Courts when ever they convict a suspect of such offences to take the matter to High Court for sentence, there by avoiding sentences which were not commensurate with the offences passed by Subordinate Courts as we saw in the previous chapter. The public was not happy with such sentences as expressed by some witnesses who appeared before the Parliamentary Committee during consultations on the Penal Code (Amendment) Bill, 2005 out of which the Committee noted that;

“Currently, the sentences being meted on offenders for sexual offences committed against children were not stiff enough to serve as a deterrent and punishment to would-be offenders.”²⁵

The new law has answered the public concerns on the need for stiff punishments.

After the enactment of the new law deterrent sentences have been meted out by the High Court unlike, the sentences which were being passed before the Amendment as we saw in Chapter two. There are a number of cases which may show the new trends of sentencing, some of which are;

In the case of *The People v Mbale*²⁶ in which the convict was tried and convicted for defilement of a girl under the age of sixteen. In this case, a domestic servant defiled an eleven year old girl a daughter of his master. When sentencing the convict to thirty years imprisonment with hard labour, the court said through this convict, it is necessary that the correct message is sent to domestic servants who abuse the trust given to them in such

²⁵ Parliamentary Committee Report, August 2005

²⁶ HPS/17/2007.

devastating manner. In related circumstances, in the case of *The People v Muleka*²⁷ in which the victim a daughter of the convict's master was only aged nine years, the domestic servant who was the convict was sentenced thirty five years imprisonment with hard labour.

In the case *The People v Shula*²⁸, the High Court sentenced the convict who was convicted by the Subordinate Court for defiling a girl aged eight years to twenty five years and said the age of the girl involved was an aggravating factor. In the case of *The People v Mwanza*²⁹ the convict was sentenced to thirty years imprisonment for defiling an eight year old girl citing the age of the girl and the fact that the convict was a cousin who should have been protecting the girl as aggravating factors. In all these cases the court has been of the view that mere long custodial sentences are not enough to be deterrent measures, and propose that the amended law should have included public reproach and shame upon the convicts as part of deterrence, as stated by the court in the preceding case of *Mwanza* (supra) that;

“How I wish the amended law had provision for public reproach and shame upon such convicts as part of deterrence. I would have ordered that such convicts be paraded for media photographs.”³⁰

This view may be right, since the numbers of sexual violence against children has continued to increase even with long custodial sentences.

The other area of strength in the new law is that it criminalizes any attempt to defile the child and sets fourteen years as the minimum jail term which is good in order to prevent greater evil from happening to the children. What is more interesting is that subsection (2) criminalizes the acts of people who prescribe defilement of a child as a remedy for

²⁷ HPS/08/2007

²⁸ HPS/25/2007.

²⁹ HPS/16/2007.

³⁰ *The People v Shula* HPS/25/2007

healing an ailment. This is in response to public demands that have always cited such prescriptions as one of the causes of the increase in the number of defilement cases. This provision is good as it attempts to deal with the source of the problem. Before dealing with the issue of defilement exhaustively it is necessary to look at the following related section;

Section 140 criminalizes the procurement of children for prostitution, pornography, bestiality or any other purpose either in Zambia or outside and may be liable to imprisonment for not less than twenty years or for life. This is a very positive response by the law makers to protect the young and especially the disadvantaged poor girls from sexual exploitation for what ever reason. However, what may be the problem is for the prosecution to have the necessary evidence to convict the accused in the light of the demand by the law that no person shall be convicted of the offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused. This may create a very big problem for the prosecution in that there will be a requirement of corroboration because the nature of the offence requires corroboration by law and it may also be required because the witness (victim) is a child of tender age which complicates things even more. This is compounded by the fact that such offences are committed in total private and even the victim is some times persuaded in to believing that she will benefit out of the arrangement. While it may appear to be compelling to do away with corroboration in this law, it is also necessary that such a safe guard should be provided by the law in order to ensure justice to the would be accused persons.

It is submitted that the Subordinate Courts trying these cases must strictly adhere to the principle of the law relating to corroboration established in the case of *Phiri and others v The People*³¹ in which the Supreme Court said that corroboration should be “something more” which means there must be circumstances which, though not constituting corroboration as a matter of strict law, yet satisfy the court that the danger that the accused is being falsely implicated has been excluded and that it is safe to rely on the evidence of the accomplice implicating the accused. This is the only way the courts can ensure that justice is done according to law otherwise if corroboration is required in a strict sense without bearing in mind the principle of law in the above case, which appears to be what is expressed in the proviso to section 140 and 141, the Court will be making it difficult for the prosecution to secure convictions, thereby defeating the purpose of this law.

It is also interesting to note that Section 141 of the new law criminalize the procuring or any attempt to procure the defilement of a child either here in Zambia or elsewhere, by threats, fraud or administering of drugs and the accused upon conviction is liable to imprisonment for twenty years as minimum sentence with a possibility of a life imprisonment. This is in response to the increase in cases in which children have been procured by some criminal minded people to be defiled by others in which cases such children are procured for defilement for various reasons which may be rituals or to be abused in brothels or some such reasons. It is therefore very important to deal with the criminally minded persons behind defilements in strongest possible terms. This is very progressive in order to protect the children and no doubt it is a positive response by

³¹ (1978) ZR78

Parliament. The new law in Section 142 proscribes, allowing of a child on the premises for the purposes of being carnally known. This is also a very positive step in the fight against child sexual abuse in that even those who provide enabling environment for the defilement of children can now be brought before the law as they are major players in the perpetration of these crimes. Section 150 proscribes any conspiracy to defile a child with a minimum of fifteen years imprisonment. The above provisions have strengthened the law relating to defilement cases.

However, the numbers of sexual offences has continued to go up. The question then is what is wrong with the law? There are two explanations which may be given for this question; the first explanation is that the law still has some weakness despite the strengths discussed above; the second explanation may be attributed to the failure by law enforcement officers to enforce the law and take proactive measures and the weaknesses of the criminal justice system as a whole. The first explanation will be considered in this chapter while the second explanation will be discussed in the next chapter.

3.2.4 The Weaknesses of the New Law Relating to Defilement

The new law as regards the protection of children from sexual abuse still leaves much to be desired. The law still does not outlaw the abuse of young girls under the pretexts of customary marriages, when in fact the majority of the girl children are victims of this social abnormality. The law says "...any person who unlawfully..." as we have seen how the courts in Zambia have interpreted what unlawful carnal knowledge is, it is clear that the young girls are not well protected by the law especially with the realities of poverty

obtaining in Zambia today more and more children are sent in to early marriage despite the current government policy of free basic education, because most families can hardly afford to look after their children. Since Parliament has not prohibited early marriages by express provision of the law as the women movements in Zambia, some traditional leaders and other sector of the society had demanded prior to the enactment of this new law and indeed as some Members of Parliament had argued, it means that if an ill informed parent gives in to marriage a girl under the age of sixteen, which is a very common phenomenon in Zambia especially in villages, no offence is committed as it was held in the case of *Rex v Chinjamba* (supra) that it is not unlawful for a man to have carnal knowledge of a girl whom he is lawfully married to despite the fact that the girl is under the age of sixteen. In the case of *Sibande v The People*³² the court emphasized on the consent of the parents or guardians as the determinate of a varied customary marriage, which means it is the interest of the parents to a larger extent and not that of the child which is protected by the law. This therefore does not achieve the intended purpose of this law which is to protect the children from sexual abuse. It also means that the law has also failed to fulfill the CRC minimum requirement which states that in every thing, the state must take in to account the best interest of the child. It is clear that the new law just like the old law does not take in to account the best interests of the child as it leaves room for children to be abused without the abusers being punished simply because there are purported marriages which has led to high rates of illiteracy as they can not go to school. This has continued to be a very big problem in Zambia particularly in rural areas. For example twenty two young girls among them grade three pupils were married off within one year at one school, Chipalamba basic school in Kasenengwa constituency in

³² (1975)ZR 101 (SC).

Chipata.³³ This gap in the law should not have been left like that when it has such serious effects.

It is suggested that Parliament should have taken the view reflected in the English case of *Bow maker Ltd v Tobor*³⁴ in which the plaintiff obtained some goods from the defendant on hire purchase and when the plaintiff failed to pay, the defendant got back the goods with the consent of the plaintiff but without the leave of the court which was against the law. The court held in that case that the consent of the plaintiff could not have absolved the defendant of his statutory legal duty which was meant for public good. It should have been the position of the law therefore; that any person who has carnal knowledge of the girl under the age of sixteen is guilty of an offence, and neither her consent nor that of the parents or guardians, be it in the name of marriage should absolve the liability of the accused. This could have been achieved by taking the position suggested by the learned scholar and author of the article entitled "Legislative and Criminal Justice Response to Sexual Violence in Zambia"³⁵ Kulusika S. that the section of the law dealing with sexual violence against young girls should have omitted the word 'unlawful' in order to avoid legalizing sexual offences against young girls when done under the pretexts of marriage. However, since this omission has already been made by Parliament, it is submitted that there is need to reconsider the new law in order to take care of this weakness so that the law can achieve its intended objective.

It is also submitted that courts should take their role in protecting the children by interpreting the law in such a way as hold sexual relations with young girls as unlawful

³³ Miti C. "Vera calls for solution to early marriages" The Post Thursday, January 11, 2007.

³⁴ (1941) 2 ALL ER. 72.

³⁵ Zambia law Journal Volume 28 2006.

and unconscionable although it is permissible under customary law by following the law espoused in the case of *Kaniki v Jairous*³⁶ in which it was held that customary law is only valid if it is not against any written law, or it is not against equity and good conscious and therefore hold customary marriages involving children as against written law, equity and good conscious as it is against what is intended by this new law which is the protection of the children and it is against the interest of the children. In the case of *Rex V Mubanga and Sakeni*³⁷ it was held that even if customary law was established it could not be supported by the courts if it was inconsistent with the Penal Code and repugnant to justice. It is submitted that this should be the view taken by the courts in relation to the sexual offences involving children. This may be the only way the sexual abuses against young girls may be brought to an end.

The new law offers the legal protection to “any child” if one is to interpret this law literally, one would argue that the protection of the law extents to boys such that if any person had carnal knowledge (in case of a female adult) or unnatural connection (in case of a male adult) of a boy under the age of sixteen would be charged with defilement and not simply indecent assault on boys or unnatural offences. However if the law was to be interpreted in that way, the question would be how to prove penetration of a boy. The law makers should have made it clear to avoid speculation since there have been of late a considerable number of incidences in which young boys have been sexually abused by men and women alike.

³⁶ (1967) ZR 71 (HC)

³⁷ (1957) 11 R&N 169.

The new law has also provided a number of pro-active crimes aimed at preventing some of the dangerous offences before they are committed. Section 157 provides that;

(1) Any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.

(2) In this section “harmful cultural practice” includes sexual cleansing, female genital mutilation or in initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.

This is a very positive pro-active measure to protect the girl children but the problem is that even this section does not help because the law does not outlaw the harmful practices if they are done under the pretext of marriage. One may be tempted to agree with Isoka East Member of Parliament Namungala that the Bill should have defined Lobola and early marriages as harmful practices against a child because Lobola constitutes rewards to parents in exchange for sexual favours by a child.

“This should have constituted harmful practices against a child. The Bill should have stated that Lobola is harmful because in most cases, especially, in our rural areas children are married off at the age of thirteen and the parents get a reward in the name of Lobola”³⁸. She argued.

It is also surprising, why the law could not offer the some protection to the boys when it is clear that in this era of HIV/AIDS they also stand the same risk. As to what must be proved by the prosecution the law seems to be very clear.

³⁸Official Parliamentary Debates No. 130, Tuesday, 9th August, 2005

Section 137A provides for another pro-active measure of protecting children from sexual violence by prohibiting practices which are in the nature of sexual harassment, in any work place, institution of learning or elsewhere. Sexual harassment in this section means

“a seductive sexual advance being an unsolicited sexual comment, physical contact or other gesture of a sexual nature which one finds objectionable or offensive or which causes discomfort in one’s studies or job and interferes with academic performance or work performance or conducive working or study environment; Sexual bribery in the form of soliciting or attempting to solicit sexual activity by promise of reward; Sexual threat or coercion which includes procuring or attempting to procure sexual activity by threat of violence or victimization; Sexual imposition using forceful behaviour or assault in an attempt to gain physical sexual contact.”

The above definition makes it clear as to what is sexual harassment. However the problem is where to draw the line between what would amount to an offence and the usual and normal exegesis of every day life. The only catch here is that the act to be criminal under this section must be accompanied by some sexual intentions on the part of the offender. This is a very good step especially that the law even set the minimum sentence there by leaving no room for the wrong doers. This is also a response to the long standing complaints by females that they are sexually harassed and it is also in compliance with CEDAW.

The other progressive step taken by Parliament is the provision of section 143 which states that;

“Any person who sells or traffics in a child or other person for any purpose or in any form commits an offence is liable, upon conviction, to imprisonment for a term of not less than twenty years:
Provided that where it is proved during the trial of the accused person that the sale or trafficking in a child or

other person was for the purpose of causing that child or person to be unlawfully and carnally known by any other person, whether such carnal knowledge was intended to be with any particular person or generally, the person is liable, upon conviction, to imprisonment for life.”

This is good in the light of the latest developments in which young girls have been taken to some countries to be sexually abused. There have also been reports of children being trafficked for rituals purposes. In the year 2006 three cases of child trafficking were reported at Mpulungu Police Station in all these cases the victim children were sold by there parents or guardians to known businessmen to be used by them for rituals³⁹. All the three cases are pending before the Mpulungu Subordinate Court. This law will help in dealing with such cases.

Section 144 proscribes the detention of any person or child in any premise or brothel with intent that such person or child should be carnally known, specifying twenty years as the minimum sentence. What is interesting is that the law here offers more protection to children as it provides that a child found in such premises is presumed to be there in order to be carnally known unless proved otherwise. Section 149 deals with the running of business of brothels which is so common in Zambia especially in boarder areas. The law expressly outlaws it with a minimum of fifteen years imprisonment. It is now for the police to do their job and enforce the law. Section 146 proscribes living on earnings of prostitution or persistently soliciting or aiding person or child in prostitution. Section 151, 152 and 153 deals with matters of abortion, procuring abortion and attempted abortion. The law here is very sensitive, where a child is pregnant as a result of being a victim of sexual abuse the law allows abortion and were the act is willful the law provides for a lenient sentence of community service. Sections 159 and 161 deals with matters of incest

³⁹ Mpulungu Police Station Victim Support Unit Annual Returns 2006.

the section is clear, suffice to say that it good that there is a minimum sentence sent out under these two sections. The other provisions of the new law which only needs mention for the purposes of acknowledging existence in the new law, without particular interest in this research paper are; section 168 proscribing child desertion; section 169 proscribing neglecting provision of food and other necessities to a child and section 148 dealing with assault or bettering of a child. One may wonder how far the law relating to the provision of food and necessities may be carried in terms of enforcement in the light of high unemployment levels in Zambia. This is however a step in the right direction in domesticating the provision the CRC.

Section 156 criminalizes attempts to commit unnatural offences, while section 138 proscribes indecent practices between persons of the same sex. This is necessary to deal with the increase of such socially unacceptable conducts in our society which unfortunately is on the increase. An Italian man was recently arrested by police together with a third year male University of Zambia student for allegedly engaging in same sex, sexual relations.⁴⁰ Section 177A criminalizes the involvement of children in pornography in any way be it production of such films or selling of such thing to any child. This is necessary to protect children from being sexually abused for commercial purposes. Such things have become more and more common in Zambia. In Ndola a local businessman and politician Terence Findley was arrest for using a young girl in the production of pornographic films.⁴¹ The above are some of the strengths and some of the weakness of

⁴⁰ The Post.

⁴¹ The Post.

the new law, which weaknesses may account for the continued increase of sexual offences against children and females generally. It may be said at this stage that Parliament has done its part in an attempt to protect children and females generally despite some gaps and weaknesses in the law. However, as stated earlier the instances of offending has continued to go up despite prescribing relatively stiffer sentences and providing for pro-active offences aimed at protecting victims before greater evil is done. The question that remains to us then is; what is the role of the police and the criminal justice system generally in the protection of the children? Has the new law put the police and criminal justice system in a better place to deal with the problem? Or is there any failure by law enforcement officers to enforce the law and take proactive measure and/or any weaknesses on the part of the criminal justice system as a whole?

CHAPTER FOUR.

4.1 THE LAW ENFORCMENT SYSTEM.

4.1.1 The Challenges Faced by the Police.

Parliament has done its part in the protection of children and women from sexual violence by strengthening the law and introducing mandatory minimum sentences, despite some few weak areas left unattended to by the law. However, the numbers of sexual violence cases has continued to increase. The question then is, has the law enforcement system done its part of implementing the law, or does it have the capacity to do so? Any law, no matter how good it is may fail to be effective, if the system in place for implementing it is either too weak or inadequate to ensure that offenders are made to face the justice of the law. One Member of Parliament and prominent Lawyer Prof. Patrick Mvunga in 1994, when contributing to a debate in Parliament had this to say on the importance of enforcing the law;

“I want to caution and advise the Honorable Minister that often, we will have very good laws but good laws alone can not create miracles. They need to be supported by corresponding facilities, and then the law will be as good as it was intended. No matter how good the law may be, the law can never change attitudes. Enforcement is extremely important.”⁴²

The situation at present in Zambia is that most of the child defilers are either not reported to the police or they have managed to escape the arm of the law even after being reported because of the weaknesses that exist in our criminal justice system. Some of the reasons why cases are not reported to the police are;

(a) In rural districts police station or police post are located at the district centre, making it difficult for victims to go and report such cases because of the distance. In such

⁴² Official Parliamentary Debates. Tuesday 15th March 1994.

circumstances people resort to reporting the cases to either the Village Headman, the Chief or the Local Courts which to a larger extent assist in concealing these crimes. The Local Courts use their powers to charge damages in civil matters to deal with these serious sexual offences by treating them as civil matters and charge very minimal damages within their powers thereby defeating the criminal justice system;

(b)The perpetrators of such crimes in some cases are relatives or indeed the bread winner of the family and as such the family may conceal the offence for economic reasons. For instance a man in Northern Province was abusing the daughter, but both the mother and the daughter (victim) could not report the matter because the man was the bread winner who caused the victim to believe that the act was alright and for the benefit of the family because it was the means of making the family to have wealth;⁴³

(c) In African society people find it very difficult to talk about sexual incidences as it is deemed to be embarrassing to the family to let other people know such an occurrence in the family;

(d)In other cases the victims are threatened by the abuser or they are given something such as money so that they do not reveal what has happened to them. For example,

“The Magistrate in Chisamba committed Bornwell Kapelwa aged 76 to the High Court for defiling a 15 year old girl; he had been having sex with the girl on several occasions and had also been giving her biscuits, sweets and money for every act.”⁴⁴

⁴³ Ntalasha Mutale ‘Cops arrest Kasama man for abusing daughter’ The Post, Tuesday, November, 13, 2007.

⁴⁴ Inonge Noyoo ‘Sex maniacs do not deserve to be in society’ The Post, August 25, 2007. P. 5

(e)Some victims have no confidence in the police because of the lack of confidentiality at the police station and as such avoid reporting sexual cases;

For these and many other reasons cases of sexual violence are not reported thereby allowing the offenders to go unpunished as a result they repeat the same thing and even the would be offenders are not deterred.

However, even when the cases are reported to the police station, in most of the cases nothing is done for a number of reasons; Police officers who receive the cases have difficulties handling sexual offences professionally as a result vital evidence is lost. Some police officers simply do not understand their roles. Even the establishment of the Victim Support Unit has not helped, because it is the same officers who do the general police duties who are attached to the Victim Support Unit without any particular training to empower them professionally; In some cases suspects of sexual offences are never arrested even if they are reported due to the failure by the police to investigate cases and because they are unable to follow up cases due to logistical problems such as transport as a result the suspects are left to go unpunished. These failures by the police may be seen from the statistics. For instance in the year 2005 out of 1375 cases of defilement reported at all police stations countrywide, the police only managed to make arrests in 92 cases, while in 1283 cases or more, suspect were not brought to book by the close of that year.⁴⁵ What then is the meaning of having a strong law, with stiffer penalties when the offenders can not be brought before the law?

⁴⁵ Police Headquarters Victim Support National Annual Statistics 2005.

The greatest challenge for the police officers investigating sexual offences, the prosecution and indeed the victims appears to be the fact that it is required that victims should have some money for medical examination when they report a case of sexual abuse to the police. Medical officers regard medical consultation by the police through the medical report forms they issue to victims as private consultation and charge a fee, which fee is prohibitive for poor families. The police do not have the provision to pay for such consultation fees as a result those who can not afford do not go for medical examination but opt to settle the matter out side the criminal justice system and get compensation of some kind or the victim may get the medical report and spend a number of days looking for money before seeking medical examination as a result the evidence is lost. Medical evidence is so critical in sexual offences and the court has put so much emphasis on that. In a robbery case of *Kalebu Banda v The people*⁴⁶ Baron DCJ stated obiter that;

“in a rape case failure to obtain medical evidence when there was a duty to do so means that, the court must proceed as if a doctor had testified that he had examined the victim and found no evidence that force was used, nor any evidence of intercourse”

The mere fact that another person had seen the accused doing the act or the appearance of some sort of distress soon after the act may not amount to corroboration as it was held in the case *Ackson Zimba v The people*⁴⁷ that evidence of distress at the time of making a complaint may not be enough to amount to corroboration because such evidence may not be real; it may as well be pretended. This means that the only dependable evidence to corroborate the evidence of the victim in sexual offences is medical evidence. This poses a very big challenge on the officers investigating these cases and subsequently on the prosecution since the law requires corroboration in such cases and in particular corroboration of medical evidence, probably for the purposes of establishing penetration and physical force if alleged. This may be the explanation for the failure by the prosecution to secure the so much needed convictions in the few cases in which the suspects are arrested. In the 2005 for example only 51 convictions were secured of the 92

⁴⁶ (1977) ZR167.

⁴⁷ (1980) Z R 259.

cases in which arrests were made, while in the other cases suspects were either acquitted or cases were withdrawn for lack of evidence;⁴⁸ The system appears to have no practical means to deal with either the accused persons who prevent witnesses from going to court and give evidence or the family of the victim who after receiving some 'compensation' abscond from criminal justice system to defeat justice though the law has provision to deal with such issue. These are some of the problems the police is faced with in dealing with cases of sexual violence despite that the law has been strengthened.

4.1.2 The Handling of Cases by the Courts

The court system and the law itself are also partly to blame for the failure to effectively implement the law. Court proceedings take unnecessarily too long which may lead to suspects escaping from custody. This problem is compounded by the fact that the position of the law in Zambia is that the court can not be compelled by any means to deliver judgment or hear a case on time so that justice is not delayed. In the case of *Godfrey Miyanda v Matthew Chaila (Judge of the High Court)*⁴⁹ it was held in that case that "A judge cannot be taken to court for delaying in adjudicating on the case; the public have a right to have the independence of the judiciary preserved; the absolute freedom and independence of judges is imperative and necessary for the better administration of justice." However, the independence which is meant for the better administration of justice has been abused. For instance if one looks at the 2005 police records, will find out that while the police only recorded 92 arrests in defilement cases that year of which it is not possible that all cases were taken to courts, 184 cases of defilement were pending in courts in that year, meaning that most of the cases which were still pending were carried forward from the previous years and that the 51 convictions recorded in that year, some

⁴⁸ Police Headquarters Victim Support National Annual Statistics 2005.

⁴⁹ (1985) Z.R. 193 (H.C.)

of which could have been cases brought before the courts in the previous years. The continuous adjournments of cases discourages the witnesses who are willing to give evidence who end up absconding and/or resorting to sorting out the matters outside court with the relatives of the accused.

Besides, the law itself has a problem, in that Parliament hastily moved in to enact for stiffer and mandatory minimum sentences in all sexual offences but without increasing the sentencing powers under the Criminal Procedure Code for the courts which deal with these cases i.e. the Subordinate Courts. This could have helped in having the cases disposed off on time and also to relive the pressure of work on the High Court which in fact is not so available to pass the sentences on time because it only seats regularly in Lusaka, Ndola, Kitwe, Kabwe and Livingstone. The rest of the country the court only have about three secessions in a year which take one to two weeks at provincial centers.

These are some of the problems of the criminal justice system making it ineffective to deal with sexual offence and indeed other cases. For reasons given, while there are so many sexual offences being committed, few cases are reported to the police, out of which not so many arrests are made and a very insignificant number of offenders is punished by the law thereby defeating the whole purpose of strengthening the law. Therefore as Prof. Mvunga has suggested it is not enough to have good laws, there is also need to change the attitude of the people, the law enforcers and to restructure the enforcement mechanism to make it more suitable to enforce the law.

CHAPTER FIVE.

5.1 RECOMMENDATIONS.

Before making recommendations of what would be some of the solutions to the problem at hand, it is important to look at what government considers as the major challenges, and its proposed way forward. In 2002 the Attorney General for Zambia Bonaventure Mutale acknowledged the challenges of providing children with the protection in the following terms;

“The state party wishes to acknowledge that it has faced a number of problems in dealing with this issue. One of the biggest problems is the reluctance of the family and the general public to acknowledge the existence of the problem. The lack of data itself and of disaggregated data on child sexual abuse in particular is also a problem. The dual legal system (statutory/customary) contributes to child sexual abuse in that children are married off at an early age as long as parents give consent. These children are usually victims of sexual abuse in their marriages. The high poverty levels and the HIV/AIDS pandemic have aggravated child sexual abuse.”⁵⁰

He went further to state the government intended action, in which he stated that;

“The state party will need to step up activities in this important area. It recognizes the need for advocacy and promotion of children’s rights, the need to reinforce the law protecting children, education on HIV/AIDS for all, provision of sustainable poverty alleviation programmes, particularly to families looking after orphans and vulnerable children, and amendment of legislation to provide for stiffer penalties for child sexual abusers”⁵¹

The government appears to know the roots of the problem even if it has failed to take the necessary action on time. While the government has taken a step as it had committed itself to the international community, by reinforcing the law, there is a serious omission

⁵⁰ Initial and First Periodical Report on the implementation of the UN Convention on the Rights of the Child 2006 page 106.

⁵¹ Ibid.

because the courts dealing with these cases do not have the power to pronounce the minimum mandatory sentences provided. It is therefore recommended that Parliament should also amend the Criminal Procedure Code Act Chapter 88, sections 7 and 9 to give more sentencing powers to the Subordinate Court, so that professional Magistrates from Resident Magistrate up to Principal Resident Magistrate should have sentencing powers of up to twenty years subject to confirmation by the High Court as opposed to the High Court passing sentences. This will help the disposing off of the cases by the courts on time.

It is also recommended that, since it is widely acknowledged by both the government and the general public that the existence of the dual legal system is partly to blame for child sexual abuse, the government should take a step to legislate against customary law which allows the children to be sexually abused in the pretext of marriage. This can be done by amending the Penal Code as suggested by Learned author Kulusika S. E. in “Legislative and Criminal Justice Response to Sexual Violence in Zambia,”⁵²i.e. removing the words “unlawfully” from the provision protecting children. Alternatively it may be done by amending the Marriage Act Chapter 50 so that it can apply to customary marriages only in so far as it relates to the age requirement for contracting a valid marriage and matters relating to the consent of the parties to marriage so that the same age and consent requirements for valid marriages under the Marriage Act will apply to customary marriages, thereby making all marriages involving children and forced marriages unlawful. Before such steps are taken it is recommended that the courts should take it upon themselves to protect the children holding sexual abuse in the form of customary marriages as repugnant to natural justice or morality or incompatible with the

⁵² Zambia Law Journal Volume 28, 2006.

provisions of any written law; in line with section 12 of the Local Courts Act, section 16 of the Subordinate Court Act, and also what the court held in the case of *Kaniki v Jairo* (supra) and case of *Rex V Mubanga and Sakeni* (supra) (discussed in chapter three.

The government should be seen to be taking steps to empower the citizens economically in order to reduce the poverty levels progressively. The government should intensify the implementation of policies aimed at educating its citizens; this will make people to be slowly doing away with some barbaric traditions thereby acknowledging the existing problem without giving less important social reasons or benefit derived from such dangerous acts to justify these social problems. It is further recommended that the government and in particular the Zambia Police Service and other institutions dealing with sexual violence cases should keep proper records which are readily available to help them as law enforcers to strategies on how to deal with the cases and for the policy makers to come up with workable policies.

The government should re-train police officers dealing sexual related offences like the Victim Support Unit, the Investigating officers and the Prosecutors and indeed the Magistrates. Creating a separate wing within the police to deal with sexual offences without appropriate training and necessary resources such as transport may not help much. It is also recommended that law enforcement organisations should move away from the traditional methods of law enforcement which put much emphasis on arresting offenders when the crime has already been committed to more pro-active methods in which emphasis should be on the prevention of the crime. This can be done by setting up a wing within the police which will be educating the likely victims on the dangers of such

violent crimes and how they can avoid them and also educate the public on the laws, encourage them to report such cases to the police on time and make the public part of the fight against sexual violence. All ministries and government departments and other stakeholders must get involved in public awareness campaigns and finding solutions. It is also recommended that even some traditional methods of dealing with sexual offenders such as making them to pay all what they have as their means of living and putting upon them the shame that they will live with through out their lives should also be legislated for in order to broaden the deterrent measure as the High Court suggested in the case of *The People v Shula* (supra) It is so important that issues of culture, traditions, beliefs and values are not overlooked because some of these phenomena may only be explained by these factors which if ignored the law may not be effective, since the living law in society is more effective than the law in the statutes books. In all these Government must do a thorough research before coming up with any policy so that there are adverse effects.

5.2 CONCLUSION.

Having looked at the old and new provision of the Penal Code Act Chapter 87 of the laws of Zambia in so far as they relate to protection of children and women from sexual violence, it may be said that new provisions of the law are a good start for Zambia. The mandatory minimum sentences, which are much stiffer than before, the proscribing of prescribing carnal knowledge of the child as cure or for any other reason, the proscribing of allowing of children in places where they are sexually abused, the criminalization of child trafficking for what ever purpose, the criminalization of sexual harassment the extension of legal protection in cases of indecent assault to boys, and other progressive

provision considered in this research are a positive and indeed a necessary step in achieving the desires of the society to protect children and women. There has been also a good attempt at partly domesticating the CRC and CEDAW. While it has been noted that the incidences of sexual violence have still continued to increase and that there are still some weaknesses left unattended to by Parliament in the new law, the continued increase of sexual offences can not be entirely blamed on the weaknesses of the penal laws. Blame should also be apportioned on the criminal justice system, the society itself and other related laws such as the Criminal Procedure Code Chapter 88 of the laws of Zambia which also needed to be worked on, so that the new law can better be implemented. However, in all these Parliament as the regulator of society through the enactment of laws is very central in order to deal with the situation.

It should be noted that while advocating for the more stiffer punishments, the society should not forget that legislative instruments have always been there to deal with defilement and other sexual offences, though it might have been necessary to completely overhaul or strengthen the them, however if offenders could not be deterred by the law then, can not be deterred even now. Therefore as we have seen from some of the causes of sexual violence, it is clear that the problem also borders on traditional practices or cultures and its solution cannot be premised only on conventional or modern legislative mechanisms. It will therefore require the involvement of all the stakeholders and a multifaceted approach because it is a problem which can not be remedied by modern laws alone. In some cases, while the laws may be there, the system in place may either be too weak or inadequate to ensure that sexual offender are made to face justice, some child defilers have escaped justice because of the weaknesses that exist in our system.

It is however, agreeable that there is need to tighten the laws against the abusers because if they are not controlled or deterred they may freely continue with their impunity over innocent lives. It should also not be forgotten that the victims of sexual offences do not just suffer physical injuries, but they also have to face the psychological trauma probably for the rest of their lives. Added to all this is the risk of being infected with HIV. For these reasons and taking in to account all what has been discussed there is an agent need to find a lasting solution to these socially unacceptable and dangerous conducts which have become so prevalent in our society.

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APPENDIX A
THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

INTERVIEW GUIDE

RESEARCH TOPIC: THE EVALUATION OF THE PENAL CODE

**(AMENDMENT) ACT NUMBER 15 OF 2005 CHAPTER 87
OF THE LAWS OF ZAMBIA.**

Dear respondent,

I am a fourth year student at the University of Zambia in the School of Law, conducting a research on the topic: "THE EVALUATION OF THE PENAL CODE (AMENDMENT) ACT NUMBER 15 OF 2005 CHAPTER 87 OF THE LAWS OF ZAMBIA". This is in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws (LLB).

You are humbly requested to answer the questions that follow sincerely and truthfully. The information that you will give shall be treated in the strictest confidence.

Thank you.

Part A. PROFILE OF RESPONDENT

1. What is your name?
2. Sex
 Male { } Female { }
3. What do you do for our living?

Part B.

1. Do you think cases of sexual violence have increased in the recent years or it is simply because of media publicity they receiving now?
2. If the occurrence of the sexual violence cases has increase, what do you think is the reason?
3. Where do you think these cases are more common?
4. Do victims report these cases?
5. Do you think the police and other relevant authorities are doing their duty in order prevent the occurrence of such cases and/ or bring the offenders before the law?
6. If they are not doing their duty as expected what could be the reasons?
7. Are you aware of the new law on sexual offences which ha made the punishments stiffer?
8. Do you think people will stop committing these offences because of this law?

APPENDIX B

YEAR

2001

4

B

C

REPORTED

1

2

3

4

5

6

7

8

9

TO COURT

NOT TAKEN TO COURT

Offences	Reports	Conviction	Acquittals	withdrawn	Pending	Total	carried forward	withdrawn	Total
Assaults	2520	465	88	525	127	1205	463	852	1315
Rape	198	42	12	36	39	129	43	6	49
Att Rape	19	0	5	0	8	13	2	4	6
In Assault on a Female	65	6	4	12	6	28	13	24	37
Dep Ben Their Benefits	909	57	4	316	184	561	88	260	348
Defilement	366	52	9	37	151	249	106	11	117
Abduction	22	2	4	2	6	14	5	3	8
Child Neglect	1551	233	7	21	90	351	59	1141	1200
Child Dessertion	74	8	0	16	12	36	16	22	38
Defilement (Idiot)	2	1	0	0	1	2	0	0	0
Att Murder	2	0	0	0	2	2	0	0	0
Murder	29	2	2	8	13	25	6	0	6
Infanticide	5	2	0	0	3	5	0	0	0
Abortion	2	0	0	1	1	2	0	0	0
Att Abortion	2	1	0	1	0	2	0	0	0
Arson	15	0	1	4	1	6	3	6	9
Malicious Damage	42	4	1	1	14	20	3	19	22
Bigamy	12	0	0	1	4	5	5	2	7
Incest	16	2	0	2	8	12	3	1	4
Threatening Violence	54	4	0	4	0	8	5	41	46
Indecent Ass Boy(14)	3	0	1	2	0	3	0	0	0
Use of Insult Language	79	2	0	3	18	23	3	53	56
F P of Marriage	21	0	2	5	4	11	4	6	10
Child Stealing	5	1	1	0	3	5	0	0	0
Indecent Curiosi	2	2	0	0	0	2	0	0	0
Sodomy	5	2	0	1	1	4	1	0	0
Disputes	1795	0	0	0	0	1795	2	1793	1795
	7815	888	141	998	696	4518	830	4244	5073

KEY

A=B+C

8=2+3+4+5

9=7+8

YEAR 2002

CRIMES	Reports	Arrest	C/Forward	Total	Withdrawn	Convictions	Aquittals	Withdrawn	Pending	Total
Assaults	3285	576	398	2887	804	545	29	848	691	2887
Rape	198	138	43	185	2	66	6	7	76	185
Attempted Rape	11	6	0	11	1	4	1	1	4	11
In Assault(?)	139	83	21	118	12	24	9	18	65	118
Dep Ben Their Benefits	641	255	119	522	95	96	9	134	189	622
Defilement	865	316	146	718	17	238	10	29	425	719
Abduction	35	4	8	27	0	4	0	5	18	27
Child Neglect	1496	223	483	1013	33	72	3	426	470	1013
Child Desertion	121	28	23	98	28	10	3	20	37	98
Defilement (Idol)	5	0	0	0	0	5	0	0	0	5
Att.Murder	0	0	0	0	0	0	0	0	0	0
Murder	36	25	1	35	0	12	10	0	13	36
Infanticide	10	8	3	7	0	7	0	0	0	7
Abortion	16	18	5	11	2	5	0	2	2	11
Att.Abortion	9	5	3	6	1	0	0	0	5	6
Arson	14	11	0	14	0	7	0	3	4	14
Malicious Damage	40	21	2	38	14	10	2	12	0	38
Bigamy	1	0	0	1	0	0	0	0	1	1
Incest	21	7	9	12	1	2	1	0	8	12
Threatening Violence	53	32	9	44	14	22	2	2	4	44
Indecent ass Boy (14)	28	1	0	28	6	2	5	2	5	20
Use of Insult Language	234	25	6	228	1	25	1	121	80	228
F.P.of Marriage	13	0	0	0	0	0	0	3	10	13
Child Stealing	13	2	0	13	0	1	1	4	7	13
Indecent Curioist	0	0	0	0	0	0	0	0	0	0
Sodomy	8	6	1	7	0	6	0	0	1	7
Deputies	1960	169	24	1966	1522	0	0	252	192	1966
Concealment of Birth	7	6	2	8	0	5	0	0	0	8
TOTAL	9281	2018	1366	7967	2663	1167	91	1698	2265	

ZAMBIA POLICE SERVICE

Victim Support Unit

YEAR 2000

OFFENCE	Report	C/forward	Withdrawn	Total	Convictions	Aquittals	Withdrawn	Pending	Total
Assault OABH	2841	488	467	953	599	71	482	728	1888
Rape	308	33	11	44	87	6	70	101	264
Attempted Rape	30	0	3	3	3	1	8	15	27
Indecent Assault on female	196	23	49	72	25	4	47	48	124
Dep Ben their Benefits	734	87	79	166	228	7	178	155	568
Defilment	1233	77	98	173	626	23	192	219	1060
Abduction	52	5	23	28	6	0	10	8	24
Child Neglect	1420	86	957	1043	17	0	281	61	359
Child Desertion	219	15	54	69	12	0	26	112	150
Defilment (idiot)	4	0	0	0	2	0	0	2	4
Attempted Murder	5	0	0	0	0	0	2	3	5
Murder	20	5	0	0	5	0	10	0	15
Infanticide	11	5	0	5	1	0	0	5	6
Abortion	8	0	0	0	1	0	1	6	8
Attempted Abortion	8	0	0	0	2	0	2	4	8
Arson	18	4	6	10	2	0	3	3	8
Malicious Damage	77	5	28	33	15	0	9	20	44
Bigamy	10	0	3	3	0	0	5	2	7
Incest	36	0	1	1	16		1	19	36
Threatening Violence	65	8	30	38	17	0	2	8	27
Indecent Assault on Boy (14)	8	0	3	3	1	1	0	3	5
Use of Insult Language	353	6	204	210	70	0	23	50	143
F P of Marriage	33	0	16	16	2	0	6	9	17
Child Stealing	8	0	0	0	1	0	1	6	8
Sodomy	26	4	1	5	0	0	0	21	21
Disputes	1762	75	1617	1692	0	0	70	0	70
Concealment of Birth	1	0	0	0	1	0	0	0	1
Neg Acts likely to cause infec.	3	0	0	0	1	0	0	2	3
Cruelty to Juveniles	53	3	0	3	36	0	2	12	50
Child Dumping	11	4	3	7	2	0	0	1	3
Victimization of the elderly	15	0	3	3	0	0	6	6	12
Child Destruction	17	5	0	5	7	1	0	4	12
TOTAL	9585	936	3654	4585	1785	114	1447	1631	

OFFENCES

	Reports	Arrest	C/foward	Withdrawn	pending	Total	Conviction	Aquittals	Withdrawn	Pending	Total
Assault OABH	2338	646	49	429	772	1896	289	29	60	64	442
Rape	179	60	1	4	68	133	22	3	5	16	46
Attempted Rape	25	11	1	3	2	17	1	0	4	3	8
Indecent Assault on female	123	39	2	8	43	92	17	2	0	12	31
Dep Ben their Benefits	227	86	24	51	36	189	15	5	3	5	28
Attempted Defflement	20	10	0	2	2	14	2	0	3	1	6
Defflement	1612	976	52	58	312	1397	140	9	3	63	215
Child Neglect	765	288	30	262	56	646	37	3	76	1	119
Theft	75	42	8	6	8	64	6	0	0	5	11
Abduction	74	14	37	5	8	64	3	0	2	5	10
Use of Insulting Language	125	55	3	15	7	80	10	30	3	2	46
Child Desertion	74	42	1	6	7	66	7	3	4	4	18
Defflement (1st)	22	9	0	3	0	12	7	1	0	2	10
Attempted Murder	10	3	0	0	1	4	3	0	2	1	6
Murder	38	20	0	0	6	26	9	2	0	1	12
Attempted Infanticide	9	2	0	0	2	4	1	0	3	1	5
Infanticide	10	4	0	1	0	5	1	1	3	0	5
Abortion	19	8	2	1	0	11	5	0	3	0	8
Attempted Abortion	14	3	0	4	0	7	4	1	0	2	7
Procuring Abortion	19	6	1	4	0	11	5	0	2	1	8
Arson	21	8	0	3	4	15	3	0	0	3	6
Malicious Damage to Property	43	19	2	10	6	37	6	0	0	0	6
Bigamy	19	8	1	1	1	11	6	0	0	2	8
Incest	29	12	0	0	7	19	5	2	0	3	10
Obtaining Money by False Pretenc	43	13	0	10	1	24	6	8	3	1	19
Obtaining Goods by False Pretenc	6	3	0	0	1	4	2	0	0	0	2
Attempted Defflement	19	11	4	0	2	17	2	0	0	0	2
Threatening Violence	131	73	7	15	4	89	4	10	18	0	32
Indecent Assault on Boy (14)	18	7	2	3	2	14	3	0	1	0	4
Use of Insulting Language	246	118	3	44	8	173	34	10	20	8	72
Fraudent Preference of Marriage	11	8	0	1	0	9	2	0	0	0	0

Child Stealing	8	5	0	2	0	7	1	0	1
Sodomy	19	8	0	0	4	12	2	3	7
Criminal Trespass	13	5	0	4	0	9	0	0	4
Deputies	1237	585	241	49	17	892	19	87	345
Concealment of Birth	2	1	0	0	0	1	0	0	1
Neg. Acts likely to cause infec.	23	4	0	7	0	11	2	4	12
Cruelty to Juveniles	7	4	0	0	0	4	3	0	3
Child Dumping	8	3	0	1	1	5	2	0	3
Victimization of the elderly	17	9	0	5	1	15	1	1	2
Child Destruction	8	3	0	0	1	4	2	0	4
Wrongful Confinement	3	2	0	0	0	2	1	0	1
Woman Living O A F G P O A W	0	0	0	0	0	0	0	0	0
Arfay	2	2	0	0	0	2	1	0	1
TOTAL	7710	3244	471	1017	1392	6124	701	215	1585

2005

OFFENCES

Assault OABH	3496	518		258	75		281	17	221	733	
Rape	290	50		35	5		18	1	9	24	
Attempted Rape	24	5					2			3	
Indecent Assault on female	145	18		5	29		9	2	5	23	
Dep Ben their Benefits	552	46		43	32		7		19		
Attempted Defilement	9	9		4					1	14	
Defilement	1375	92		5	12		51	4	13	184	
Child Neglect	1571	170		201			27	3	78	59	
Failure to Supply Necessaries	68										
Theft	191	11		6	1					3	
Abduction	44	7		4	2		1	1	2	9	
Child Desertion	149	19		40	17		1		10	7	
Defilement (idol)	11										
Attempted Murder	4	1		1							
Murder	28	11			1		1			11	

Reports Arrest C/forward Withdrawn pending Total Convictions Acquittals Withdrawn Pending Total