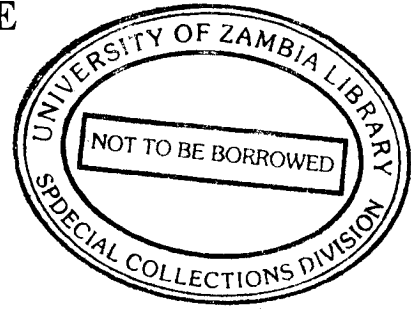


GENDER BASED VIOLENCE

BY

FREDRICK IMASIKU

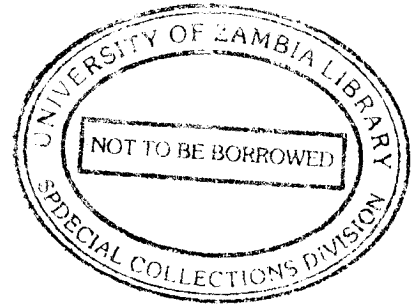


Being a paper presented in partial fulfillment of the examination requirements for the degree of Bachelor of Laws of the University of Zambia

2005

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



I recommend that the directed research essay presented under my supervision by

FREDRICK IMASIKU

Entitled

GENDER BASED VIOLENCE

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

Date *09-01-06*

Supervisor... *A. Chanda*

Mrs. Anne Chewe Chanda

Dedication

To my parents, Mr. Martin Munyinda Imasiku and Mrs. Priscilla Monde Imasiku, I thank you for all the sacrifices that you have made for me over the years and for loving me, for being such an inspiration and encouraging me to aspire to fulfill my dreams.

Mum....You have shown me the greatest love that a son can ever have. You have always wanted nothing but the best for all of us.

Dad....Thank you for leading the way and your encouraging words.

May God Bless You.

ACKNOWLEDGEMENTS

First and foremost, I would like to thank *God* for the gift of life and the countless blessings that he has showered upon me.

I thank my supervisor *Mrs. Anne Chewe Chanda* for the consistent encouragement and tireless examination of this work, thank you for so much patience. To my brothers, *Silumesii* and my dearly beloved late brother, *Munyinda*, if only you were still here to share all the joy and laughter that we once shared. To my brother *Silumesii* for making this paper possible. My sisters *Nyambe* and *Maimbolwa*, you have made it.

I especially like to thank the following individuals : *Tebuho (Dr. T)* the silent partner, you are simply the best! *Mutumumu*, you make everything seem so easy. *Milimo...*(neighbours). *Mukumba...*from way back in grade eleven, thanks for being there and being an all weather friend... *Sibajene...*you are a good person who always encouraged me to do more. *Namangolwa*, congratulations, you inspirational, *Malingose...*for just that moment, thank you! *Gideon* (cousin), you know how it is.

To my friends *Garla, Koreen, Njelembo, Given, Douglas, Joseph*, thank you for your support and for always being there for me when I needed you.

Preface

Gender based violence is a phenomenon that is as old as history. It is mostly committed by men against women, although in some cases it does occur vice versa. It is a type of violence that is common to all societies, cutting across class, race, religion and culture.

This research attempts to discuss the form, prevalence and causes of gender violence in Zambian secondary schools. The research also intends to showcase evidence of gender based violence in schools in developing countries as well as the measures being taken to address the situation, if any. Further, the research attempts to identify the nature and forms that gender based violence takes in schools.

Its identification in schools has become a barrier to increased education participation, in particular of girls, in the poorer countries of the world. As a result, this has contributed to increased underachievement, high pupil dropout, poor quality of learning and low levels of teacher professionalism, hint at its presence in schools.

However, gender based violence is a very complex issue to address because a central problem in identifying the nature is the fact that many forms and incidents of gender violence in schools are not reported as such.

Researchers on the subject have learnt that studies from Sub Sahara Africa reveal that gender based violence is mostly perpetuated against girls. They have also addressed primarily the sexual abuse of female pupils by male teachers and male pupils.

In Zambia, NGO's have identified a number of incidents where teachers are preying on vulnerable girls, exchanging answers to tests or high grades for sex. In most cases, the incidents are not reported nor are the teachers. When they are, they are not penalized.

As a result of the above, there is increased poor performance and drop out, irregular attendance and underachievement of girls. Pregnancy has been identified in other cases, as well as early marriages. Some pupils exhibited low self esteem which resulted from verbal abuse by teachers and a teacher's low opinion of either male or female students.

The law in Zambia unfortunately has not kept pace with the rate at which gender violence is becoming a serious concern. Zambia still has a long way to go before it can adequately deal with the issue of gender violence. The present legal system has not provided for any comprehensive legal protection. Furthermore, there is need to educate the people, we have to know why gender violence is so prevalent and better still, what can be done to stop and prevent it.

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CHAPTER 1

THE FORMS AND CAUSES OF GENDER VIOLENCE

Introduction

Gender violence is a concept that has been in existence as old as history. It has been the focus of a number of activists that have attempted to inform the world of the silent battle that is being fought.

What is gender violence? For lack of a better term, it has been given a number of names which encompasses the following, but is not limited:

. physical, sexual and psychological violence occurring in the family, including battery, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.¹

. physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions.

¹ Professor Alfred Chanda Gender Violence (Women and Law in Southern Africa Trust) Lusaka, Zambia. 2001. p.6

laden language that undermines their self-esteem, for instance, phrases like whore, homo, gay boy or slut. In some cases, ‘school-related’ rather than ‘school-based’ is used since not all violence against students is limited to the school itself. Even going to and from school or living in a dormitory setting away from home can place students at risk for rape and other sexual violence.³

The study will focus on Zambia and the sub region, both sexes although while girls are subjected to gender violence more frequently, often in more severe forms and with more severe consequences, boys are also vulnerable. In addition, the focus will be mostly on secondary schools needless to say that examples may be drawn from primary schools as well.

The focus of this chapter will be the different forms of violence in at institutions of educations, the prevalence and forms.

1.0 THE FORMS OF GENDER VIOLENCE

³ Kathrine M. Blakeslee, Under Schools; A Literature Review on School-Related Gender-Based Violence in Developing Countries, (Director Office of Women in Development), Virginia, USA, 2003.p.17

Gender violence manifests itself in a number of ways and it ranges from subtle and indirect abuses to the most blatant abuse such as beating, slapping etc .

1.1 What is physical violence?

Physical abuse is ‘unfair, cruel or violent treatment of somebody’- pushing, hitting, whipping, biting, throwing things, beating, slapping, choking, shoving, restraining and other acts designed to injure, hurt or cause physical pain.³ Even if the person who inflicts the injury might not have intended to hurt that person, the injury is not considered an accident if the actions were intentional.

1.2 What is sexual violence?

Sexual abuse is any act between two persons that is unwanted by one person. This includes fondling, touching or kissing a person’s genitals, penetration, intercourse, incest, rape, oral sex or Sodomy, sexual exploitation, or enticing the person to pornographic sites or material on the internet.

³ Jerry Bringer, Breaking Free From Domestic Violence (Compare Publishers), Minneapolis, Minnesota, USA, 1992.p.3

Violence against women is defined in the *Declaration on the Elimination of All forms of Violence Against Women* as:

*‘Any act of gender-based violence that results in, or is likely to result In, physical, sexual or psychological harm or suffering to women, Including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life’.*²

However, because of the diversity of the subject, this study discusses the violence at institutions of learning. In light of this, institutions of learning experience ‘gender-based violence’ which focuses on gender roles. It is prudent that a distinction is made between ‘gender-based violence’ and ‘violence against women’. Violence against women has already been defined in the Declaration on the Elimination of All Forms of Violence Against stated earlier. On the other, the concept of ‘gender-based violence’ is not limited to sexual and physical violence, but includes all forms of violence when victims are targeted on the basis of gender roles traditionally assigned to their sex. This may vary from requiring only girls to clean classrooms and school grounds, to exposing students to demeaning sexually

² Article 1

This form of violence includes “forcing someone to have sex when she does not want to, forcing someone to engage in sexual acts she does not like or finds unpleasant, frightening or violent: forcing someone to have sex with others or watch others, criticism of sexual performance; sadism, anything that makes her feel demeaned or violated”⁴

1.3 What is emotional and psychological abuse?

Emotional abuse is defined as “ constantly doing or saying things to shame, insult, ridicule, embarrass, demean, belittle, or mentally hurt another person”.⁵ Emotional abuse is any attitude, behaviour, or failure to act on the part of a person. Other names for emotional abuse are; verbal abuse, mental abuse and psychological maltreatment or abuse.

Emotional abuse can range from a simple verbal insult to an extreme form of punishment. The following are examples of emotional abuse: ignoring, withdrawal of attention, or rejection, lack of physical attention such as hugs or negative comparisons to others.

⁴ Dawn B. Berry, Domestic Violence Sourcebook (Lowell House, NTC/ Contemporary Publishing Group) Illinois, USA, 1998, p.1

⁵ Jerry Brinegar, Breaking Free From Domestic Violence (Compcare Publishers) Minneapolis, Minnesota, USA, 1992. p.3

1.4 What is socio-cultural abuse?

Societal attitudes and traditional practices that have been passed on from generation to generation enhance this form of abuse. Initiation ceremonies for women have taught them to be obedient and submissive to their husbands. In most cases, men usually have a greater say in matters that affect the family and a final say in decision making. In addition, boys are given the most opportunities, for instance, when it comes to who should be sent to school between the boy and the girl, regardless of their intelligence, the boy will be sent first.

1.5 What is economical abuse?

Economical abuse may be defined as “any act, which takes away or prevents a woman from using or enjoying something or any act which results in the exploitation of the woman for gain or benefit”.⁶ Depriving the family of income, the husband’s failure to support the wife, considering wife’s property as the husband’s, property grabbing are examples of economic.

It is important to note that the various forms and levels of violence are experienced by individuals in general, and women and female children in

⁶ Josephine B. Muchelema, “Economic Battering”. A paper submitted at YWCA seminar in Lusaka, 1991

particular. The various forms of violence faced are in many cases multi-dimensional, i.e. they were usually a combination of several types of violence at the same time.

2.0 CAUSES OF GENDER VIOLENCE

Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full achievement.

A study conducted by experts covered by the *United Nations Division for the Advancement of Women in 1994* recognized that gender violence relates to issues of power than sexuality:

“It has been known for some time that rape or sexual assault is not related to sexuality: it is related to the dominance and an apparent need to humiliate the person being attacked”.⁷

⁷ www.unesco.org/gender violence

Similarly, battering as part of domestic violence is also at its heart an effort to assert dominance or to reassert a self image based on dominance. The causes of gender violence are numerous but the most frequent are the following:

2.1 Alcohol and other drugs

Alcohol and drugs are a cause of gender violence. It is believed that individuals who use alcohol and drugs are more prone to violence than those who do not. Students in schools have been taught by teachers abusing alcohol and other drugs. The most common kind substance abuse that students are exposed to is petrol sniffing. Students then enter class intoxicated thus taking a more aggressive and challenging approach to authorities as well as being less responsible for their actions. It is a cause in light of the fact that it is not only students that are exposed to gender violence, but female teachers are at times subjected to threats by students based on their gender.

2.2 Ignorance

The level of illiteracy in Zambia is high, especially among the females. Most women are ignorant of their rights and the law. They do not know what to do

and where to run to. This lack of knowledge and access to help makes them vulnerable to violence. High Court Judge, Peter Chitengi at a Permanent Human Rights Commission workshop said:

*“Given the fact that the majority of Zambians are illiterate and poor, many people in Zambia do not know their rights are protected by the Constitution and therefore they do not know they have the right to challenge their violation”.*⁸

Violence against women through out the cycle of life derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society.

Violence against women is exacerbated by social pressures, notably the shame of denouncing certain acts that have been perpetuated against women. Women’s lack of access to legal information, aid or protection; the lack of laws that effectively prohibit violence against women; failure to reform existing laws; inadequate efforts on the part of public authorities to promote

⁸ Legal Resource Foundation (L R F) News Number 33, Lusaka, Zambia, 2001. p.6

awareness of and enforce existing laws; and the absence of educational and other means to address the causes and consequences of violence.

3.0 PREVALENCE OF GENDER VIOLENCE

As regards the scale of gender violence in schools and whether it is endemic in educational systems across the developing world is difficult to answer, given that this is largely uncharted territory. The Akiba study of school violence in 37 mostly *“counselors”* nations found that it is widely prevalent,⁹ while the six case studies provided by Ohsako (all but one in the developing country category) reported sharp increases to what were in some cases already very high rates.¹⁰ However, there are no surveys that specifically have examined gender violence in schools. Most countries gather statistics on sexual assault and rape of children but their published statistics do not identify whether the victims are school children, nor where the rape took place. However, domestic violence, mostly against women and children, is well documented in most societies, as is sexual violence in situations of civil conflict (where rape is a common form of retribution) and in many social institutions, including religious *“counselors”*, children’s

⁹ Akiba, M., LeTendre, G.K., Baker D.P. and Goesling, B., School Victimization: national and school system effects on school violence in 37 nations, (American Educational Research Journal) 2002, p.829

¹⁰ Ohsako, T.(ed), Violence at School: Global Issues and Interventions, Paris: UNESCO/IBE.1997

homes, prisons, the military and refugee camps. Region-specific forms of violence such as dowry deaths and acid attacks in South Asia and jackrolling (counselors kidnapping and gang rape) in South Africa may implicate women as well as men.¹¹ Given the school's role in the production and reproduction of forms of social relations and social control, it would be surprising therefore if gender violence was not endemic across the education sector in all countries, but in more overt and aggravated forms in certain schools and locations. As schools are not immune from social forces in the outside world, it would not be surprising that increased poverty and unemployment, family disintegration, migration, AIDS, divorce etc. contribute to increased violence in schools.

South African society is well known to have very high levels of violence, including rape. The Human Rights Watch report (2001) entitled Scared at School has a wealth of statistics on rape but does not provide school specific data. It cites one research study which states that from 1996 to 1998, girls aged 17 and under constituted approximately 40% of reported rape and attempted rape victims nationally.¹² The South African Police Service in 1998 reported that rape accounted for one third of all serious offences against

¹¹ www.unesco.com

¹² www.unesco.com

children and another police report stated that girls aged 12-17 constituted the highest ratio of rape cases per 100,000 with 472 cases per 100,000 nationally (in Western Cape this was nearly 900 per 100,000).

CHAPTER TWO

EVIDENCE OF GENDER-BASED VIOLENCE

1.0 Introduction

This study will consider the evidence of gender-based violence in schools in developing countries and summarise the measures taken to address them. A central problem in identifying the nature and scope of review is the fact that many forms and incidents of gender violence in schools are not reported as such. Most often, gender violence is not considered differently from other forms of school violence.

Identification of gender-based violence in schools as a barrier to increased educational participation, in particular of girls, in the poorer countries of the world, is recent and the understanding of its causes and consequences is not well developed. As a result, the appropriate gender-sensitive framework required to observe and to intervene does not exist, so that these least desirable aspects of school life are either left unreported or unrecognized as gender violence.

There is no doubt, however, that this is not an isolated phenomenon, as studies directed at investigating a range of problems in education in

developing countries such as underachievement, high pupil drop-out, poor quality of leading and low levels of teacher professionalism, hint at its presence in schools. There is therefore a need to explore and categorise its manifestations within an explicit gender framework and to examine its impact on the school experience and student learning. Without this, it will be impossible to identify effective system-wide strategies to address it.

Cases of gender-based violence in schools may be categorized and reported differently and without reference to gender, for example, unregulated and excessive corporal punishment, bullying and physical assault should be included alongside sexual harassment, sexual abuse and rape because they are manifestations of gender violence. Using a gender-sensitive frame of reference, gender-based violence can be broadly clustered into two overlapping categories; *explicit gender* (sexual) violence, which includes sexual harassment, intimidation, abuse, assault and rape, and *implicit gender* violence, which includes corporal punishment, bullying, verbal and psychological abuse, teacher's unofficial use of the pupils for free labour and other forms of aggressive or unauthorized behaviour that is gender specific.¹ These latter are categorized as "implicit" because they are forms of

¹ www.unesco.com/gender and violence in schools

violence which are physical, verbal or psychological in nature but have a gender dimension.

Both explicit and implicit forms will be covered in detail. However, to have an understanding of this phenomenon, it is implicit to have a summary of relationships between gender relations and gender violence in schools.

2.0 GENDER RELATIONS AND GENDER VIOLENCE IN SCHOOLS

Within the institutional culture of the school, there are norms of interaction and explicit and implicit rules and codes that guide behaviour which are re-enacted and re-enforced in the everyday life of the school. Within school the ‘gender regime’ is constructed through everyday, ‘taken for granted’ routine practices.² For example, in many schools girls are predominantly responsible for cleaning and boys for digging the school grounds; in the classroom girls may sit at the front of the class and boys at the back. The gender boundaries within the instructive thus help to construct and reinforce feminine and masculine identities within the school. Gender identities are not given or

² www.unesco.com/gender and violence in schools

accomplished passively but are constantly performed overtime through individual and collective acts of resistance and accommodation.³

The age/authority relations between teacher and student are a fundamental structure of schooling that interacts with gender regime. The institution of the school officially condones teacher's regulation and control of appropriate student behaviour.

The scope of gender violence focused on includes 'explicit' forms of violence such as sexual violence and sexual abuse and 'implicit' forms such as corporal punishment, verbal abuse and bullying.

3.0 THE NATURE OF GENDER VIOLENCE IN SCHOOLS

The few studies of gender violence in schools that exist come almost exclusively from sub-Saharan Africa. Rather than indicating that it is most prevalent in African countries, the studies are likely to be the result of a concentration of donor and lending programmes in this region, where efforts at poverty alleviation through improved health, education, governance etc.

³ Bultler, J., Gender Trouble, Feminism and the Subversion of identity. (Routledge) London, 1990, p23.

are present on a large scale, and where there are very high rates of HIV/AIDS infection.

3.1 Explicit (sexual) Violence

Studies from Sub-Saharan Africa have focused almost exclusively on heterosexual relations and violence against girls and have not investigated the incidence of violence against boys or against teachers. They have also addressed primarily the sexual abuse of female pupils by male teachers and male pupils. A study examined the abuse of junior secondary school girls by older boys, teachers and ‘sugar daddies’ in Zimbabwe, Ghana, Malawi and Zambia and found that there was a high level of sexual aggression from boys, which went largely unpunished in the schools, and some cases of teachers propositioning girls for sex.⁴ This behaviour was largely tolerated and ‘normalised’.⁵ All three educational systems were characterised by a reluctance to take action against either teachers or pupils.

Zambian NGOs reported to Human Rights Watch numerous incidents of teachers preying on vulnerable girls, exchanging answers to the tests or higher grades for sex. Most abuses by teachers are not reported, and few

⁴ www.unesco.com/gender and violence in schools

⁵ Leach, F. and Machakanja, P., *A Preliminary Investigation into the Abuse of Girls in Zimbabwean Junior Secondary Schools*. (DFID Research) London, 2000. p.45

teachers are penalized, they said.⁶ “The laws are strict, but there’s no real attempt to find out what goes on,” said one experienced NGO worker.⁷

NGO representatives in Zambia and South Africa also told Human Rights Watch that girls’ safety and security on their way to and from school was often threatened. The length of the girls’ commute to school was an important factor since their risk of sexual abuse by minibus drivers or conductors, if they were transported, or abuse by others along the road, if they walk, could be significant.

3.2 Implicit Gender Violence

There is a wide range of implicit violence in schools which is perpetrated by teachers and students. Corporal punishment is the most widely reported form of implicit gender violence in schools and there are numerous studies and reports documenting its abuse worldwide.

⁶ www.humanrightswatch.org

⁷ Human Rights Watch interview with Cosmas Musumali, Lusaka, Zambia, May 16, 2002.

4.0 IMPACT OF GENDER VIOLENCE IN SCHOOLS

It is only through the above named studies that we can assess the impact of gender violence in schools. They suggest that gender violence is an important cause of poor performance and drop-out, although it is difficult to establish cause and effect. The study by Dunne, on the impact of gendered experiences on retention and achievement found that gender violence in the form of sexual intimidation, verbal abuse and physical assault was a significant contributor to irregular attendance and underachievement of girls.⁸ Pregnancy has been identified in other studies, with early marriages, as a major reason for girls drop-out. Boys developed strategies to avoid excessive corporal punishment, of which truancy was the most common; this also led to permanent drop-out in some cases. A number of the above studies also show that teacher's widespread use of verbal abuse (especially by female teachers who resort to verbal abuse rather than corporal punishment) generates low self-esteem and is found by many pupils to be hurtful than corporal punishment. Loss of self-esteem may also stem from teacher's low opinion of either male or female students.

⁸ Dunne, M., Leach, F., Chilisa, B., Maundeni, T., Schools as Gendered Institutions: The Impact on Retention and Achievement, London, 2003.p.60

5.0 MEASURES TAKEN TO ADDRESS GENDER BASED VIOLENCE IN SCHOOLS

As has already been stated, studies specifically about gender-based violence in schools have only been carried out in a very small number of countries in the developing world, mostly in Sub-Saharan Africa. Consequently, measures to tackle the problem are equally sparse and concentrated in the same countries, in particular where the issue has received most publicity, and donor funding has been made available. Because the existence of widespread gender-based violence in schools is not fully recognized, or is classified as, for example, bullying, lack of discipline, youth crime and excessive corporal punishment, it is unlikely that many governments will have addressed the issue explicitly at the policy level. It has not been possible within the scope of this study to investigate fully whether any Ministries of Education have developed such a policy and so what follows is by necessity partial. There is no doubt, however, that the country that has made the most effort to develop interventions to tackle the issue is South Africa, largely within the context of HIV/AIDS.

5.1 National Initiatives

Ministries of Education have policies on school discipline and codes of conduct for teachers that outline procedures for disciplinary measures, sanctions and prosecutions in cases of teacher misconduct. However, all the evidence from the reports cited above points to a lack of enforcement, with efforts at the national level to tackle misconduct being at best. The studies from Sub-Saharan Africa suggest that prosecutions of teachers for having sexual relations with their pupils, or for sexual assault or rape are rare, that those few that are followed up take years to progress through the courts and that they do not often end in dismissal. There is a lack of political will to tackle the issue and much shifting of responsibility from one government office to another. Cumbersome bureaucracy, a backlog of cases and a reluctance to confront the problem meaning that the only punishment a teacher found guilty of sexual abuse is likely to suffer is transfer to another school. At the school level, head teachers are reluctant to report cases as they know it will lead to lengthy paper work and possibly unwanted media attention. Communities also find it difficult to report teachers or head teachers for misconduct, whether for sexual abuse, excessive corporal punishment or misappropriation of funds.

Student on student violence is often shrugged off as part of growing up, except where it involves severe injury or the use of weapons, when it is likely to result in dismissal. As for implicit forms of gender violence such as corporal punishment by teachers and bullying by students, as the above has made clear, both are endemic in many educational systems and are largely seen as a necessary part of school life.

Although most governments have made explicit commitments to meeting the goal of gender equity in education, and some are taking active steps on gender mainstreaming at the policy formulation and implementation stages, there is little evidence of national strategies and/or examples of good practice specifically to tackle gender violence in schools.

There is also little evidence that Ministries of Education have incorporated topics about gender violence in schools in their curricula. South Africa's curriculum 2005 has tried to do this within the context of its life skills programme for schools. Beyond the sphere of government policy, there have been a number of national initiatives using the media which have tackled gender violence among adolescents and developed associated materials for use within schools. Again from South Africa, the best known examples is

Soul City (www.soulcity.org.za) , a TV drama series set up by a national NGO with a focus on health (in particular HIV) and development issues, which has been running for over ten years. This programme has also been aired in Zambia through Zambia National Broadcasting Corporation (ZNBC).

5.2 International and Regional Initiatives

A Commonwealth framework to tackle gender violence has been produced by the commonwealth Secretariat as part of a series of gender mainstreaming manuals; this is entitled *Promoting an Integrated Approach to Gender-based Violence*. While the materials acknowledge that both women and men can be ‘victims’ and ‘perpetrators’ of gender-based violence, it is emphasized that women and girls are most at risk. Education is also included in the reference manual *Gender Mainstreaming in HIV/AIDS*.

Peer counselors is judged to be an effective way to approach sensitive issues such as HIV/AIDS and sexuality, gender violence and abuse. In Latin America, Save the Children Fund has been working with the Institutes of Education and Health in Brazil, Colombia and Peru to train young people as

peer counselors to work within schools on sexual and reproductive health issues from a gender perspective.

There are also a number of anti-violence interventions in schools, which centre on the abolition of corporal punishment. As the research studies show, the gendered nature of both the process and the effects of corporal punishment are often not acknowledged by researchers or policy makers, although the differentiated application of corporal punishment in many countries points to a subconscious gendered practice. Corporal punishment in schools has in fact been outlawed in many countries and is only allowed as a last resort and under very strict conditions in many other countries. And yet, its practice and abuse is widespread worldwide, particularly in developing countries, where it has many advocates among teachers and parents, and even among pupils (provided that it is administered fairly and with moderation). Its continuing widespread use confirms that strong statements at government policy level and government commitments to international conventions on human rights, for example, are not sufficient to ensure behavioural change.

5.3. Local initiatives

Much of the innovative work with young people has been done by Ngo's, mostly in connection with HIV/AIDS education. Some of this work has been carried out with schoolchildren, although not always in school setting, with the overall aim of changing sexual behaviour and developing more constructive gender relations. Again, South Africa has been the most proactive. NGO initiatives tend to have in common the use of participatory approaches and popular media forms, including drama and storytelling.

In tackling gender violence in schools, a whole school approach involving management, teachers, pupils and the curriculum is necessary to ensure that the messages are consistent with and reinforced by teachers and pupils alike. Teachers can be a key instrument for change. However, they have their own experiences as gendered beings. To play an effective role in addressing gender-based violence, teachers need to understand and confront their own attitudes and experiences regarding gender and violence. Given that some teachers are perpetrators of abuse, and others may be victims of abuse, it is important that strategies to address gender violence in schools acknowledge and address teachers' experiences as well as pupils', so that constructive and collaborative relationships can be encouraged.

In summary, this chapter sought to document the extent of gender-based violence in schools in developing countries. Much of the evidence comes from Sub-Saharan Africa, although, this does not mean that the problem does not exist in both developing and developed countries. In the developing world, however, the failure of educational authorities to acknowledge its existence and to address it, in particular in contexts of weak policy compliance, low resources and entrenched gender roles, has allowed it flourish unchecked and to become institutionalized. To prepare for effective interventions against gender-based violence in schools, it is important that broad dissemination of the analysis of the gender relations and their complexity as well as further research using an accepted gender sensitive framework of analysis be undertaken.

CHAPTER 3

A CRITIC OF THE LOCAL LEGISLATION AND INTERNATIONAL INSTRUMENTS

1.0 Introduction

This chapter discusses the law in Zambia relating to gender-based violence. It will also look at international instruments that Zambia has ratified in its endeavour to address the issue of gender violence. In addition, it will also look at the difficulties that are faced by the criminal justice system in dealing with complaints of sexual abuse of girls.

2.0 NATIONAL LAW

The Zambian Constitution guarantees a wide range of rights, including prohibiting discrimination on the basis of sex¹ but it does not recognize the attention that is due to women, particularly as far as gender based violence is concerned. The Constitution is the supreme law of the land, according to article 1 (3). Every other law enacted in Zambia derives its validity and authority from the Constitution. Consideration is given to Part III of the Constitution as it contains the Bill of Rights from article 11 through to

¹ Constitution of Zambia, Article 23(3), 1991

article 26. Every person in Zambia can claim protection of his or her rights under article 28, which gives the right to petition the High Court in the event of a violation. However, with respect to women, the Constitution inherently has deficiencies. The Bill of Rights has absolutely no special provisions for women and children.

The Penal Code prohibits virtually all the abuses associated with sexual violence, coercion, and discrimination. The reality of enforcement, however, is entirely different: bias against the victims, endemic problems of the criminal justice system, and discrimination and other shortcomings in the customary law. These problems often lead to a failure to investigate, prosecute and punish these offences. As a result, the victims have little recourse to the justice system, while the perpetrators face little disincentive to abuse again.

The Zambian Penal Code prohibits rape, incest, and defilement-sex with a girl under age sixteen-as well as neglect or desertion of children by a parent or guardian.² It also outlaws offenses endangering life or health, unlawful compulsory labor, and assaults causing bodily harm.³ In addition, the

² Penal Code of Zambia, Chapter XV, section 132

³ Penal Code of Zambia, Chapter XXII, Offences endangering life or death, section 229

Juvenile Act of Chapter 53 provides for care and protection of children; Section 46 of this Act prohibits cruelty to children by parents or guardians.⁴

2.1 Statutory and Customary Law

Before independence from the British rule in 1964, Zambia had two distinct legal systems, one applying only to Africans and the other to Africans and Europeans. Zambian law now integrates the two legal systems: customary law, based on pre-colonial legal systems as interpreted by the colonial “native courts,” known as local courts today; and statutory law, much of it still inherited from the pre-independence era, but modified and extended by legislation adopted by the Zambian parliament since 1964. In general, customary law grants significantly fewer rights to women and girls than statutory law.

The Zambian court system is separated into several levels-local courts, magistrates’ courts, the High Court, and the Supreme Court. Local courts are the lowest in the hierarchy of courts in Zambia and possess only limited jurisdiction. The Local Courts Act provides that Subject to any express provision of any other written law conferring jurisdiction, no local court shall have jurisdiction to try any case in which a person is charged with an

⁴ Juvenile Act chapter 53 of The Laws of Zambia

offence in consequence of which death is alleged to have occurred or which is punishable by death.⁵ The local courts do not have jurisdiction to try more serious offenses, including murder and rape, which must be heard in the magistrates' court or High Court.

Problems may arise when the laws under the two legal systems conflict, even though the Local Courts Act makes it clear that in such instances statutory law should take precedence. When customary law takes precedence, according to Constance Lewanika of WILDAF, it often happens that “the worst victims are women and girls, stemming from social and cultural factors which degrade the position of women and girls.”⁶

3.0 INTERNATIONAL LAW

Zambia is a party to many major U.N. human rights treaties such as the Convention on the Rights of the Child (CRC), entered into force in January 1992; Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW), entered into force in July 1985 as well as the African Charter on Human and People's Rights. Zambia signed the African

⁵ section 11

⁶ Human Rights Watch Interview with Lewanika, May 21, 2002

Charter on the Rights and Welfare of the Child in 1992, but has not ratified it.⁷ By ratifying these international human rights instruments, Zambia has committed itself to protecting a broad range of civil, political, economic and social rights that if enforced would protect the rights of persons directly or indirectly.

In 1985, Zambia ratified CEDAW, which calls upon public authorities and institutions to “pursue a policy of eliminating [sex] discrimination.”⁸ Zambia in 1997 signed the Gender and Development Declaration of the Southern African Development Community (SADC), in which the government pledged to “take urgent measures to prevent and deal with the increasing levels of violence against women and children.”⁹ Still, most efforts to address gender violence emanate not from the government but from NGOs and other civil society groups. Although the government has made progress in reforming statutory law by removing overtly discriminatory laws, discrimination against women continues under customary law in particular.

The Convention on the Rights of the Child contains provisions to protect

⁷ U.N. Common Country Assessment, p.80

⁸ CEDAW, Article 2

⁹ Southern African Development Commission, “Gender and Development: A Declaration by Heads of state or Government of the Southern African Development Commission”, par. H (IX), September 8, 1997

children from abuse and exploitation. Article 2 requires states to take all appropriate measures to ensure that children are protected from discrimination. Article 19 requires state parties to take all appropriate measures to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Article 24 recognizes the right of children to enjoy “the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health.” Article 32 recognizes the right of children “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” Article 34 requires states to undertake to protect children “from all forms of sexual exploitation and sexual abuse,” and in particular take all appropriate measures to prevent “(a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices.”¹⁰

¹⁰ Convention on the Rights of the Child, G.A. res. 44/25, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.

4.0 CRIMINAL JUSTICE SYSTEM AND SEXUAL ABUSE OF GIRLS

A central problem in many African countries is the failure by the states and particularly the criminal justice systems to deal appropriately with complaints of sexual abuse from women of all ages, but perhaps more particularly from girls and young women. There are many barriers to effective reporting and prosecution of crimes of sexual assault. For orphaned girls being abused by men who are meant to be their guardians or otherwise to be helping to look after them, reporting the abuse may mean risking abandonment or violent punishment. Families will often go to great lengths to conceal this abuse. In other cases, victimized girls remain silent in the face of legal and social services systems that fail to act to protect girls' rights. To report a crime of sexual violence or abuse, a girl would face a police department that is rarely child- or gender-sensitive, health service providers that may scold her for being promiscuous, a court system lacking any facilities for youths, and a social structure that teaches girls to be submissive to men. Even if she did report an abuse, chances that officials would act against the abuser are minimal. Official inaction on the part of the criminal justice system helps to perpetuate the abuse by contributing to a climate in which girls who suffer sexual violence decide it is not worth

reporting to the police because of the unlikelihood of punishment of perpetrators and by sending the message to perpetrators that they can commit abuse with impunity. As a result, the perpetrators remain free to abuse again.

In most African countries, the police play a central role in facilitating the access to justice and to judicial mechanisms of sexual abuse survivors. The police hear complaints and are often a survivor's gateway to forensic medical services, which are important to prove sexual offences cases and may be essential where corroborative evidence is required.

In Zambia, the Victim Support Units (VSUs) found in all police stations handle sexual abuse cases, including those involving children. Although the VSU has intervened effectively in some cases, the potential impact of the VSU has been undermined by a fundamental shortage of resources, equipment, and training. For example, in 2002 the VSU had only two vehicles for the whole country.¹¹ There were 100 women officers in the VSU, and one woman officer was supposed to be assigned to each police station. A VSU spokesperson said that this system was difficult to

¹¹ Human Rights Watch with interview with Eugene Sibote, Lusaka, Zambia, May 22, 2002.

implement because many women refuse to be assigned to police stations in remote areas.

While the mandate of the VSU is laudable, many observers told Human Rights Watch that the VSU were tainted by their association with a police force that did not enjoy the confidence of the people in Zambia. Eugene Sibote, a spokesperson for the VSU, said VSU was willing to try to set up liaison functions with schools as a way “to target children and let them know about their rights and about the work of the police. Because they do not have confidence in the police, they fail to seek police assistance.” Karen Doll Manda of the NGO Family Health International, put it more starkly: “The concept of the VSU is a step – but you need a whole overhaul of the police system before people will have faith in the VSU. People go there out of desperation.”¹² Girls often expressed fears that they would not be believed. In other cases the basic logistics—distance to the police station and medical clinics, and the cost of the police report—dissuaded people from reporting. Moreover, when faced with a complaint, the VSU all too frequently failed to respond or was ineffective. Juliet Chilengi, director of the New Horizons orphanage for girls, lamented this lack of follow-up: The laws are there, but

¹² Human Rights Watch interview with Karen Doll Manda, Lusaka, May 21, 2002.

no one enforces them. Most cases of abuse here have gone through the VSU—but they don't follow up or do anything about it. I can't sit on the phone and remind them. If you don't take action, you're out of sight, out of mind. When there's a docket, I don't know who closes it.¹³

Given all of these negative factors, it is relatively rare in Zambia as in many other countries for police to investigate these cases or for prosecutors to bring them before a court. The responsibility for failure to follow up in abuse cases does not exclusively reside with the VSU, however. Sometimes, the failure to follow up is due to corruption, where court officials as well as police may be paid off by perpetrators. In other cases the family may not want to press charges. Judge Lombe Chibesakunda, who chairs Zambia's National Human Rights Commission, observed, "The chances of coming to court are almost nil; it's an embarrassment to the family, to the girl. They try to hide it under the carpet."¹⁴

Other constraints to prosecution in child abuse cases in Zambia and elsewhere include the attitude of the legal and law enforcement agencies toward girl victims, the inadequate training and resources for investigation (as noted with respect to the VSU above), the difficulties of using a child's

¹³ Human Rights Watch interview at New Horizons orphanage Lusaka, June 1, 2002.

¹⁴ Human Rights Watch interview with Judge Lombe Chibesakunda, chair of national Rights Commission, Lusaka, Zambia, May 30, 2002.

testimony in court, and the lack of trained prosecutors to pursue cases of child and gender violence.

The law on rape in Zambia, as in a number of countries, also leaves much to be desired. Some Zambian women's groups have called for an expanded definition of rape, stressing the need to restructure the law to provide for circumstances of aggravated rape, which should lead to stiffer penalties. They have also called for stiffer, mandatory minimum sentences as a way of addressing the lenient sentences.¹⁵

In conclusion, the law in Zambia leaves much to be desired in the prosecution of child abuse cases. The law requires to purposefully deal with the issue of gender violence is there, but its enforcement is ineffective. As Zambia is a signatory to a number of international instruments dealing with gender violence, it must follow that all the necessary measures and conditions are put in place to ensure compliance and enforcement.

¹⁵ Women in Law and Development in Africa (WILDAF) Zambia, 'NGO commentary on the Government of Zambia combined third and fourth report on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)', Lusaka May 2002 p.16

CHAPTER 4

RESPONSES FROM THE LAW ENFORCEMENT AGENCIES

1.0 Introduction

This chapter aims to discuss how the law enforcement agencies respond to gender-based violence in schools. Evidence of gender-based violence has been noted in some schools and even in other cases where pupils are on their way to and from school. Therefore, the question to be asked is, what is being done to address this problem?

2.0 Police

The police play a key role in response to gender-based violence. They possess within them the entry point to the justice delivery system of a state.¹ They can either grant access to it or close it. Almost all cases of gender-based violence are reported to the police. The reason is obvious- the police is the only agency that offers the woman a combination of accessibility and the coercive power of the state...it is the only service available to the battered women twenty fours hours a day and seven days a week.²

¹ M. Chuulu, P.M. Chileshe, "Gender Violence: The Invisible Struggle". Published by Women and Law in Southern Africa Trust, Zambia. 2001.p.92

² Confronting Violence - A Manual for Common Wealth Action, Common Wealth Secretariat. Marlborough House, Pall Mall, London (June 1992), p.17

However, the situation on the ground leaves a lot to be desired. The police are viewed as inadequate, inappropriate and ambiguous. This ambiguity stems from social attitudes. In chapter three, we considered some situations where cases were reported to the Victim Support Unit (VSU). The most common fear expressed among girls that reported cases was that they would not be believed. In other cases, victims expressed lack of confidence and faith in the police, and generally, they were not able to respond adequately. Most victims ran to the VSU out of desperation only to be let down. Other factors that contribute are lack of resources in terms of transportation, the requisite facilities as well as the qualified personnel.

On the other hand, there are advantages to the VSU. The VSU deals with cases such as femicide, sexual abuse and many others. Since its establishment, there are VSUs in every police station in the country. This has extensively contributed to the number of cases that are now being reported. The VSU offers counseling services to victims as well as carry out public sensitization programmes. Through these programmes, people have been aware of their rights and thus report cases to the VSU.

3.0 The Courts

It is believed that judges have the ultimate legal authority in the legal system. However, the reality of it is that most cases do not even make it to court. There are several reasons for this. The police treat gender violence when it falls within the domestic sphere as though it is not a crime.³ When a person is assaulted by someone to whom they are not related, the police have no difficulty in treating that as a crime, however once the parties are related, police become lethargic in the handling of such a case.⁴

In other instances, implementation of the law is fettered by the attitudes of those involved in the legal system. These attitudes have negative impact on the justice delivery system. For instance, the criminal justice system can break down at several points in the enforcement process.⁵ An offence is committed but once it is reported, an arrest may not be made because the victim is not believed. Even where an arrest is made and all the necessary documents are done, they still have to contend with the court system as it is

³ M. Chuulu, P.M. Chileshe, "Gender Violence: The Invisible Struggle". Published by Women and Law in Southern Africa Trust, Zambia. 2001.p.98

⁴ Ibid p.98

⁵ Mutinta Natala, "Domestic Violence Against Women in Zambia", Obligatory Essay, (University of Zambia), Lusaka, 2002, p. 44

mainly adversarial in nature. In addition, even if the offender is prosecuted, the punishment handed down may be a light sentence.

4.0 The Department of Social Welfare

The department of social welfare has statutory duties to provide various services to the community. These services include counseling, sensitization and preparing reports to guide the courts in handling offences. The department is inherently centered on providing care and support to children. Concentration is on child welfare and child abuse.⁶ It plays a pivotal role in identifying children's need. In addition, social workers also play a crucial role in acting as coordinators.

In conclusion, this chapter attempted to bring to light the mechanisms that are employed by the law enforcement agencies in reacting to cases of gender-based violence. It can be inferred from the above that the response by the law enforcement agencies leaves much to be desired, in that their efforts to deal with the problem are hampered by a number of factors discussed above.

⁶ Ibid p. 49

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

Conclusion

It has been stated that gender based violence is a battle that has been fought by activists since time immemorial. These activists have attempted to alert the world of the consequences of not adequately addressing the issue. It has been observed that gender based violence is not only exhibited in schools from teacher to student, but also from student to teacher.

Violence took the form of excessive corporal punishment, bullying, sexual harassment, intimidation, assault and rape. It also includes a teacher's unofficial use of the pupils for free labour and other forms of aggressive or unauthorized behaviour that is gender specific. However, identification of gender based violence is recent in most developing countries. It has been seen as a barrier to increased educational participation, in particular of girls. The appropriate gender-sensitive framework required to observe and to intervene does not exist, so that these least desirable aspects of school life are either left unreported or unrecognized as gender violence.

RECOMMENDATIONS

In view of the following and in order to improve the situation of gender based violence, we recommend the following:

LAW REFORM

Legislation to eliminate all forms of gender violence is a complex task. Can one or several pieces of legislation deal with all manifestations of gender violence? What type of laws can effectively eliminate gender violence in a system that has historically kept women subordinate to and undervalued by their fathers, husbands, brothers, or even sons? What is required to redress a situation in the short term that has existed in and since the distant past?

Although the Zambian legal system has enacted laws intended to protect victims of violence, the need for constitutional safeguards to curb gender violence cannot be over emphasized. There is a need to constitutional provisions which specifically protect vulnerable groups against gender based violence. All legislative measures meant to prevent, eradicate, or punish gender violence must recognize the following:

(a) Legal systems still imply that gender based violence against women in particular is justified under certain circumstances. However, it is time that all

violence is equally unjustified and reprehensible, because most violence is committed against women. Two essential steps to combat gender violence against women are:

(i) The repeal of all articles that extenuate or justify such violence,
(ii) The prohibition of the use of doctrine or arguments that legitimate any type of violence, and particularly gender violence against women, in judicial proceedings.

(b) The form in which a law is written influences the extent to which people know and use it. Therefore, when drafting laws against gender violence, careful attention must be given to language to facilitate understanding, and hence application of laws by the general population.

(c) Law can contribute in a fundamental way to the eradication of gender violence; however, law alone cannot eradicate gender violence. Several types of actions must be effected simultaneously including:

- (i) Revision of legal codes
- (ii) Gender sensitive education for children and youth
- (iii) Programmes to rehabilitate aggressors
- (iv) Shelters and counseling services for battered women, and

(v) Campaigns to promote diversity and tolerance, and to reject violence as a means to an end.

(d) There is need for a minimum mandatory sentence in case of violence against women and children. At the moment different classes of Magistrates can only give mediocre sentences, as they are tied by the law, even if they gave a stiff sentence it would have to be reviewed by the High Court.

In addition, improvements in legal remedies and procedures are important. Laws that interfere with the ability of victims to report cases must be done away with. For instance, a victim should not be made the subject of an intense interrogation.

Furthermore, access to the law should not be made difficult. It should be simple and made cheap.

EDUCATION

It is important that strategic people in all walks of life are educated so as to prevent gender based violence and improve programmes and services seeking to end it. There should be educational seminars to train judges,

prosecutors and law enforcement officers. Presentations in schools should also be helpful. It is important to teach children that violence is not an appropriate way of solving problems.

In addition, the Ministry of Education can make the following improvements:

1. The Ministry should establish appropriate mechanisms for guaranteeing equality of educational opportunities for girls and women.
2. The Ministry should establish means for guaranteeing equal access by girls and women to sources of information or assistance, grants and subsidies for education.
3. The Ministry should take the necessary steps to avoid discrimination in the teaching and learning of subjects included in official curricula and syllabuses.

INSTITUTIONAL SUPPORT

Owing to the nature of the problem, there is need to setup institutions that can support victims of violence. Counseling and shelter is one way an institution can give support. At the moment, only YWCA at their Lusaka office provides counseling and support, as well as a crisis centre for

children. These institutions should be in a position to offer information, safety, shelter and compassion. This is for the purpose of giving emotional support to the victim when they are going for trial so as not to be intimidated by the perpetrator of the violence.

RESOURCES

It is a matter of urgency that the issue of resources needs to be addressed. The police are the frontline of response in as far as gender violence is concerned. Police work requires investigation and they need effective communication and transport, which they do not have. They work under very difficult conditions, therefore, due attention should be paid to providing the basic necessities for the whole justice system to function for the people to access justice and human rights.

THE EFFECT OF TAKING THESE RECOMMENADATIONS INTO ACCOUNT

The resulting effects of putting these recommendations in place are numerous. We would see improved sensitization of the law in addressing gender based violence. The state would achieve this by enacting a statute that specifically addresses all types of gender based violence. It would

define and state the types of gender based violence as well as state the sanctions. In addition to enacting such a statute, the Constitution should also recognize and guarantee the enforcement of that statute. The Constitution would also use gender sensitive language to enable effective enforcement.

Improved sensitization through education would also ensure that people from all walks of life are aware of the forms gender based violence and the institutions were to report.

Improved institutional support would mean that each city or town in Zambia would have a center that gives support to victims of violence. Support would be in terms of providing information, safety, shelter, counseling and compassion.

Finally, readily available resources would ensure effective response by the police as they are the frontline of response in as far as gender violence is concerned.