

**AN ANALYSIS OF DEFILEMENT: ROLE, PERFORMANCE AND EFFICACY OF
THE LAW ENFORCEMENT MECHANISMS AND THE SUPPORT SYSTEM
DEALING WITH THE SEXUAL OFFENCE**

BY

CYNTHIA ZULU

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BY

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An obligatory Essay submitted to the school of Law of the University of Zambia in partial fulfillment of the requirements for the award of the Degree of Bachelors of Laws (LL.B)

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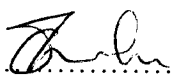
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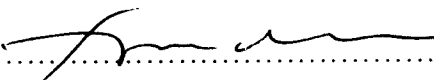
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ABSTRACT

This dissertation was seized with the task of analyzing the offence of defilement in Zambia and generally ascertaining and establishing the structures that address the offence of defilement at the same time, the role, performance and efficacy of these institutions dealing with the sexual offence was established. The institutions that have been looked at are the police, the courts and various Nongovernmental organizations. It had been found that defilement is a very serious crime as witnessed from the importance attached to the fight against the vice. Due to the seriousness of the offence, the law on defilement has been amended to stiffen the penalties for the offence. Despite this amendment, incidences of defilement have continued to be reported as shown by the media, therefore, it has been shown in the research that there are a number of reasons that lead to the perpetration of the offence.

All stakeholders and law enforcement agents have a part to play in the fight against defilement, this is so because violence against women and children requires an institutionalized, integrated approach reflecting effective coordination and collaboration between the various stakeholders, such as Nongovernmental organizations and law enforcement agents. Preventive and sensitization programs need to be put in place if the public is to remain aware of the offence. Such programs must be extended to public places as well. Despite a good fight against defilement, the institutions dealing with the offence face a lot of challenges in the fight against defilement, these challenges may be within their internal offices or in the communities. The main object of this research was to establish the roles of the police, the courts and Nongovernmental organizations in the fight against defilement. It was therefore established in this research that the role of these key players is indeed sufficient but these key players have to work hand in hand to be efficacious.

In order to arrive at conclusions, the research was qualitative as it was desk research in which secondary data sources such as various legislation, legal commentaries and other publications including obligatory essays that have been written on the topic had been consulted. Primary sources such as conducting interviews with those specialized in sexual offences had also been used.

The study therefore recommends that the government should come in and offer the key players in the fight against defilement assistance to enable them perform effectively. This is more so needed by the Victim Support Unit which lacks the much needed equipment and resources to help in investigations. Lack of resources of the unit makes investigations difficult and thus, making the public lose confidence in the police service. It is also recommended that the government should provide more office space to enable victims of defilement have privacy when reporting defilement and telling their story.

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LIST OF ABBREVIATIONS

AIDS	Acquired Immuno deficiency syndrome
ASAZA	A safer Zambia
HIV	Human Immuno deficiency syndrome
IJM	International Justice Mission
VSU	Victim Support Unit
WILDAF	Women in Law and Development in Africa
WLSA	Women and Law in Southern Africa
YWCA	Young Women Christian Association

CHAPTER ONE

INTRODUCTORY CHAPTER

1.0 INTRODUCTION

Defilement is a sexual violence that is widespread. It cuts across all cultures and people of all ethnicities worldwide.¹ Being serious as it is, it is up to the law to fight this crime. One of the primary functions of law is to ensure social order by prescribing how individuals ought to behave among themselves and between them and other social entities both natural and artificial. Law is a system of norms in that it sets or describes standards and rules of human behavior which should be followed. It thus consists of rules and standards.²

Everybody is bound by some rules of some sort so that social order is maintained. Departure from the accepted patterns of behavior usually attracts a sanction. That being the case, criminal law is one branch of the law which is aimed at reducing socially undesirable conduct. The purpose of criminal law is to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interest.³

In *Board of Trade v Owen*⁴, statements of the House of Lords entails that a crime is an unlawful act or default, it is an offence against the public. A person who commits it will be adjudged by a competent court as guilty and as a criminal against the community as a whole, the convicted person will suffer some sort of penalty, and the penalty imposed is a legal punishment.

Defilement is a very serious and common offence in Zambia as has been witnessed from the many reports by both the print and electronic media. The fact that children could suffer defilement at all should come as a terrible shock and truth, but at the same time, it is an ugly reality that has tremendous effects on the victim. It is a crime for which there should be no excuse and thus, perpetrators should be booked and punished severely. This sexual offence is not only a social or cultural issue, but is also a human rights violation which the state has an obligation to take effective steps to prevent. Children are by reason of their emotional immaturity

¹ M. Munalula, *Gender discrimination and the Law*, UNZA Press, Lusaka, 2005. Page 121.

² C. Anyangwe, *An outline of jurisprudence*, UNZA press, Lusaka, 2005. Page 16.

³ Smith and Hogan, *Criminal Law*, 11th edition, Sweet and Maxwell, London, 2005. Page 3.

⁴ (1957)AC 602.

dependent on their families and the community and more widely on political and economic power to safe guard their well being. As a matter of fact, children have a right to protection from sexual exploitation.

The offence being on the increase in many parts of the world especially Africa has given rise to international concern. Many countries worldwide have shown the importance they attach to children rights by ratifying and acceding to the convention on the rights of the child which has the best interest of the child addressed exhaustively to give real meaning to the child.

In Zambia, defilement is provided for in the penal code⁵ as amended by Act no 15 of 2005. The amendment came about due to the alarming numbers of cases which led to calls for the change in the law. With this Act protecting children, Zambia is also a party to international conventions as seen, which have the welfare of the child as the main focus.⁶ Nongovernmental organizations like the young Women Christian Association, Women and Law in Southern Africa and Women for Change are also some of the institutions fighting for an end to defilement. The Victim Support Unit also plays an important part in fighting the sexual offence this goes to the churches as well.

The above statement clearly establishes that the law alone should not be the only advocate but society as a whole has a very big part to play in order to fight the serious scourge. It is evident from the foregoing that the problem of defilement in Zambia is indeed a serious one which needs a solution and which calls upon the courts, the police and society to work together if the crime is to be combated effectively.

1.1 STATEMENT OF PROBLEM

Despite the amendment of the law on defilement in 2005, incidences of defilement have continued to be reported as seen from both the print and electronic media. Statistics from the police, the courts and the media continue indicating the high number of cases. According to the statistics obtained from the police Victim Support Unit in the month of April 2008, there were sixty seven cases of defilement reported.⁷ It is against such back ground that much needs to be

⁵ Chapter 87 of the Laws of Zambia.

⁶ For example, The United Nations Convention on The Rights of The Child, 1989.

⁷ Victim Support Unit, Divisional Gender Based Crime Statistics for the year 2008, Police Headquarters, Lusaka.

done. Defilement is a social problem and therefore, all members of society should take up the challenge to fight defilement. This implies that, rather than just relying on the law to curb this sexual offence, it is important to initiate other measures as well to fight the offence. The problem of violence against women and children requires an institutionalized, integrated approach reflecting effective coordination and collaboration between the various stakeholders and law enforcement agents.

It has already been observed that there are mechanisms in place to help fight the offence. One of the most important being the Victim Support Unit which is the main government mechanism tasked with providing legal protection to children. The Victim Support Unit in the police department is the only specialized body to deal with the problem of defilement.⁸ But even with this in place, defilement persists, so the question to be asked is what still needs to be done to curb the scourge? Is it that the role of law enforcement agents is not sufficient enough and that preventive measures adopted are not effective?

The penal code⁹ as amended by Act No 15 of 2005 prescribes severe minimum and maximum penalties for the offence of defilement. The Act has stiffened the punishment for defilement, for example, a person convicted of defilement is sentenced to fifteen years imprisonment as a mandatory minimum. With this in place, another challenge is posed for the Zambian courts. The challenge is whether or not they will strictly adhere to the terms of the various sections of the new Act and mete out the proper sentences.¹⁰

Nongovernmental organizations, the church and other interested groups of the community have been calling for an end to the sexual violence. These groups have carried out a number of educational works.¹¹ These works are to enlighten members of the community about the problem of defilement, they have also tried to contribute to the protection of the girl child from the sexual violence. However the crime has continued, is this because they are not taking up the challenge as effectively as they are supposed to despite the sensitization of the evils of defilement?

⁸ A. Gacoin, *Suffering in Silence: The Link Between Sexual Abuse and HIV Transmission to Girls in Zambia*, Human Rights Watch, Lusaka, 2003. Page 68.

⁹ Chapter 87 of the Laws of Zambia.

¹⁰ S. E.Kulusika, *Legislative and Criminal Justice Response to Sexual Violence in Zambia*, Zambia Law journal, vol 38, Lusaka, 2006. Page 38.

¹¹ For example, YWCA and WILSA have mounted various nationwide public education campaign on violence against women and children.

Despite these laws and guarantees, most cases of defilement go unreported and unpunished, and so a thorough public sensitization of the evils of defilement will help arrest this vice. But at the fore to help achieve this, the interested institutions and organizations should have established roles and should actually play these roles for them to be able to achieve the best results.

The purpose of this study is therefore designed to analyze the phenomenon of defilement in order to enable the research to arrive at correct conclusions on whether the police, the courts and society are playing their role effectively with the existing mechanisms in fighting the crime. The research will also give recommendations as to what still needs to be done to strengthen the role of these key players in their fight against the offence.

1.2 SPECIFIC OBJECTIVES

- a) To highlight the offence of defilement in Zambia.
- b) To find out what structures address issues of defilement in Zambia and how they address the issue.
- c) To bring to the fore the practical difficulties faced by the structures in the fight against defilement.
- d) To show whether the key players are playing their role and what should be done to enable them effectively deal with defilement.
- e) To establish the law and society's response to the victims of defilement, if it has been such as to encourage them to speak out.

1.3 SIGNIFICANCE OF STUDY

The researcher was prompted to choose this area of study in view of the persistence of defilement cases in Zambia. This is still happening despite the Law on defilement being amended and thus, the punishment for defilement being stiffened. Efforts to fight the sexual offence have been put up by the police force through the Victim Support Unit. Various organizations and other interested groups of society also have a hand to play in fighting defilement. It is the researchers view that the role of these key players should be scrutinized in order to determine whether or not they are playing their roles to the best of their ability in the quest to fight defilement, and also to establish if people know of these institutions and that they can actually get help from there.

1.4 RATIONALE AND JUSTIFICATION OF THE RESEARCH

This research is important in light of the much attention which has been put on the offence of defilement in Zambia given the fact that the Law on defilement has been amended. It is prudent that the children are protected. The offence is a very serious one and has devastating and serious consequences on the victim. It is mostly perpetrated by people that are often well known to the victim. In very rare cases will a total stranger defile a child. Everyone has a hand to play in the fight against defilement if it is to be totally curbed. In this regard, this research endeavours to highlight the need for structures set up to deal with defilement to operate to the best of their ability and to the expectation of victims and would be victims. In order to do so, these structures must have established roles. Their effective operation will protect the victims and would be victims.

1.5 RESEARCH METHODOLOGY

The research will be conducted basically in two stages. The research will be qualitative, firstly it will be a desk research in which secondary data sources such as various legislation, legal commentaries and other publications including obligatory essays that have been written on this topic will be consulted. Primary sources such as conducting interviews with persons and organizations whose speciality is in the area of sexual offences such as defilement. These are the police under the Victim Support Unit, the courts and Nongovernmental organizations such as the Young Women Christian Association, Women and The Law in Southern Africa and women in law development fund and Women in Law Development Fund Africa.

There have been a number of people who conducted studies on defilement and this work is expressed in obligatory essays, reports, proposals, and the internet and text books as well. Other materials will be obtained from news papers such as the post news paper, Times of Zambia, and the Zambia daily mail.

CONCLUSION

This chapter gave an introduction to the topic being researched on. Further the statement of problems was set out in this chapter. Further the objectives of the study and the significance of study were laid out in this chapter. Moreover, the rationale and justification of research as well as the methodology that will be used have been highlighted.

CHAPTER TWO

DEFILEMENT AS A SEXUAL OFFENCE IN ZAMBIA

2.0 INTRODUCTION

This chapter will examine the law on defilement. The chapter will address the *Mens rea* and the *Actus reus* as well as the causes of the offence in Zambia at the same time pinpointing who the victims are as well as the perpetrators of the offence.

2.1 DEFILEMENT: A GENERAL OVERVIEW

To defile is to make dirty, to physically soil, to figuratively tarnish, to morally corrupt, to deprive of chastity.¹² As regards the noun defilement, it is defined as an act of defiling, a condition of being defiled.¹³ The law that creates the offence of defilement was first enacted in 1931 in the then Northern Rhodesia when the penal code was enacted for the first time.¹⁴ Since its enactment, the law of defilement has undergone several amendments. In 1933, there was an amendment which changed the age limit of defilement from twelve to sixteen. This was effected by amendment No 26 of 1933.¹⁵ Sixteen has remained the age limit to date. Further amendments were effected in 1941 by amendment No 25 of 1941 which provided for a sufficient defence to a charge of defilement if a person charged believed the girl was of or above the age of sixteen. The penal code as amended by Act No 15 of 2005 imposes severe penalties for defilement and other offences that fall under it, for example, a person who has unlawful carnal knowledge of an underage child is liable upon conviction to a term not less than fifteen years and may be liable to imprisonment for life.¹⁶

2.2 THE LAW CREATING THE CRIME OF DEFILEMENT

Before the amendment of the penal code in 2005, the law on defilement was regulated by section 138 of the penal code, as amended Act by No 26 of 1933 and No 9 of 1941. The repealed law

¹² Blacks Law dictionary, 4th edition, edited by Bryan.A. Garner, west foundation press, 1968. Page 455.

¹³ Blacks Law dictionary. Page 455.

¹⁴ An Act to establish a code of criminal Law, November 1931.

¹⁵ Section 119(1) of the penal code.

¹⁶ Section 138 of the penal code as amended.

relating to criminal sexual conduct treated sexual violence as a very grave offence.¹⁷ Criminal sexual conduct was thus recognized as extremely serious, given the magnitude of the offences. This was so even when the victim did not suffer any grave physical injury.

Although this was the position of the repealed law, surprisingly the penalty prescribed for the offences was not commensurate with the gravity of the offence in question. The law gave the accused the right of defence when charged of having unlawful sexual intercourse with a minor under sixteen years, this was so even though the Act provided for a guilty person to be liable for imprisonment for life. The accused needed only to produce sufficient evidence that he had reasonable cause to believe and did in fact believe that the girl was or above sixteen years of age.

Defilement is a felony. Felonies are treated as serious offences.¹⁸ This felony according to section 138 of the penal code as amended provides:

- 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 a 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 interest of the child.

Defilement now is applicable to both boys and girls under the age of sixteen years. In the repealed section 138 of the penal code, defilement only applied to girls below the age of sixteen, this was the position. A child under the Act means a person below the age of sixteen years. There is no specific sex mentioned, so, it cuts across both sexes.

Act No 15 of 2005 has also introduced community sentencing and counseling for those between the age of twelve and sixteen¹⁹ who have committed an offence under section 138 (1) and (2) of the penal code.²⁰ This is a positive stance as juvenile offenders were not even mentioned. The Act now provides for what should be done to children convicted of defilement.

¹⁷ S.E.Kulusika, Legislative and Criminal Justice Response to Sexual Violence in Zambia, Zambia Law journal, vol 38, Lusaka, 2006. page 5.

¹⁸ S.E. Kulusika, Texts, cases and Materials in Criminal Law, UNZA Press, Lusaka, 2006. page 28.

¹⁹ Section 138 (4).

²⁰ Chapter 87.

2.3 ACTUS REUS OF DEFILEMENT

The *Actus reus* must be proved in the charge of defilement and will have to comprise the following elements:

2.3.1 There must be carnal knowledge

For one to be found guilty of defilement, it must be proved that the accused had sexual intercourse with a child below the age of sixteen.²¹ The sexual intercourse must be unlawful, this means that where an accused person may have carnal knowledge of the child in circumstances that may be considered lawful, the accused may not be convicted, for example where the accused is married to the child below sixteen with full consent of the child's parents under customary law.²²

The burden of proof lies on the prosecution who must prove beyond reasonable doubt that the victim was below the age of sixteen years old, if this is not proved, the accused should be acquitted. Consent of the victim is immaterial, young children can be easily convinced to engage in sexual intercourse, for example, in the English case of *Williams v R*,²³ a singing master was convicted of having sexual intercourse with a girl below sixteen years by pretending that it was a method of training her voice. This case shows that indeed young children are vulnerable at the hands of adults.

2.3.2 The victim must be a child below the age of sixteen

The victim in the crime of defilement is quite essential in the definition of the offence. The prosecution has to prove beyond reasonable doubt that the victim is below the age of sixteen years. In *Phiri v The People*,²⁴ the appellant was convicted of defilement of a girl aged eleven years. The only evidence that was available was that of the girl who said that the mother told her she was born in 1961, that was twelve years before the case appeared in court. The court of appeal ordered a retrial and held that the age of the person is an essential ingredient to the charge, the age must be strictly proved.

²¹ S.E. Kulusika, *Texts, cases and Materials in Criminal Law*, UNZA Press, Lusaka, 2006. Page 517.

²² J. Daka, *Sexual Offences and how to Deal with Them*, Comfort publishers, Lusaka, 2003. Page 42.

²³ (1923) 1 KB pg 340.

²⁴ (1973) Z.R 145.

The prosecution must prove that the victim of defilement was a child, if he or she is not, then the prosecution must not succeed and the accused must be acquitted. There must be good evidence to prove that at the time of the offence, the child was under the age of sixteen years. Birth records and certificates of the girl can be produced in court as evidence. In the absence of such evidence, one of the parents or guardians to the girl should tell the court what the girl's age was at the time of the offence.²⁵

2.4 MENS REA OF DEFILEMENT

The *Mens rea* is simply defined as the guilty mind or intention it can also be the blame state of mind.²⁶ The accused person must have the requisite mental element for the charge of defilement to stand meaning that he must intend to commit the crime. The accused must have the intention of having carnal knowledge of a child below the age of sixteen or must be reckless as to the age of the child. In *Kalasa Mvula v R*,²⁷ Francis J stated as follows:

“ The question of age in a charge of this description is of the greatest importance and must be proved, moreover proved beyond reasonable doubt.”

In *Nsofu v The people*,²⁸ the appellant was convicted on three counts of defilement. Two of the girls were nine years old and the other one seven years old. The girls testified that they were playing at the house of one of them when the appellant arrived. After a short time, he took each of the girls in turns into the kitchen of the house and had sexual intercourse with them. He was later on reported and medical evidence showed that the hymen of each girl had been broken by the insertion into the vagina of a rough object. The magistrate in his judgment said:

“Having seen the girls myself, I am satisfied that no one can think that any one of them could be over sixteen years of age.”

It is important at this point to also consider whether the law of defilement is adequate to curb the horrible vice of defilement. The law on defilement under the penal code as amended has introduced good provisions that can effectively curb the ever common cases of defilement. This law has addressed the factor of traditional practice. These practices contribute to the increase of

²⁵ *Phiri v The people*, (1973) Z. R 145.

²⁶ S.E. Kulusika, *Texts, Cases and Materials in Criminal Law*, UNZA Press, Lusaka, 2006. Page 33.

²⁷ (1945-54) 4 NRLR 20.

²⁸ (1973) Z.R., 287

defilement and so, the law makes these practices an offence. The law does not provide a defence to an accused person even if the accused had a reasonable ground to believe that the child was above sixteen years of age. The amendment has done away with the statutory defence, this means that even if an accused person has good reasonable grounds to prove before court that the girl was above sixteen, he cannot advance those reasons. The reason being that defilers relied too much on it and as such, some ended up being acquitted. The law is also in line with the international Convention on the Rights of the Child²⁹ which provides:

- 1) States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child 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 parents, legal guardians or any other person who has the care of the child.

The law indeed has good provisions that can fight defilement, but on its own, it is inadequate to fight the scourge of defilement. This means that rather than devoting all attention on punishment which is an after the fact, all concerned persons should also look at solutions before the fact. An article published in the Times of Zambia stated:

“Mike Mulongoti said even if laws are stiffened against child defilers, defilement would continue being committed. He said that what should be encouraged at this stage is the sensitization of the public against defilement. Mr Mulongoti said the law in itself was not sufficient to deter citizens from defiling children.”³⁰

2.5 CAUSES OF DEFILEMENT IN ZAMBIA

Before the amendment of the penal code in 2005, most people attributed the increase of defilement cases to the weak law at the time. But despite the amendment of 2005, cases of defilement have continued to be reported. And so, it is important for this research to consider and highlight some of the possible causes of this terrible vice being perpetrated on young children. Some of the causes are cited below :

²⁹ Article 19 (1).

³⁰ Times of Zambia, Sensitization of public against defilement to help fight the vice, 10 June 2005.

a) Cultural Beliefs

Some cultural practices and traditional beliefs contribute to the increase in the number of defilement cases.³¹ The traditional practices such as rituals and traditional healing are also a major contributing factor to the number of defilement cases, with an increase of HIV and Aids, there is a belief among the people that a person having the virus can be healed if such a person had sexual intercourse with a minor or a virgin. Some traditional healers prescribe sex with children as a ritual to become rich.³² When arrested and charged for defilement, this is the defence that they give. However, section 138 (3) of penal code as amended, provides as follows:

Any person who prescribes the defilement of a child as a cure for an ailment
Commits a felony and is liable upon conviction to imprisonment for a term of
not less than fourteen years and may be liable to imprisonment for life.

Traditional medicines that men take may also mostly cause them to behave in an unreasonable manner thus committing the offence of defilement.

b) ignorance of the law concerning defilement

Many persons lack knowledge on defilement.³³ For young men, they go to an extent of claiming that the girl is their girlfriend. Some men arrested of defilement have claimed that they did not know that having sex with a girl below sixteen years old is an offence.³⁴ Section 7 of the penal code provides:

Ignorance of the law does not afford any excuse for any act or omission which
would otherwise constitute an offence unless knowledge of the law by the
offender is expressly declared to be an element of the offence.

In accordance with section 7, ignorance of the law cannot be used as a defence in the court of law.

³¹ A research on the Root Causes of Sexual Abuse of Children in Zambia , 1st edition, Zambia Civic Association, Lusaka, 2009. Page 4.

³² S.E Kulusika, Women Insecurity in Zambia, The Post Newspaper, Lusaka, 2007.

³³ A Research on the Root Causes of Sexual Abuse of Children in Zambia, 1st edition, Zambia Civic Association, Lusaka, 2009, Page 4 .

³⁴ J. Daka, Sexual Offences and how to Deal With Them, Comfort publishers, Lusaka, 2003. Page 57.

c) lack of knowledge of the law by girls

Many girls under the age of sixteen do not know that the law protects them against sexual abuse, as such, they should not entertain any form of sexual intercourse.³⁵

d) peer pressure among girls

The majority of girls may know that the law protects them from sexual abuse, however, because of peer pressure, they have resorted to premature sexual intercourse as a sign of what they term modernity. Those that are not engaging themselves in sexual intercourse are considered to be old fashioned.³⁶

e) lack of respect for virginity

Another cause of sexual violence in Zambia is that society has lost respect for virginity, making many girls to have sex in the early days of their youth. If virginity is respected, girls will keep their virginity for a longer time.³⁷

f) Customary law marriages

Customary law marriages play a big role when examining the offence of defilement. This is so because the girl under such a marriage is married off provided she has attained puberty. Therefore, a man having sex intercourse with a girl below the age of sixteen years to whom he is married does so legally as long as such a girl is of age and he is married to her according to custom. Under section 138 (1) of the penal code as amended, the section does not prohibit sexual intercourse with a minor if it is done under customary law. The section states as follows:

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.

It is a complete defence for any person to engage into sexual intercourse with a girl below sixteen if they are legally married. This was considered in *Rex v Chinjamba*,³⁸ a villager Fulai

³⁵ J. Daka, *Sexual Offences and how to Deal with Them*, Comfort Publishers, Lusaka , 2004. Page 57.

³⁶ J. Daka, *Sexual Offences and how to Deal with Them*. Page 58.

³⁷ J. Daka ,*Sexual Offences and how to Deal with them*. Page 58.

³⁸ (1949) 5 N.R.L.R 384.

Njamba, married a girl under sixteen years and lived with her as man and wife. The accused who was a village headman knew of these facts and took no steps to prevent or report the matter. He was charged with being an accessory after the facts to the unlawful carnal knowledge of a girl under sixteen years of age and convicted. It was held by the high court that:

It is not unlawful for a man to have carnal knowledge of a girl to whom he is lawfully married, despite the fact that the girl is under sixteen years of age.

From the Chinjamba case, we can deduce that sex with a girl below the age of sixteen to whom a man is married to can be lawful when her parents or guardians give permission for her to marry. As seen above, consent of the girl alone cannot make the marriage lawful. If the parents do not give consent, then such marriage is not valid and should fail. In *R v Njoni*,³⁹ it was observed that:

The question of the wrongfulness of the accused persons conduct depended on whether the purported marriage had been duly solemnized. If it was not, then as the girl was under the age of sixteen, the intercourse was wrongful. If it was solemnized, the intercourse would be lawful and the accused would have committed no crime.

A man who elopes with a girl under sixteen years cannot claim to be married to her. Such marriage is void and a man should be arrested for defilement. Infact, both her parents or guardians and husband or any persons who supported such a marriage should be arrested for defilement.⁴⁰

In *Sibande v The people*,⁴¹ the accused was charged with the defilement of a girl aged twelve. Her father gave her date of birth as 9 march 1962, in answer to the charge, the accused said that the girl told him that she was fifteen years old. The appellant made an unsworn statement in which he said that he twice sent someone to see the girl's parents but they refused to give their permission for him to marry her, he then went himself but they still refused.

³⁹ (1963) R and N law reports 143, N. Munkombwe, Defilement cases in Zambia is the law adequate? Obligatory Essay submitted to Law school in partial Fulfillment for the award of the degree of bachelor of Law 2009.

⁴⁰ J Daka, Sexual Offences and how to Deal with Them, Comfort publishers, Lusaka, 2003. Page 44.

⁴¹ (1975) Z.R, 101.

He then spoke to the girl, who said she was ready to go with him and they went off together. When the appellant and the girl returned, they were taken to the chief where the girl was repeatedly asked about the marriage and she repeatedly said she was formally married to the appellant. It was held in this case that:

In Zambia it is not generally unlawful for a man to have carnal knowledge of a girl under the prescribed age if he is lawfully married to her, lawfully here means that both the parents or guardians of the girl have consented to the marriage , but unfortunately, consent of the girl alone cannot be raised as a defence to a charge of defilement.

The accused in this case was found guilty because there was no consent to the marriage by the parents of the girl as mere agreement between the man and the girl does not make the marriage valid, therefore the carnal knowledge was unlawful. The consent of the girl in a customary law marriage is perceived as not that important and so, under this type of marriage, the family controls and consents to sex on behalf of the girl. Thus provided she has attained puberty, she may be married off and she is considered old enough to engage in sex.⁴² Most of these customary marriages are common in rural areas, this can be attributed to the high levels of poverty and illiteracy. Parents marry off the girl, as a result, she stops going to school.

Customary law marriages go against the very idea that the law wants to curb. Statutory law recognizes customary law as long as it is not repugnant to any other written law.⁴³

2.6 VICTIMS OF DEFILEMENT

A victim of defilement is a child below the age of sixteen. These victims are the people who best understand the real effect of defilement. Therefore, we can deduce that defilement has a direct and potentially permanent impact on the victims self esteem. The impact is even greater when the offender is someone trusted and respected by the victim.

⁴² A Research on The Root Causes of Sexual Abuse in Zambia, 1st edition, Zambia Civic Education Association, Lusaka, 2009. Page 27.

⁴³ Subordinate Court Act, section 16.

As seen from section 138 of the penal code as amended, a victim of defilement can either be a boy or a girl. This means that a male child can indeed be a victim of defilement at the hands of an adult. But it is important to note that the violence is more common on the girl child.

Defilement as a form of violence against children may lead to serious lack of self confidence, exposure to sexually transmitted diseases including the very much dreaded HIV/Aids, and distrust of adults. The violence also affects the child's future development, unwanted illegitimate children, promiscuity, prostitution, seductive behavior directed towards members of the opposite sex.⁴⁴ The violence leads to school dropouts, this means that their lives could be disrupted (especially school life) making the whole idea of women's emancipation a fallacy.⁴⁵

2.7 PERPETRATORS OF DEFILEMENT

Perpetrators of defilement are mostly well known to the victims, these perpetrators take advantage of the trust that their victims have in them. Young children need further protection especially because there is an increase in defilement committed by people they know and trust, the people who are supposed to provide love and care for them, or who are directly responsible for their custody.⁴⁶

These perpetrators may include fathers, uncles and other relatives, family friends and acquaintances, even a total stranger may commit the offence though this is rare. It is now sad because people in authority are committing the offence.⁴⁷ Clergymen and teachers commit the offence as well, for example, in a story published in the Daily Mail, a prophet was jailed for defilement. This is a story in which a Lusaka High court Judge Gregory Phiri sentenced a twenty nine year old man to thirty years imprisonment with hard labour for defiling a girl whom he was praying for in siavonga.⁴⁸

⁴⁴ M.B Chulu, Gender Violence, the Invisible Struggle : Responses of the justice delivery system in Zambia, Women and Law in southern Africa, Lusaka, 2003. Page 13.

⁴⁵ M.B.Chulu, Gender Violence, the Invisible Struggle. Page 13.

⁴⁶ M.B.Chulu, Gender Violence, the Invisible Struggle. Page 14.

⁴⁷ M.B.Chulu, Gender Violence, the Invisible Struggle. Page 14.

⁴⁸ Zambia Daily Mail, prophet jailed for defilement. Monday 12th July 2010.

In another story in the Times of Zambia a teacher defiled a pupil and gave her a sexually transmitted disease. This pupil had wanted past papers from the teacher who advised her that she should go to his home to pick the papers. He then defiled her from his home.⁴⁹ Everything looked at so far proves that children under the age of sixteen are therefore in very vulnerable situations and in grave danger of a whole life time of psychological trauma likely to reach uncontrollable proportions.

Abusers use their power or authority over a child and take advantage of a child's trust and respect to exploit them for sexual purposes. These perpetrators may use tricks, bribes, threats or physical force to make the child take part in the sexual activity.⁵⁰

Perpetrators may be juveniles as well. Any male person of twelve years and above can defile a girl. Section 14 (3) of the penal code states:

A male person under the age of twelve years is presumed to be incapable of having carnal knowledge .

Section 138 (4) of the penal code as amended provides:

A child above the age of twelve 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 interest of both children.

This section is a positive one as the best interest of both children is of paramount importance. This section simply covers for what should be done to children convicted of defilement. Cases of children convicted of defilement were common,⁵¹ and they were subject to the same penalty upon conviction. An example of such a case is *Re S (a juvenile)*,⁵² the accused a juvenile was charged for defilement of a two year old girl. The accused was convicted by the court, and a sentence of six strokes of the cane.

⁴⁹ Times of Zambia, Teacher defiles pupil, Monday 28 July 2008.

⁵⁰ Southern African region police coordination conference(sarpcco)training policing violence against women and children. A manual prepared by the institute for securing studies for 9 southern Africa police force.

⁵¹ Gender Based Violence Report: Mechanisms and Support Systems, a Report by Women and Law in Southern Africa, Lusaka, 2003. Page 55.

⁵² (1952) N.R.L.R, 617.

CONCLUSION

This chapter examined the law on defilement in Zambia. It has been ascertained that the penal code as amended imposes severe penalty for the offence of defilement but however, the current state of the law does not criminalize sexual intercourse with a girl under the age of sixteen provided one is lawfully married to the girl. The causes of defilement have been examined as well and from this examination, it can be deduced that the causes of child sexual abuse are many and varied. This means that protecting children from sexual abuse will require involvement of all groups and institutions working with and dealing with issues relating to children.

CHAPTER THREE

THE ROLES PLAYED BY VARIOUS INSTITUTIONS IN THE FIGHT AGAINST DEFILEMENT.

3.0 INTRODUCTION

This chapter assesses the institutions that are tasked with dealing with the offence of defilement. This will entail looking at the role of the police and the courts, at the same time, the chapter will also consider the work of Nongovernmental organizations involved in fighting the offence. Their efficacy and preventive methods as well as sensitization methods adopted will be examined.

3.1 STRUCTURES ADDRESSING CASES OF DEFILEMENT

It will not be denied that gender based violence retards the socio economic empowerment of women and children at all levels. Thus the approach to adequately combat gender based violence must be multifaceted involving all stakeholders including law enforcement officers. This partnership is a right step in addressing the existing gaps among stakeholders in preventing and responding to gender based violence.⁵³

The enforcement mechanisms in a case of defilement in Zambia are being undertaken mainly by the courts and the police and thus, they have an important obligation to deal with offenders of the sexual offence.⁵⁴ In addition to the obligations of enforcement agencies, several Nongovernmental organizations are involved in responding to cases of defilement and gender violence in general. The organizations to be looked at are, Young Women Christian Association (YWCA), Women in Law Development in Africa (WILDAF), Women and Law in Southern Africa (WILSA) and the International Justice Mission (IJM). These groups have carried out a number of educational works. These works are to enlighten members of the community about the problem of sexual abuse, they have also tried to contribute to the protection of the girl child from sexual violence.⁵⁵

⁵³ Gender Newsletter, volume 1, July-September 2010, page 6.

⁵⁴ Gender New letter. Page 8.

⁵⁵ Gender New letter. Page 8.

The problem of defilement or violence against women and children requires an institutionalized, integrated approach reflecting effective coordination and collaboration between the various stakeholders such as the Nongovernmental organizations and the law enforcement agents.

3.2 THE ROLE OF THE POLICE IN FIGHTING DEFILEMENT

In discussing the role of the police in cases of defilement, it is important to take note of the fact that the police constitute a key entry point to the formal criminal justice delivery system.⁵⁶ The police service also provides protection by arresting offenders and taking them to court. This implies that, the police service is charged with the general responsibility of preservation of peace and the protection of life and property, the detection of crime and apprehension of offenders throughout the republic. The police is also charged with the responsibility of community education and liaison on issues of crime and safety among other tasks.⁵⁷

In cases of defilement, the police as an enforcement agency are generally the victim's first contact with the justice delivery system as in most instances such cases are first reported to the police. The Victim Support Unit under the police service, is the main government mechanism tasked with providing legal protection for children subjected to sexual violence and abuse.⁵⁸ The idea for a Victim Support Unit dates to 1994 with a police reform program initiated by women's Nongovernmental organizations. The Victim Support Unit began its work in 1997 by virtue of section 53 of amendment Act No 14 of 1999,⁵⁹ which provides:

- 1) There shall be a Victim Support Unit at all police stations and posts to be administered by police officers appointed by the inspector general
- 2) The functions of the Victim Support Unit shall be:
 - a) To provide professional counseling to victims of crime and offenders and
 - b) To protect citizens from various forms of abuse
- 3) Police officers in the Victim Support Unit may coordinate with the civic society and professional bodies in carrying out their duties.

Before the establishment of the Victim Support Unit in the police service, matters involving families mainly were perceived as domestic and so, when reported to the police, such matters were not handled as they were seen to be of no concern to the police, but today, such acts are

⁵⁶ M.B.Chulu, *Gender Violence the Invisible Struggle: Responses of the Justice Delivery System in Zambia*, Women and Law in Southern Africa, Lusaka, 2003. Page 23.

⁵⁷ Zambia police service Annual Report for the year 2005.

⁵⁸ A. Gacoin, *Suffering in Silence: The Link Between Sexual Abuse and HIV Transmission to Girls in Zambia*, Human Rights Watch, Lusaka, 2003. Page 67.

⁵⁹ Amendment to the police Act.

seen as violations of human rights and personal liberties which undermine the rule of good governance.⁶⁰ The birth of VSU was also partly ignited by conduct of police officers which was perceived to be unwelcoming to victims of sexual abuse. The Victim Support Unit has officers at virtually every police station in the country no matter how remote the area is.⁶¹

The unit is tasked with handling cases of physical or sexual abuse, including child abuse, violence against women, property grabbing, and victimization of the elderly. In other words, the task of the Victim Support Unit is to police crime committed mainly in family relationships or any other relations.⁶² The unit while enforcing the law relating to such crimes also goes ahead and offers counseling to the victims of such crimes. In a case of defilement, the VSU under the police service will investigate a complaint of defilement reported to them. These officers are also tasked with the responsibility of prosecuting such cases of defilement.⁶³ The police officers under VSU are mandated to give sympathy, and empathy to victims of defilement and to most importantly ensure that perpetrators of such crimes are arrested and prosecuted in the courts of law.⁶⁴

It is important to note however that police officers under the VSU do not provide counseling to a victim of defilement. The police officers mainly will take a child victim of defilement to a place where they feel the child will be safe and then prosecute the case. For this to be achieved, the police has to work hand in hand with members of the community. To a large extent, the police also collaborate with other government organizations and other institutions of society in matters relating to gender violence. The Zambia police is a member of the southern Africa region police chiefs cooperation organization (SRPCCO), and hence, the service embraces rights of every human being.⁶⁵ The police are uniquely positioned to convey information to communities about crimes, services and procedures. With the VSU in place, the police seek to foster the trust necessary to get victims to report, and to let potential perpetrators know that such behavior is both unacceptable and punishable by law.

⁶⁰ Interview with Miss Agnes Chilemba, Administration Assistant, Victim Support Unit, Police Headquarters, Lusaka, 17th November 2010.

⁶¹ Interview with Miss Agnes Chilemba.

⁶² Zambia Police Service, Annual Report of The Inspector General of Police, 2005. Page 43.

⁶³ Zambia Police Service Annual Report. Page 44.

⁶⁴ Victim Support Unit, A report on Stop Child Abuse, Police Headquarters, Lusaka .February 2009.

⁶⁵ Victim Support Unit, A Report on Stop Child Abuse.

Police statistics on defilement are based on reported cases. It is from reported cases that investigations commence, and if possible arrests are made.

DEFILEMENT CASES REPORTED

YEAR	2007	2008	2009
NUMBER OF CASES	696	1224	1679

Source: The Victim Support Unit office, police force headquarters.

The figures in the table above may mean an increase in the number of defilement cases or that the police force or officers are performing their role adequately and effectively, thus prompting more victims, parents and guardians who were sitting on the cases to report, thus showing and indicating the communities confidence in the Victim Support Unit. According to Mr Gabriel Kaunda⁶⁶:

“Police officers are critical actors in combating gender based violence because they offer the first line of assistance to victims and so, there is need to equip these officers with the necessary knowledge and skills related to gender based violence so that they offer hope, courage and support to victims of gender based violence most of whom are ignorant of the important provisions in our laws that are aimed at protecting them from perpetrators of gender based violence.”

3.3 THE ROLE OF THE COURTS IN DEALING WITH DEFILEMENT

The role of the courts in the fight against defilement cannot be overemphasized. The main role of the courts in cases of defilement is to adjudicate and to pass sentences. Courts in playing their

⁶⁶ Permanent Secretary, Gender in Development Division, Gender News Letter, July-September, 2010.

role will mostly use all evidence available to convict or acquit an accused person. Adjudicators are supposed to help curb defilement cases by passing sentences that will prevent would be offenders from defiling children. The increased defilement cases of minors are saddening and adjudicators should play their part in ensuring that children are protected from the dreadful crime being committed upon them.⁶⁷

It must be noted that sentences passed by adjudicators are to act as a deterrent to would be offenders and offenders themselves. In deciding an appropriate sentence, courts should always be guided by certain considerations, the first and foremost is the public interest. When a particular type of offence is prevalent, the passing of deterrent sentences is justifiable as being in the public interest.⁶⁸ The deterrent theories of punishment are that punishment as an imposition of punitive sanctions and infliction of suffering is unjustified unless it can be shown that more good is likely to result from the imposition of punitive sanctions than the absence of sanction.⁶⁹ In determining the correct sentences, the sentence must bear in mind the view of legislation, it is this body which determines what conduct constitutes a criminal offence and also lays down the maximum sentence for each crime.⁷⁰

3.4 SOCIETY AND INTERESTED ORGANIZATIONS: THEIR ROLE IN THE FIGHT AGAINST DEFILEMENT

Violence against children still remains an overwhelmingly huge problem in Zambia today despite the stiff punishment. Community members, Nongovernmental organizations, churches and individuals are encouraged to get involved in breaking the silence by advocating for an end to the vice. Gender based violence if left unchecked can undermine national development and security. It is therefore the duty of every citizen to report acts of sexual violence to law enforcement officers so that we have a free and safe environment which is created for everyone especially the weak, for example, the children.⁷¹ Parents and guardians have a legal obligation to

⁶⁷ Justice F. Mumba, Magistrates to take part in fight against defilement, a paper for the Zambia association of women judges workshop for professional magistrates, Lusaka, May 2010.

⁶⁸ Hutchard and Ndulo, Readings in criminal law and criminology in Zambia, Multimedia publications, Lusaka, 1994. Page 97.

⁶⁹ Hutchard and Ndulo, Readings in Criminal law and Criminology. Page 97.

⁷⁰ Hutchard and Ndulo, Readings in criminal law and criminology. Page 98.

⁷¹ Gender Newsletter, Volume 1, July- September 2010. Page 3.

report any sexual offences that occur in their homes, if a child is defiled, parents are first supposed to report to the police so that the perpetrator is investigated and arrested.⁷²

The role of society in the fight against defilement will hugely involve the media. The media plays an important role in exposing sexual gender based violence cases globally and nationally. Media in this case comprises both electronic and print. The leading national dailies in Zambia include the daily mail, the post newspaper and the times of Zambia. The print media has been in the last several years playing a significant role in reporting cases of sexual gender based violence. It must be noted however, that the print media coverage indicates that the majority of cases reported are on defilement.⁷³

Defilement is an offence being talked about frequently because it has become rampant at the time when most people are advocating for gender equality and respect for women rights and also at a time when there are very high cases of HIV and AIDS, disease to which women and children are most vulnerable.⁷⁴ Because of the seriousness of the offence, Nongovernmental organizations such as WILDAF, YWCA, WLSA and IJM play a very important role in fighting defilement. This is so because Gender violence is the main focus of concern for these organizations.⁷⁵

Women in law and development in Africa (WILDAF) is among the organizations playing a big role in fighting gender based violence (which includes defilement). This organization is a pan African Nongovernmental organization networking with other organizations and individuals under the shade of the law to promote culture for the exercise and respect for women's rights in Zambia. The organization was established in 1993 out of the urgent necessity to coordinate the activities of women's rights.⁷⁶ According to khuta Hara, the main role of the organization in cases of defilement is to offer legal advisory services, this is done because there is lack of knowledge on the part of the victim or the victim's families. The organization works with other organizations like the YWCA and WLSA that deal with children and women. When a case is taken to WILDAF, the organization will provide legal advice on how the victim should proceed with the case. It so happens that most victims may lack knowledge on how they should go about

⁷² J. Daka, Sexual Offences and how to deal with them, Comfort publishers, Lusaka, 2003. Page 68.

⁷³ C. Wonani, Sexual and Gender based violence in Zambia, Women in Law and Development in Africa, Lusaka, 2008. Page 15.

⁷⁴ Zambia HIV Research Group, Child Sexual Abuse (CSA) in Zambia, Zambia HIV Research Group, Lusaka. 2008.

⁷⁵ Gender Newsletter, volume 1, July – September 2010. Page 12.

⁷⁶ Women In Law Development in Africa, Progress Report, Lusaka, 2008. Page 1.

with the case, they may not know where to go, because of this, they may opt not to report the case. Before the organization can provide this legal advice, the victim must provide evidence. This evidence may be medical evidence and police reports. Since the organization does not have shelters, YWCA will come in to help.⁷⁷

The International Justice Mission is a Nongovernmental organization which is a leading institution in providing assistance to victims of abuse which may range from property grabbing and sexual abuse.⁷⁸ A Christian human rights organization, the international justice mission rescues victims of violence, sexual exploitation, slavery and oppression.⁷⁹ The international justice mission aims to help people suffering injustice and oppression but cannot rely on the authorities for relief as the authorities are perceived to be slow in providing this sought relief. The agency documents and monitors conditions of abuse and oppression, educates the church and the general public about the abuses, and mobilizes intervention on behalf of the victim.⁸⁰ In addition to bringing relief to victims of violence, the organization through a safer Zambia (ASAZA), consortium contributes to this cause by training paralegals and police officers on the laws of sexual violence.⁸¹ ASAZA is a care Zambia led consortium of government and Nongovernmental organization that seeks to address sexual and gender based violence in Zambia as well as ensure improved behavior, attitudes and practices towards women and children.⁸²

Women and law in southern Africa (WLSA), also plays a key role in protection of the girl child. This organization provides the necessary direction, coordination and facilitation of such a sustained and multi prolonged approach to violence against women and children. Gender violence has been the focus of concern for WLSA since its inception.⁸³ The organization is of the view that gender violence is an integral part of Zambian tradition and custom. The organization has been directly involved in ensuring that the girl child is protected from violence. The organization in addressing defilement works with the police to ensure cases are reported and prosecuted. The welfare of the child is taken into account. The major role of the organization is

⁷⁷ Interview with Khuta Hara , Progame Coordinator at Women In Law Development in Africa, Lusaka ,11th November 2010.

⁷⁸ International Justice Mission progress report for 2008.

⁷⁹ Gender Newsletter, volume 1, July –September 2010. Page 10.

⁸⁰ Gender Newsletter. Page 10.

⁸¹ Gender Newsletter. Page 11.

⁸² Victim Support Unit , Stop Child Abuse, Police Headquarters, Lusaka may 2009.

⁸³ Women and Law in Southern Africa, monthly bulletin, Lusaka ,July 2008.

to offer advice to the police, they advise the police to arrest the offender, to remove the child from the abusive home, to ensure that medicals are done, to ensure evidence is conclusive when case comes for prosecution. The organization also gives legal advice to victims.⁸⁴

Young Women Christian Association plays an important role as well in the fight against defilement. It operates a drop in center where they offer counseling to victims of child sexual abuse and their families and also carry out educational work to enlighten members of the community about the problem of defilement.⁸⁵ The organization also contributes to the protection of the child from defilement. YWCA has mounted a nationwide public education campaign on violence against women and children and also maintains statistics to monitor the incidence and types of violence.⁸⁶ YWCA has pioneered work on abuse against women and children and has continued to play a leading role in this area since 1991.⁸⁷ YWCA drop in centers are the main facilities offering social and legal counseling to women and children. The main role of the organization in defilement according to Eric Sakala⁸⁸ is preparing the victim of defilement for court sessions and providing counseling. The victims of defilement are kept at child in crisis centers, these victims stay there until the case is disposed. This is so because some victims are afraid of revealing their ordeal or they may be afraid of the stigma, so they are kept at the child in crisis until they are willing to talk or come out with their story.⁸⁹

The Young Women Christian Association can institute criminal proceedings against the perpetrator by taking the matter to the police and following it up until it goes to court, in fact, that's the whole purpose, to protect the victim. YWCA has provided support to victims of gender violence. It is one of the few organizations with branches in most rural provinces of Zambia. The organization in achieving its goals works closely with the police, the social welfare department and other nongovernmental organizations which may offer legal advice to the victims. Through drop in centers, the organization responds to cases of sexual violence like defilement.⁹⁰

⁸⁴ Women and Law in Southern Africa, monthly bulletins, Lusaka, July 2008.

⁸⁵ Young Women Christian Association, monthly bulletin, Lusaka, February 2009.

⁸⁶ Young Women Christian Association, monthly bulletin, Lusaka.

⁸⁷ Young Women Christian Association, Research on incest in Zambia, Lusaka 1999. Page 15.

⁸⁸ Interview with Eric Sakala, Legal Assistant, Young Women Christian Association, Lusaka, 19th November 2010.

⁸⁹ Interview with Eric Sakala.

⁹⁰ Young Women Christian Association, monthly bulletin, Lusaka, February 2009.

3.5 SUFFICIENCY OF THE ROLE OF LAW ENFORCEMENT AGENTS AND INTERSETED GROUPS IN FIGHTING DEFILEMENT.

The role of law enforcement agents and the interested groups in the fight against defilement is indeed sufficient but to be efficacious, these keys players need to work hand in hand. Law alone cannot prevent defilement, preventative measures need to be employed. Awareness campaigns are admittedly a useful tool that society can use to prevent commission of defilement. When potential victims are armed with information, they may be able to avoid circumstances likely to attract prospective defilers.⁹¹

It is evident that the police are doing everything possible to fulfill their role, which is adequate as seen from the work carried out by the victim support unit. Police officers are critical actors in combating defilement and gender based violence because they offer the first line of assistance to victims and so, they need to be equipped with the necessary knowledge and skills related to gender based violence so that they offer hope, courage and support to victims, most of whom are ignorant of the important provisions in our laws that are aimed at protecting them from perpetrators of violence.⁹² Police officers under the VSU undergo training, in counseling, investigation, prosecution. Officers in charge of VSU in the Zambia police service across the country have received training sponsored by the Gender in Development Division (GIDD), in gender and human rights. The partnership between gender in development division and the VSU is aimed at helping victims of violence in all communities in Zambia.⁹³

The establishment of VSU is an initiative which needs to be commended and supported in order to make significant strides in the eradication of defilement in Zambia. The VSU therefore has Collaborations with Nongovernmental organizations is so because, the victim may lack the knowledge needed to proceed with the case. The VSU will write to these organizations to seek legal aid. There are also cases were the police may lack the necessary resources, and may thus need help from these nongovernmental organizations.⁹⁴

⁹¹Interview with Miss Agnes Chilembo, Administration Assistant Victim Support Unit, Police Headquarters, Lusaka, 17th November 2010 .

⁹² Gender Newsletter, volume 1, July- September 2010. Page 9.

⁹³ Gender Newsletter. Page 10.

⁹⁴ Interview with Agnes Chilembo, Administration Assistant, Victim Support Unit, Police Headquarters, Lusaka , 17th November 2010.

From the statistics of defilement for the year 2009, there is an indication that more reports of defilement were made (1625). According to Agnes Chilembo of the VSU⁹⁵, more reports of cases of defilement may be read as indicating that more people are reporting because of the work of the Victim Support Unit, through the sensitization programmes in communities, enabling people to be aware of the sexual offence and also aware of the existence of the VSU so they report.

The courts of law play an adequate role in fighting defilement. It must be noted that courts of law must at all times assist the law in its mission of ordering society, this is done by imposing the required sentences. Judges in a case of defilement, pass sentences that may deter would be offenders. The Magistrate court will hear a case of defilement and then commit the case to the high court for sentencing. This is the procedure because of the law on defilement which sets the minimum sentence of defilement to be fifteen years. Magistrates therefore cannot pass sentences in a case of defilement as they have a maximum sentence limit of up to nine years.⁹⁶

Interested organizations like Nongovernmental organizations play an adequate role in the fight against defilement. According to Matrina Bbuku Chulu of WLSA, the work of Nongovernmental organizations is adequate in the fight against defilement. These organizations to be effective and to provide the necessary assistance to victims work hand in hand. These organizations have a number of networks with others that are fighting defilement to make their work even more efficient. These networks are there to essentially provide the victim with legal advice or shelter or counseling whenever needed. The organizations in addressing defilement also have consortiums with the Victim Support Unit. This is to ensure effective performance of all the organizations that are involved in the fight against defilement. The organizations are doing their part and playing their role effectively, a role which is adequate as well, however, it is up to society to report cases of defilement in order for the offenders to be prosecuted.⁹⁷

Because of the existence of these organizations, victims are at an advantage, as they are given legal advice especially when they do not have the financial means, they are also removed from the abusive homes by being taken to shelters. Legal advice will be provided to advise the victims

⁹⁵ Interview with Agnes Chilembo, administration assistant, Victim Support Unit, Police Headquarters, Lusaka, 17th November 2010.

⁹⁶ The Criminal Procedure Code, chapter 88 of the laws of Zambia.

⁹⁷ Interview with Matrine Bbuku Chulu, Regional coordinator for Women and Law in Southern Africa, Lusaka, 17th January 2010.

on where to go when the offence is committed on them. Nongovernmental organizations are actively involved in campaigns to condemn cases of violence against children particularly sexual violence. This can be witnessed from WILDAF in 2003 which dealt with a case involving a senior Zambia Air officer who defiled his old daughter and infected her with HIV. WILDAF helped publicize the case in the media and also to bring it before the courts of law.⁹⁸

3.6 PREVENTION AND SENSITIZATION METHODS ADOPTED IN FIGHTING DEFILEMENT.

Prevention and sensitization campaigns must be taken up by the police and Nongovernmental organizations. Such programmes must be extended to public places. Campaigns consist of disseminating information to the public in general on the evils of defilement and how it can be avoided.⁹⁹ The Victim Support Unit and the interested organizations are carrying out various prevention and sensitization methods to enlighten and educate the public on the evils of defilement.

Under the Victim Support Unit, the police offer sensitization programs, and workshops and basically sensitize and give information to the community on defilement. During the sixteen days of activism which ran from 13th November to 10th December 2010, the officers sensitized members of the community in Makeni on gender based violence. Apart from this, the police have various Preventive methods which are aimed at encouraging members of the public to report cases of defilement. The officers also host radio and television programs and meetings with the civic leaders and communities to talk about the crime of defilement and about issues concerning it. The unit also disseminates brochures on sexual abuse to the public. These are also available at all VSU offices. Response of the community is positive as they are becoming aware of the horrible crime through the information they get.

Nongovernmental organizations conduct one day community as well as church workshops and usually engages the church from time to time to help Christians realize their biblical mandate to

⁹⁸ Women In Law Development in Africa, monthly bulletins Lusaka, 2007.

⁹⁹ A. Gacoin, *Suffering in Silence :The Link Between Sexual Abuse and HIV Transmission to Girls in Zambia* , Human Rights watch, Lusaka, 2003. Page 43.

seek justice on behalf of those who are suffering abuse. These organizations work with communities in Lusaka and other provinces. The organizations have a number of programs in place, such as child rights clubs in schools, where they also train these children. The organizations, as part of capacity building initiative, have conducted paralegal and human rights training workshops on behalf of their partners. They have continued to foster relationships with other partners, notably the VSU in increasing response to violations of the sexual rights of young person's within the area of HIV/AIDS epidemic.¹⁰⁰

Organizations like YWCA has conducted various preventive and sensitization programs, which involve the men's network, where men reach out to fellow men and talk about the evils of the vice of defilement and gender based violence, the cause and how to combat the vice. The organization uses men because the aim is to look at preventive measures. This is done at insakas held every month. These men talk to kids since the organization believes it's better to start from the grassroots. The organization is involved in other networks in different countries, where they share experiences, through programs called the get moving initiatives. The recent one was held in Uganda.¹⁰¹

WLSA holds a lot of research and sensitization, one of them is the access to justice. These programs are usually a coordinated response to help victims. In rural areas, this is done by working with paralegals. The organization is behind the gender violence bill that has been presented before parliament.¹⁰²

¹⁰⁰ Women In Law Development in Africa, monthly bulletins, Lusaka ,2007.

¹⁰¹ Young Women Christian Association, monthly bulletins , Lusaka ,2009.

¹⁰² Interview with Matrine Bbuku ,Regional Cordinator, Women and Law in Southern Africa, Lusaka ,17th January 2010.

CONCLUSION

This chapter considered the institutions dealing with the crime of defilement. Defilement is a very serious crime as seen from the importance attached to the fight against the vice. All stakeholders and law enforcement agents have a part to play in the fight against defilement, this is so because violence against women and children requires an institutionalized, integrated approach reflecting effective coordination and collaboration between the various stakeholders, such as Nongovernmental organizations and law enforcement agents. These organizations and the law enforcement agents are playing a sufficient role in fighting defilement as well as disseminating information which is received positively by members of the community.

CHAPTER FOUR

CHALLENGES FACED BY VARIOUS INSTITUTIONS IN THE FIGHT AGAINST DEFILEMENT

4.0 INTRODUCTION

This chapter assesses the challenges and difficulties that the law enforcement officers and the support mechanisms such as Nongovernmental organizations face in fighting the offence of defilement. The chapter will also assess the sentencing patterns in cases of defilement. At the same time it will examine society's response to victims of defilement.

4.1 THE PRACTICAL DIFFICULTIES FACED BY LAW ENFORCEMENT AGENTS AND SOCIETY IN THE FIGHT AGAINST DEFILEMENT.

Despite a good fight against defilement being in place in Zambia, law enforcement officers and the support mechanisms face great and major challenges as they perform their roles in the fight against defilement. These challenges are and may be within the internal offices of these key players and may also be within the communities themselves. This therefore implies that society as a whole faces difficulties when dealing with defilement. However, these challenges may be overcome with the necessary help from both the government and the communities.¹⁰³

The common challenge that is faced by almost all institutions dealing with defilement is the culture of silence. This culture is a contributing factor to the perpetration and increase of child sexual offences. It is a well known factor throughout the world that the majority of cases of sexual violence are mostly not reported to the police or courts, which are the institutions assigned by the state to provide remedies for sexual violence.¹⁰⁴

In Zambia, the situation is similar, in some cases of defilement, the family may not want to press charges. This is so because it is seen to be an embarrassment to the family of the girl.¹⁰⁵ Families may also seek a remedy from the perpetrator in certain instances. The widespread remedy sought

¹⁰³ Interview with Miss Agnes Chilemba, Administration Assistant, Victim Support Unit, Police Headquarters, Lusaka, 17 November 2010.

¹⁰⁴ C. Wonani, Sexual and Gender Based Violence in Zambia, Women in Law Development in Africa, Lusaka, 2008. Page 10.

¹⁰⁵ A. Gacoin, Suffering in Silence: The Link Between Sexual Abuse and HIV Transmission to Girls in Zambia, Human Rights watch, Lusaka, 2003. Page 72.

by the families of the victim is compensation, this is common due to the high levels of poverty.¹⁰⁶ Families also resort not to report cases of defilement in situations where the offender is the breadwinner of the family. In such a case, the mother to the victim because of poverty will not take the offender to the police as such a mother may not have any means of sustaining the family.¹⁰⁷ In short, poverty and fear of shame that the family may undergo if defilement is reported is seen as a negative factor and so, it leads to the non reporting of cases.

4.2 DIFFICULTIES FACED BY THE VICTIM SUPPORT UNIT IN THE FIGHT AGAINST DEFILEMENT.

Despite a good department in place under the police Victim Support Unit, officers under the department face major drawbacks. One of these drawbacks is transport. Lack of transport has made people complain against the VSU performance. At times, the police officers use their own money to take the victim to the hospital.¹⁰⁸ The VSU at the police force headquarters has transport, but other police posts do not have this much needed transport, these police posts may have just one car and because of this, they cannot take up the investigations. Police operate in a difficult environment with limited resources, this means that they operate without the basic tools like vehicle's.¹⁰⁹ Fear of the VSU is also one of the drawbacks that the department faces. People in most cases are free to talk about the offence, but they do not know how to handle the case, some think that if they report the case to the VSU, then they will be arrested.¹¹⁰ People fear police attitude, it is appreciated that the structural changes have been initiated, but the challenge lies in working to change the police culture so that the police can become truly user friendly. This would be in line with the changed name and image from a police force to a police service.¹¹¹

Another challenge is that of having no office space. The VSU for example at the police force headquarters operates in a small room which holds three to four officers in such an office space.

¹⁰⁶ A. Gacoin, *Suffering in Silence: The Link Between Sexual Abuse and HIV Transmission to Girls in Zambia*, Human Rights Watch, Lusaka, 2003. Page 72.

¹⁰⁷ Interview with Miss Agnes Chilembo, Administration Assistance, Victim Support Unit, Police Headquarters, Lusaka, 17th November 2010.

¹⁰⁸ J. Daka, *Sexual offences and How to Deal with Them*, comfort publishers, Lusaka, 2003. Page 122.

¹⁰⁹ A. Gacoin, *Suffering in Silence: The Link Between Sexual Abuse and HIV Transmission to Girls in Zambia*, Human rights watch, Lusaka, 2003. Page 69.

¹¹⁰ A.Gacoin, *Suffering in silence*. Page 70.

¹¹¹ J .Daka, *Sexual Offences aandhow to Deal with Them*. Page 123.

This is a set back as there is no privacy in relation to the victims. This means that if a victim goes to the office, he or she may not have that privacy to state their story.¹¹² Lack of shelter by the VSU is also a challenge. These shelters may come in very handy to the department as they do not have places to take the victim of gender based violence when and if such victims go to them for help. This is a drawback as the VSU has to rely on Nongovernmental organizations such as the Young Women Christian Association to get shelters for the victims, if such victim is not sheltered, then he or she has to remain in the same abusive home.¹¹³

Withdrawing of cases is also a problem faced by the VSU. Some complainants withdraw cases at police stations by simply not following up the matter once it has been reported at the station. Some victims even go on ahead and make written statements requesting for the case to be withdrawn.¹¹⁴ Finally, the VSU has been undermined by bias and corruption in other parts of law enforcement, for example, despite the best efforts of specialized units, the rest of the police force is known for violating human rights, law enforcement cannot be effective in addressing violence against women as long as the broader police force has a reputation for abuse.¹¹⁵

4.3 SENTENCING PATTERNS IN CASES OF DEFILEMENT.

The penal code as amended prescribes severe minimum and maximum penalties for offences it proscribes. The question that is to be asked is whether the courts will strictly adhere to the terms of the various sections of the provisions and there by participate in heralding what appears to be a move away from liberal due process based system to crime control based system.¹¹⁶ The purpose of sentencing an offender is not only to punish him but also to rehabilitate him so that they become good citizens after serving the sentence. The minimum sentence should indeed be minimal. It should be stated that the importance of the judiciary in sentencing an offender cannot

¹¹² Interview with Miss Agnes Chilembo, Administration Assistant, Victim Support Unit, Police Headquarters, Lusaka, 17th November 2010.

¹¹³ Interview with Miss Agnes Chilembo, Administration Assistant, Victim Support Unit.

¹¹⁴ Interview with Miss Agnes Chilembo, Administrative Assistant, Victim Support Unit.

¹¹⁵ J.Daka, Sexual Offences and How to Deal with Them, Comfort Publishers, Lusaka, 2003. Page 122.

¹¹⁶ S. E. Kulusika, Legislative and Criminal Justice Response to Sexual Violence in Zambia, Zambia Law Journal vol 38, Lusaka, 2006. Page 38.

be overemphasized.¹¹⁷ It is believed that a minimum sentence of fifteen years as provided under the penal code as amended will deter others from committing the offence.

In deciding an appropriate sentence, courts should always be guided by certain considerations, the first and foremost is the public interest. When a particular type of offence is prevalent, the passing of a deterrent sentence is justifiable as being in public interest. In determining the correct sentences, the sentencer must bear in mind the view of legislation, it is this body which determines what conduct constitutes criminal offence and also lays down the maximum sentence for each crime.¹¹⁸

The subordinate court in the Zambian court system are the courts that normally hear cases of defilement. But however, these courts are subject to restrictions on their jurisdiction to mete out sentences. According to section 3 of the subordinate courts Act,¹¹⁹

There shall be and hereby constituted courts subordinate to the high court in each district as follows

- a) A subordinate court of first class to be presided over by a principal resident magistrate, a senior resident magistrate, resident magistrate or a resident magistrate of first class
- b) A subordinate court of the second class to be presided over by a magistrate of the second class
- c) A subordinate court of the third class to be presided over by a magistrate of the their class

According to the criminal procedure code¹²⁰

- I. A subordinate court presided over by a senior magistrate shall not impose any sentence of imprisonment exceeding a term of nine years.
- II. A subordinate court presided over by a resident magistrate shall not impose any sentence of imprisonment exceeding a term of seven years.
- III. A subordinate court presided over by a magistrate of first class shall not impose any sentence of imprisonment exceeding a term of five years.
- IV. A subordinate court other than a court presided over by a senior resident magistrate, a resident magistrate or a magistrate of first class, shall not impose any sentence of imprisonment exceeding a term of three years.

Principal resident magistrates are magistrates of the first class and so, this being the case, they do not impose any sentence of imprisonment exceeding a term of nine years.¹²¹

¹¹⁷ Hutchard and Ndulo, Readings in criminal Law and Criminology in Zambia, Multimedia publications, Lusaka, 1994. Page 97.

¹¹⁸ Hutchard and Ndulo, Readings in Criminal law and Criminology. Page 97.

¹¹⁹ Chapter 28 of the laws of Zambia.

¹²⁰ Chapter 88 of the laws of Zambia, section 7.

¹²¹ Interview with Mr Christansos Chandi, Magistrate of Second Class, Mwinilunga Subordinate Court, Lusaka, 31st march 2011.

The above shows that magistrate courts will not impose sentences exceeding nine years, because of this, such courts will not pass sentences in an offence of defilement since the minimum sentence of the offence of defilement is fifteen years as provided under the penal code as amended. Cases are committed to the High court for sentencing. However, there must be uniformity in sentencing offenders. This means that the sentences must in most cases be the same and must not be changing or varying by imposing a ten year sentence in one case and a thirty five year sentence in another.

In *The People v Steven Hara*,¹²² the defendant was convicted by the subordinate court of first class of lundazi for having unlawful carnal knowledge of a girl under the age of sixteen and was sentenced to twenty five years imprisonment. In *The People v Peter Njelesani*,¹²³ the convict was sentenced to fifteen years with hard labour for defiling his employer's daughter. In *The People v Prince Black*,¹²⁴ the appellant was sentenced to fifteen years imprisonment for having unlawful carnal knowledge of two girls aged fourteen and eleven.

The above cases show how courts sentence offenders of defilement, the sentences can be said to be consistent and in accordance with the penal code as amended.

4.4 DIFFICULTES FACED BY NONGOVERNMENTAL ORGANIZATIONS AND SOCIETY IN FIGHTING DEFILEMENT.

Various organizations in society have been fighting and raising awareness on the dangers of defiling minors. However, there are still a lot of difficulties that organizations face in their quest to fight defilement. Some of the problems they face are discussed below.

The major challenge lies with women and the victims themselves who are mostly children. Women and children face serious cultural barriers to legal redress. Women are often reluctant to use legal remedies because they don't believe that is the right thing to do.¹²⁵ They are afraid of additional violence from the perpetrator or other members of their families. These women try by all means to avoid bringing shame upon their families by not reporting the offence. They also

¹²² 2004/HJ/07 (unreported), *Zambia Law Journal*, Legislative and Criminal Justice: Response to sexual Violence in Zambia, Lusaka, 2006. Page 38.

¹²³ High Court Judgment of 2007(unreported).

¹²⁴ 2007/HPS/68 (unreported).

¹²⁵ M.B. Chulu, *Gender Violence, The invisible Struggle: Responses of the Justice Delivery system in Zambia*, research by Women and Law in Southern Africa, Lusaka, 2001. Page 24.

avoid the perpetrator from being imprisoned as such a person will cut off the families economic support, this is common if the offender is the breadwinner.¹²⁶ This is a very negative factor that affects the work of nongovernmental organizations whose main concern is the welfare of the victim. Such attitude also affects the fight against defilement.

Another difficulty that these organizations face is that the victims will try to withdraw cases. This is common even in police stations. This is regardless of the offence being a criminal offence and that once it is reported, it involves society as well. Organizations like the young women Christian association and others do not allow for the withdraw of cases of defilement once such cases are taken to them since society is already involved.¹²⁷ Victims try to withdraw cases in many ways. In the case of Women in Law Development in Africa, a victim will withdraw in a way that, after such victim has been given legal advice and have been told where to go in order to proceed with the case some victims will not follow the advice given and will not follow up the case, they simply choose to stay away. It is unfortunate that organizations will not follow these victims to persuade them to continue with proceedings.¹²⁸

Another challenge faced is that some parents and indeed the victims do not know what to do if the offence of defilement has occurred. For example, after reporting to the young women Christian association, they will remove the evidence that may be needed to convict the accused by washing the victim.

4.5 LAW ENFORCEMENT AND SOCIETYS RESPONSE TO VICTIMS OF DEFILEMENT.

The response that the victim receives from law enforcement agents and society as a whole is very important in the fight against defilement. If the response is positive, it will have positive impact as more victims will speak out and report cases of defilement. Police response to gender violence should be seen to be favourable. The police station should be user friendly. In responding to victims of defilement, the police officers at the VSU are trained in how to deal with child related

¹²⁶ C. Wonani, Sexual and Gender based violence in Zambia, Women in Law Development in Africa, Lusaka, 2008. Page 10.

¹²⁷ Interview with Eric sakala, Legal Assistant at Young Women Christian Association, Lusaka ,19th November 2010.

¹²⁸ Interview with Khuta Hara, programme coordinator at Women In Law Development in Africa, Lusaka, 11th November 2010.

offences like defilement.¹²⁹ They undergo training in counseling, investigations, prosecutions, gender and social work. Most officers at the VSU are plain clothed, this is in order to create friendliness.¹³⁰ At the police station in a case of defilement, an interview will be done and a medical report will be issued for such a child to be examined. Police commence investigations and open a docket. The police at the VSU by all means try to create an atmosphere of privacy even though they lack offices. The police officers will ask the victim if they are comfortable to talk in front of other officers present, they also ask the victim if they are comfortable with being interviewed by either a female or male officer. This is done to create an atmosphere that is comfortable for the victim.¹³¹ The courts response to the victim is to be user friendly as possible. For example, if a victim cannot speak a certain language, then an interpreter will be used to translate to the victim.¹³²

Nongovernmental organizations respond to victims in a positive way. This is done by offering them counseling services, these organizations also offer help with court sessions and with advice on how to proceed with the case. They encourage the victims to speak out and report cases of defilement. These organizations respond in a way that is encouraging to the victim and their families the atmosphere at the organizations is to make the victims know that they have the support of these organizations.¹³³

¹²⁹ Interview with Miss Agnes Chilembo, Administration Assistant, Victim Support Unit, Police Headquarters, Lusaka, 17th November 2010.

¹³⁰ Interview with Miss Agnes Chilembo, Administrative Assistant, Victim Support Unit.

¹³¹ Interview with Miss Agnes Chilembo, Administration Assistant, Victim Support Unit, Police Headquarters, Lusaka, 17th November 2010.

¹³² Interview with Mr Eric Musona, acting Registrar of the High court, Lusaka, 2nd December 2010.

¹³³ Young Women Christian Association monthly Bulletins, February 2007.

CONCLUSION

This chapter looked at the challenges faced by various institutions in the fight against defilement. Law enforcement agents and Nongovernmental organizations have a big role to play in the fight against defilement, these institutions are playing their roles. However, these institutions face a lot of challenges and difficulties in the fight, these difficulties may be in their internal offices or may be with the communities themselves. These challenges may be seen to be impediments of the effective prosecution of cases of defilement. However, once prosecution has begun, the principle of sentencing demands that sentences be fair and considerate. The sentence should be within the acceptable range which is no more than the maximum period enshrined in the penal code.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 GENERAL CONCLUSIONS

Chapter One of the research gave the general introduction of the topic researched on. The chapter gave the statement of problem, the specific objectives, the significance of study, rationale and justification and also the research methodology. From chapter One of the research, it has been shown that cases of defilement still persist despite the law on defilement being amended by Act No 15 of 2005, thus stiffening the penalties for the offence.

Chapter Two looked at defilement as asexual offence in Zambia. It has been established from chapter Two that there are various causes of sexual abuse in Zambia, more so defilement. The advent of HIV/AIDS pandemic has posed a dynamic challenge to all concerned in that there are many people masquerading as traditional healers who are prescribing sex with a virgin as some kind of cure for HIV infection. HIV/AIDS has contributed to the rise in the incidences of sexual violence.

Chapter Three looked at the roles played by various institutions in the fight against defilement. Chapter Three established that there are various institutions that have a hand to play in the fight against defilement. These institutions are the law enforcement agents, which comprise of the police and the courts. Apart from these, Nongovernmental organizations such as the Young Women Christian Association, Women and Law in Southern Africa, Women in Law Development in Africa and the International Justice Mission also play an important role, the chapter also revealed that gender based violence retards the socio economic empowerment of women and girls at all levels. Thus, the approach to adequately combat gender based violence must be multifaceted involving all the stakeholders including law enforcement agents. It has been shown that this partnership is a right step in addressing the existing gaps among stakeholders in preventing and responding to gender based violence. In addressing defilement, the police and Nongovernmental organizations have in place a lot of programs and sensitization campaigns which have been place to inform and educate the public of the evils and dangers of

the offence of defilement. The role of these key players as has been shown is indeed adequate in the fight against defilement.

Finally, chapter Four of the research looked at the challenges faced by various institutions in the fight against defilement. It has been established in chapter Four that despite a good fight against defilement by various institutions, these institutions face a lot of challenges that may be seen to be impediments to the effective prosecution of cases of defilement. These challenges may be within the institutions' internal offices or within the communities themselves. Various weaknesses in society exist and the most common one faced by both the law enforcement agents and Nongovernmental organizations is the culture of silence. People opt not to report cases of defilement due to fear of stigmatization from their families. The situation is even worse if the offender is the bread winner of the family. The victim or the wife of the offender will mostly not report due to fear of economic hardship as they have no means of sustaining the family. More so, the chapter has shown that although the Victim Support Unit has intervened effectively in some cases, the potential impact of the Victim Support Unit has been undermined by a fundamental shortage of resources, equipment and training.

5.1 RECOMMENDATIONS

Having discussed defilement and the role of the law enforcement agents and the support system and their adequacy in the fight against the sexual offence, it has been seen that a lot has been done and is being done to curb the sexual offence. But more needs to be done to help the law enforcement agents and Nongovernmental organizations as well to be efficacious in their role in the fight against the crime. It is against such background that this paper recommends that measures be taken in the following ways:

- a) Because of ignorance of the law, there is need to increase awareness about the law on defilement, this is one way children will learn their rights. Churches, communities, families and individuals need to take it upon themselves to get familiar and understand what the law says concerning defilement. Increased awareness will prevent the vulnerable and helpless from being sexually abused.
- b) It is recommended that the awareness of defilement should be taken to public places as well. Awareness should be done in colleges and universities. The police through the

victim support unit and Nongovernmental organizations should distribute brochures to such institutions in order to disseminate information on defilement.

- c) It is recommended that in order to provide punitive measures against perpetrators of gender based violence, government should speed up the process of developing specific legislation like the gender violence bill, which is still being debated in parliament.
- d) The government as the principal duty bearer should review the practice relating to customary marriage to remove the use of puberty as a determinant for marriageable age for a girl child.
- e) It is also recommended that the government should also expedite the complete domestication of the United Nations Convention on the Rights of the Child to enable full protection of the child including protection from child sexual abuse. This will harmonize the different legislations that are currently used to protect children.
- f) The other recommendation that can be advanced is that sentences for defilement that the criminal law imposes on the perpetrators of sexual violence should always be followed by civil proceedings where victims of sexual violence can be compensated for all the injury suffered.¹³⁴
- g) It is recommended that in the cases of defilement, the court should take into account the question of HIV/AIDS and therefore sentences should be adjusted accordingly. To this extent, if it is proved that the victim has contracted HIV/AIDS the sentence should be capital punishment.
- h) It is also recommended that sentencing policy should be changed. Currently, Magistrates can impose a certain minimum sentence and in the event where the Magistrate convicts a sexual violence offender, the case has to be referred to the High court for sentencing. Therefore, the sentencing power of the magistrate should be increased so that no limitation is placed on the sentences which they can impose in relation to sexual offences. This will assist in the expedient disposal of sexual violence. In essence, Magistrates should be given more powers in order to allow them

¹³⁴ T.Daka, The prevalence of sexual violence, Are existing Laws Adequate to curb the vice, obligatory Essay submitted to the school of Law in partial fulfillment for the award of the degree of Bachelors of Laws, 2010.

impose sentences up to the maximum instead of referring matters to the high court for sentencing as is the situation for sexual offences.

- i) In order for the Victim Support Unit to achieve the intended results, it is recommended that the unit should be moved to larger office space to enable them to be effective. The officers at the police headquarters work in a small room that holds five officers instead of one or two. Larger office space will also be a positive stance as this will afford the victim with the much needed privacy. The Victim Support Unit also lacks shelter to house the victim's, they have to rely on nongovernmental organizations to provide this shelter so another recommendation is that the government should come in and help the unit with shelter. This will be positive as the victim will not have to go to many places to seek protection.
- j) The Victim Support Unit even though it is trying to secure transportation for all provinces is still undermined by shortage of transport. Government and well wishers should thus provide and make available transport to the victim support unit. This will enable them carry out investigations.
- k) It is recommended that the government should also take deliberate actions to improve coordination among all the institutions and departments that are promoting children's rights to foster an environment of sharing and coordination to enhance child protection.
- l) Another recommendation is that in one way or the other, women should be empowered economically. This will decrease poverty and their dependency on the male folk. Women and victims of defilement do not report cases of defilement because they depend mostly on their husbands, they fear poverty and due to this, they do not report the crime.

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