

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

MANDATORY HIV TESTING: IN LIGHT OF THE CASE OF
STANLEY KINGAIPE AND CHARLES CHOOKOLE V. THE ATTORNEY-GENERAL

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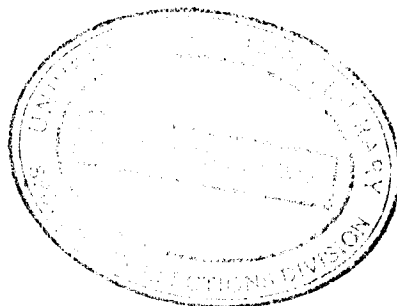
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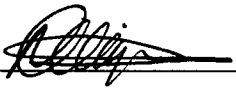
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**MANDATORY HIV TESTING: IN LIGHT OF THE CASE OF
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ABSTRACT

This essay considers the mandatory testing of the human immunodeficiency virus (HIV) and how an individual's rights are protected following the decision in *Stanley Kingaipe and Charles Chookole v. The Attorney-General*.¹

In that case it was held that the mandatory HIV testing of an individual without their informed consent was an infringement of that individual's fundamental rights provided for in the Zambian Constitution. Therefore, following this decision no individual in Zambia should be tested for HIV without their informed consent.

The effect of this decision is explored against the backdrop of the HIV/AIDS epidemic in order to determine whose rights are actually protected. This is done firstly, by looking at four groups in society to whom this decision is particularly relevant, these are:

- a) People living with HIV and AIDS (PLWHA)
- b) Children in defilement cases
- c) Women in rape cases
- d) Offenders in the sexual offences of rape and defilement

Secondly, the arguments against mandatory HIV testing as is stated in *Stanley Kingaipe*² and also arguments for mandatory HIV testing by looking at the sexual offences of defilement and rape were considered. Such arguments were obtained by looking at other jurisdictions

¹ *Stanley Kingaipe and Charles Chookole v. The Attorney-General*. 2009/HL/86.

² *Ibid.*

such as that of South Africa, where there is a law imposing the mandatory HIV testing of offenders³, and also America where some States also have such a law.

In conclusion, the essay argues that imposing mandatory HIV testing on offenders serves no purpose in protecting the victim's rights as was previously assumed. The essay is of the view that the decision in *Stanley Kingaipe* has good intentions in that according to that case, it is everyone's rights which should be protected when it comes to mandatory HIV testing. However as it is still a recent case its effects are yet to be seen.

³ The Criminal Law (Sexual Offences and Related Matters) Amendment Act. Act No. 32 of 2007 (South Africa), <http://www.info.gov.za/view/DownloadFileAction?id=77866> (accessed, March 26, 2012).

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ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
ARVs	Anti-retroviral drugs
ACWC	African Charter on the Welfare of the Child
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
GBV	Gender-based violence
GDD	Gender in Development Division
HIV	Human Immunodeficiency Virus
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NAP	National Action Plan
PEP	Post-exposure Prophylaxis
PLWHA	People Living with HIV and AIDS
SADC	Southern African Development Community
STD	Sexually Transmitted Disease
STI	Sexually Transmitted infection
UN	United Nations
VCT	Voluntary Counselling and Testing
VSU	Victim Support Unit
ZAF	Zambia Air Force
ZARAN	Zambia AIDS Law Research and Advocacy Network
ZWPC	Zambia Women's Parliamentary Caucus

Chapter One

General Introduction

1.1 Introduction

In 2009 a landmark decision was delivered in the case of *Stanley Kingaipe and Charles Chookole v. The Attorney-General*.¹ It was held that mandatory testing of the Human Immunodeficiency Virus (HIV) without informed consent was unconstitutional as it infringed the fundamental rights and freedoms of individuals. The concerned rights were the right to protection from inhuman and degrading treatment under Article 15 and the right to privacy under Article 17 of the *Zambian Constitution*.

In the above stated case two former Zambia Air force (ZAF) officers, Mr Kingaipe and Mr Chookole were subjected to a mandatory HIV test carried out as part of a compulsory medical check-up. A Station Routine Order requiring the two individuals to undergo a medical check-up had been placed on a notice board signed by the Station Commander, it was compulsory as non-compliance would render it a punishable offence. The medical check-up consisted of the testing of blood samples, urine, height, sight and blood pressure. It also included an HIV test, however the two men were not informed of this. Upon receiving the medical check-up there was no pre or post-test counselling as is routine. When the test results came back they showed that the two men had tested positive for HIV. The doctor in charge of testing had placed them on Anti-retroviral (ARVs) drugs; however the two men were not aware that the drugs prescribed to them were used to treat the virus.

¹*Stanley Kingaipe and Charles Chookole v. The Attorney-General*. 2009/HL/86.

Following the check-up the Medical Board made the decision to discharge the two men on the grounds that they were unfit to carry out their duties. The two men argued to the contrary and stated that they had been dismissed from ZAF as a result of their HIV positive status.

It was held that “the petitioner’s rights to protection from inhuman and degrading treatment under Article 15 and the right to privacy under Article 17 were violated”² due to the mandatory HIV test which had been carried out. However the Court decided that the two men had not been discharged from ZAF due to their HIV positive status but rather due to their medical condition which doctors believed was likely to remain permanent.

This case is a much welcomed decision by human rights groups, such as the Zambia Aids Law Research and Advocacy Network (ZARAN), who believe that a case precedent has been set for similar cases that arise in the future.³

1.2 Mandatory HIV Testing and Informed Consent

Mandatory HIV testing occurs when an individual is tested for HIV without their informed consent. Informed consent has been defined as consent to medical examination “obtained freely without threats or improper inducements” and that the patient is provided with “adequate and understandable information in a form and language understood by the patient.”⁴

In the South African case of *Stoffberg v. Elliot*⁵ a case concerning consent to medical intervention, Watermeyer J held that:

² Ibid., 45.

³ Masuzyo Chakwe, “ZARAN hails outcome of ex-ZAF employees’ case,” *The Post*, June 2, 2010.

⁴ United Nations, “Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care,” <http://www.unhcr.org/refworld/publisher,UNGA,THEMGUIDE,,3ae6b3920,0.html> (accessed December 1, 2011).

⁵ *Stoffberg v. Elliot* (1923) CPD 148.

(I) n the eyes of the law, every person has certain absolute rights which the law protects. They are not dependent on Statute or upon contract, but they are rights to be respected, and one of the rights is absolute security to the person. Nobody can interfere in any way with the person of another, except in certain circumstances... Any bodily interference with or restraint to a man's person which is not justified in law, or excused in law or consented to is a wrong, and for that wrong the person whose body has been interfered with has a right to claim such damages as he can prove he has suffered owing to the interference.⁶

This position was later confirmed in the case of *Castell v. De Greef*⁷ where it was provided that a person consenting to a medical procedure must:

- (a) know the nature and the extent of the harm or the risk undertaken
- (b) understand the nature and extent of the harm or risk to be undertaken
- (c) agree to the harm or risk
- (d) agree to all parts of the harm or risk including the consequence

In this case the Court accepted the principle that consent to treatment is vitiated if the patient is given inadequate information on the medical intervention to be performed.⁸

In *Lewanika and others v. Chiluba*⁹ the Zambian Supreme Court declined to order that the respondent be subjected to a DNA test without his informed consent, as it violated his right to liberty and security of the person. It is evident that informed consent is a significant aspect of any medical procedure, more so one involving mandatory HIV testing.

In Zambia there is an opt-out system of HIV testing, this is where testing is offered routinely to all patients attending a particular healthcare service such as an antenatal clinic.¹⁰ Upon

⁶ Ibid., 148.

⁷ *Castell v. De Greef* 1994 (4) SA 408.

⁸ The South African Law Commission, "Aspects of the Law Relating to AIDS: Compulsory HIV Testing of Persons Arrested in Sexual Offence Cases" <http://www.info.gov.za/view/DownloadFileAction?id=123823> (accessed November 2, 2011)

⁹ *Lewanika and others v. Chiluba* [1998] Z.R. 49. (S.C)

¹⁰ Paul Collini, "Opt-out HIV Testing Strategies," *Clinical Evidence*, <http://clinicalevidence.bmj.com/downloads/2.Opt-out%20HIV%20testing%Strategies.pdf> (accessed December 20, 2011)

receiving information an individual can decide not to proceed, Zambian law does not provide that an HIV test be done mandatorily.

1.3 Background and Implications of the Decision

It is against the backdrop of the HIV and AIDS (Acquired Immunodeficiency Syndrome) epidemic in Zambia that this case was decided. In 2007 the estimated prevalence of HIV infection in adults aged 15-49 years was 15,087 per 100,000 of the population, which was estimated to be approximately 10 million.¹¹

The Ministry of Health estimated that at the end of 2004 one million adults and children were living with HIV/AIDS. Furthermore, according to the Zambian Demographic Health Survey of 2002, women account for 54% of all people living with HIV/AIDS. The HIV prevalence among females aged 14-19 years is six times that of males in the same age group.¹² These statistics indicate the alarming reality of HIV/AIDS, what is particularly evident is the feminisation of the epidemic.

A landmark decision the above mentioned case may be the extent of its effect is yet to be seen. Moreover, this decision purports to protect the rights of individuals who are infected with HIV/AIDS by not imposing a mandatory HIV test without their informed consent, however it is silent on how to protect the rights of those who become infected with HIV as a result of individuals who may, or may not be aware of their HIV positive status. This is of particular concern with regard to sexual offences, specifically in cases of defilement and rape.

¹¹ World Health Organisation, *World Health Statistics*, (Geneva: WHO Press, 2009), 22.

¹² World Health Organisation, "Summary Country Profile for HIV/AIDS Treatment Scale-up" World Health Organisation, http://www.who.int/hiv/HIVCP_ZMB.pdf (accessed October 10, 2011).

In a Times of Zambia article, Mr Kasale coordinator of the Zambia Police Victim Support Unit (VSU) reported a rise in Gender Based Violence (GBV) cases.¹³ The VSU reported that there were 20,028 GBV cases of which 64 were rape cases and 452 child defilement cases. In such cases the rights of women and children are fundamentally curtailed by the offenders. This revelation is particularly devastating, due to the stated feminisation of the HIV/AIDS epidemic.

1.4 Statement of the Problem

Stanley Kingaipe purports to protect the rights of society as whole by holding that mandatory HIV testing without informed consent is an infringement of fundamental rights. It effectively provides that each individual in society shall be protected from such an intrusion of the person. It however does not provide for instances where mandatory HIV tests are imposed such as upon the perpetrators in sexual offences, specifically those in defilement and rape.

In such cases the importance of mandatory HIV testing is to assist the victim to make a decision about whether to take post –exposure prophylaxis to reduce the risk of HIV infection.

This essay purports to look at an area in which the decision in *Stanley Kingaipe* left unturned, in doing so, arguments for mandatory HIV testing are only being considered in the context of the sexual offences of defilement and rape.¹⁴

In such cases, some offenders are subjected to mandatory HIV testing without their informed consent. The rationale behind testing such individuals mandatorily is based on the fact that

¹³ Times Reporter, “ VSU bemoans unceasing Gender Violence,” *Times of Zambia*, January 11, 2012

¹⁴ Other instances in which mandatory HIV testing may be imposed are in pregnant mothers and also those who wish to marry. For further discussion see, Ebenezer Durojaye and Victoria Balogun, “Human Rights Implications of Mandatory Premarital HIV Testing in Nigeria,” *International Journal of Law and Policy and the Family* 24(2) (April 2010): 245-265.

they have curtailed the liberty of another, suggesting that the subsequent curtailment of their fundamental rights by administering a mandatory HIV test be justified. Indeed, in most cases the offenders transmit sexually transmitted diseases¹⁵ including HIV to their victims.¹⁶

This is futile ground to investigate the fundamental rights and freedoms of society at large and particularly to determine whose rights are actually protected following the decision in *Stanley Kingaipe*.

1.5 Objective of the Study

The objective of this study is to consider whether it is acceptable to curtail the rights and liberties of some individuals following the decision in *Stanley Kingaipe*, namely, the offenders in defilement and rape cases, for the purpose of protecting the fundamental rights of society at large. In order to establish this, it shall be necessary to consider the rights of the following groups:

- a) People living with HIV/AIDS
- b) Children in defilement cases
- c) Women in rape cases
- d) Offenders in defilement and rape cases

1.6 Rationale and Justification of the Research

Zambia is a nation plighted with the HIV/AIDS epidemic yet surprisingly there is not much in the form of reported case law on the matter, highlighting why *Stanley Kingaipe* is a landmark decision. The background to this decision is that there is an alarming increase in

¹⁵ *Saidi Daka v. The People*. SP3-405 (2008), (Lusaka Magistrate). In this case the victim was infected with syphilis by the offender.

¹⁶ *Mfukwa Nkhata v. The People*. SP-873 (2008), (Lusaka Magistrate).

cases of defilement which hamper the fight against HIV/AIDS, not a week goes by without a new defilement case being reported.

It has been stated above that more women than men are afflicted with HIV/AIDS; this is correlated with the fact that in defilement and rape cases, women and girls are also the victims. Furthermore, in such cases some offenders are subjected to mandatory HIV tests it is therefore necessary to investigate the rights of these individuals in order to determine whose rights should be protected. This provides a justification for the purported essay.

1.7 Operational Definitions of Terms

AIDS: Acquired Immunodeficiency Syndrome.

HIV: Human Immunodeficiency Virus.

Mandatory HIV Testing: The testing of an individual for HIV/AIDS without their informed consent.

Defilement: Unlawful carnal knowledge of a minor under the age of 16. As provided under Section 138 (1) of the Penal Code, Chapter 87 of the Laws of Zambia as amended with Act No 15 of 2005.

Rape: Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed "rape". As provided under Section 132 of the Penal Code, Chapter 87 of the Laws of Zambia.

Post-exposure prophylaxis: Short-term antiretroviral treatment, to reduce the likelihood of HIV infection after potential exposure, either occupationally or through sexual intercourse.

PLWHA: People Living with HIV and AIDS.

1.8 Research Methodology

The method of research shall be a library study and the review of case law. In considering the rights of people living with HIV/AIDS, women and children, the research will be conducted by reviewing a number of books, statistics and the law on the matter at both national and international levels.

In the case of offenders in defilement and rape cases, research shall be conducted by the collating of cases illustrating whether mandatory HIV tests were conducted without the informed consent of the offender. The sample will depend on how many of such cases are available. Furthermore, cases from other jurisdictions shall be considered.

1.9 The Rights of People Living with HIV and AIDS.

According to the Oxford Dictionary of Law a right is an “interest or privilege recognized and protected by law.”¹⁷In Zambia the rights of citizens are enshrined in the Bill of Rights provided in Part III of the Constitution which purports to protect the fundamental rights and freedoms of “every individual.” Article 11 sets out these fundamental rights as:

- (a) life, liberty, security of the person, and the protection of the law
- (b) freedom of conscience, expression, assembly, movement and association
- (c) protection of young persons from exploitation

¹⁷ Elizabeth A. Martin. and Jonathan Law, eds., *Oxford Dictionary of Law*. (Oxford: Oxford University Press, 2006)

(d) protection for the privacy of his home and other property and from deprivation of property without compensation;

People living with HIV/AIDS (PLWHA) by virtue of being human are also entitled to these fundamental rights. However it is important to note that these rights are only protected to the extent that they “do not prejudice the rights and freedoms of others or the public interest.”¹⁸

In considering whose rights should be protected where mandatory HIV testing is concerned, the rights of PLWHA are important due to the stigma and discrimination which they face. The United Nations in their publication titled ‘International Guidelines on HIV/AIDS and Human Rights’¹⁹ provide that some of rights that concern PLWHA are:

- The right to non-discrimination, equal protection and equality before the law
- The right to life
- The right to liberty and security of the person
- The right to participate in public and cultural life
- The right to privacy
- Freedom from torture ,cruel, inhuman or degrading treatment

In *Stanley Kingaipe* mandatory HIV testing was viewed as an infringement of the two latter rights. The United Nations (UN) provides that mandatory HIV testing should only be used “upon the screening of blood in blood transfusions” and “mandatory screening of donors is

¹⁸ Zambian Constitution, Article. 11 (d).

¹⁹ United Nations, “International Guidelines on HIV/AIDS and Human Rights,” UNAIDS, http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf (accessed January 4, 2012).

required prior to all procedures involving transfer of bodily fluids or body parts.”²⁰ UNAIDS/WHO do not support mandatory HIV testing of individuals on public health grounds. Similarly, in the context of employment, ZARAN argue that mandatory HIV testing “is counterproductive, irrationally wasteful of scarce resources, imperils the human rights and dignity of the employees and prospective employees.” As far as mandatory HIV testing is concerned regarding PLWHA much research and literature is against it, as it is thought that doing so would only encourage more stigma and discrimination.

As stated earlier, in Zambia there is no HIV/AIDS specific legislation, the rights of PLWHA are protected in the same way as those living without HIV/AIDS. This is not satisfactory because the former are in a more vulnerable position. However, some organisations such as Women and Law in Southern Africa have taken the initiative to promote the rights of those living with HIV/AIDS by publishing documents such as ‘The Zambia HIV/AIDS Human Rights Charter’.²¹ One of the aims of this Charter is “the recognition that the effective prevention of HIV/AIDS is not restricted to people living with HIV/AIDS but extends to Zambian society as a whole.” Article 1 of the Charter provides for voluntary counselling and testing (VCT), it states:

VCT must be undertaken with the free and informed consent of the affected persons except routine testing should be undertaken in the following cases:

- a) for persons who are critically ill and are unable to give consent;
- b) minors in need of treatment including those under the care of guardian or parent (s);
- c) perpetrators and victims of sexual assaults such as rape, defilement, sodomy and incest

²⁰World Health Organisation, “UNAIDS/WHO Policy statement on HIV Testing,” World Health Organisation, <http://www.who.int/hiv/pub/vct/statement/en/> (accessed October 15, 2011).

²¹ Women & Law in Southern Africa Research & Educational Trust, *The Zambia HIV/AIDS Human Rights Charter* (Zambia: Women & Law in Southern Africa Research and Educational Trust,2007).

The propositions made in this document are very important and relevant and shall be explored further in the following chapters. However it has no legal effect as it is not a statute passed by Parliament.

The rights of individuals in Zambia are further provided for in a number of International Instruments such as, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.10 Conclusion

Mandatory HIV testing infringes the fundamental rights and freedoms of individuals and this therefore includes those living with HIV/AIDS. However the rights of such individuals are not absolute and need to be balanced with those of other groups in society. It is the purpose of the following chapters to look at those other groups in society. The next chapter shall look at the rights of children and defilement cases.

Chapter Two

Rights of the Child in Defilement Cases

2.1 Introduction

“In Zambia as in other countries in the region, tens of thousands of girls – many orphaned by AIDS or otherwise without parental care – suffer in silence as the government fails to provide basic protections from sexual assault that would lessen their vulnerability to HIV/AIDS.”¹ This statement is taken from a document published in 2003, it is now 2012, nine years later and not much has changed.

There has been a recent surge in the number of defilement cases, with a new case being reported almost every day. Defilement is the legal term referring to the sexual abuse of children, specifically girls under the age of 16.² In a number of instances that a child has been defiled they may contract sexually transmitted diseases (STDS) including HIV/AIDS.

In a Times of Zambia article, Dr Mwaba Kasese stated that “some children have contracted STDs and tested HIV positive after being defiled which is tantamount to murder since there is no known cure of the virus at the moment.”³

It is due to this reason that mandatory HIV testing is being explored, because potentially a lot of victims are exposed to the virus, in order to protect their fundamental rights it is essential to

¹ Human Rights Watch, “Suffering in Silence: The Links between Human Rights Abuses and HIV Transmission to Girls in Zambia,” Human Rights Watch, <http://www.unhcr.org/refworld/docid/3f4f59890.html> (accessed 16 November 2011) 2.

² Section 138(1), CAP 87 of the Laws of Zambia, The Penal Code Act (Amended by act No. 15 of 2005)

³ Potipher Tembo and Nebert Mulenga, “The Impact of Child Defilement on Society,” *Times of Zambia*, September 25, 2003.

be aware of the HIV status of the offender. From the case law reviewed⁴ it is apparent that upon defilement the victim is subjected to a medical examination which includes an HIV test.

In most cases the offender is only tested for HIV if the victim is found to have the disease.

Post-Exposure Prophylaxis

Defilement is considered an emergency as the child is supposed to be tested for HIV and given post-exposure prophylaxis (PEP) to prevent the spread of HIV. Post-exposure prophylaxis is a 28 day programme of antiretroviral drugs. Research has shown that taking anti-retroviral drugs (ARVs) after exposure to HIV within 72 hours greatly decreases the risk of getting infected with HIV.

In evaluating the need for PEP the following factors should be considered:

- The duration of time that has passed since the potential exposure
- The likelihood of infection in the exposure source
- The risk of transmission given the source material and type of exposure
- The effectiveness of therapy at modifying the risk, and
- The burden of adherence to anti-retroviral therapy⁵

⁴ See Appendix , Table I.

⁵ Peter L. Havens MD and the Committee on Paediatric AIDS, "Post-exposure Prophylaxis in Children and Adolescents for Non-occupational Exposure to Human Immunodeficiency Virus," American Academy of Paediatrics, <http://pediatrics.aappublications.org/content/102/4/e46.full.pdf> (accessed on December 11, 2011).

2.2 How Children’s Rights are Protected in Zambia.

Part III of the Zambian Constitution provides for fundamental rights to which each individual is entitled to. With regard to children it only provides for “protection of young persons from exploitation.” Due to this, some view the provision of children’s rights in the Constitution as having “deficiencies.”⁶

In 2008, the Zambian government adopted a National Action Plan (NAP) on violence against women and children. The aim of this initiative is to eliminate gender-based violence (GBV) in “holistic, systematic, complementary and comprehensive manner through multi-sectoral, and multi-dimensional approach, and to provide appropriate care and services to survivors of GBV.”⁷

Zambia has signed a number of international treaties that promote the protection of human rights and the rights of the child. “Human rights are freedoms established by custom or international agreement that impose standards of conduct on all nations. Human rights are distinct from civil liberties, which are freedoms established by the laws of a particular state and applied by the state in its own jurisdiction.”⁸

The Convention on the Rights of The Child (CRC) was ratified in Zambia in 1991. Article 2 provides for the protection of the child from discrimination. Article 6 refers to the child’s inherent right to life, and the responsibility of the state to ensure the survival and

⁶ Matrine Bbuku-Chuulu et al., *Gender Violence: The invisible struggle: Responses to the Justice Delivery System in Zambia*, 1st ed. (Zambia: Women and law in Southern Africa Trust, 2001), 23.

⁷ Republic of Zambia, Cabinet office, “Gender in development division”, United Nations Development Program, [http://www.undp.org.zm/joomla/attachments/033_GBV-NAP_2008-2013_FINAL_\(2\)1.pdf?8e2474a80d13c9785641fc2923161380=ee954f7d3226ba2bbff6fe5db8e6c912](http://www.undp.org.zm/joomla/attachments/033_GBV-NAP_2008-2013_FINAL_(2)1.pdf?8e2474a80d13c9785641fc2923161380=ee954f7d3226ba2bbff6fe5db8e6c912) (accessed November 5, 2011)

⁸ Support to the HIV/AIDS Response in Zambia (SHARe). “HIV and AIDS Reference Materials for the Judiciary in Zambia,” SHARe, <http://www.abtassociates.com> (accessed October 10, 2011)

development of the child. Article 19 provides that States should take appropriate measures to ensure that the child is protected from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent (s), legal guardian, or any other person who has care of the child.”

Article 34 is particularly significant as it refers to the protection of children from all forms of sexual exploitation and sexual abuse. Article 39, further provides that the state must “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse.”

Zambia is also a signatory to the African Charter on the Welfare of the Child (ACWC) which focuses on the problems a child faces in Africa. It emphasises on non-discrimination on the basis of sex and the girl child rights to education and health among other things.⁹ Article 16 of the Charter provides for the protection against child abuse and torture it states:

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

The government states that in order to fulfil the obligations outlined in the above stated instruments, treaties and agreements, several institutions have been established. Some of which are, the Gender in Development Division (GDD), the Zambia Women’s Parliamentary Caucus(ZWPC), the Human Rights Commission (HRC) and the Police Victim and Support

⁹ Mulela Margaret, Munalula., *Women, Gender Discrimination and the law: Cases and Materials* (Lusaka:UNZA Press,2005) 15.

unit (VSU). These frameworks are stated to “constitute core guidelines for improving the welfare and quality of life as well as protecting their survival and developmental rights.”¹⁰

It is apparent that the mechanisms are in place to protect vulnerable children, however these provisions are generalised and in most cases the child is not protected as is illustrated below.

2.3 The Problem of Defilement: Cases

*Saidi Daka v. The People.*¹¹

In this case the victim was defiled, when later examined it was discovered that she had contracted syphilis, a sexually transmitted disease. As a result of this the offender was also tested and it was concluded that he had transmitted the disease to the victim.

*Mfukwa Nkhata v. The People.*¹²

In this case the victim was found to be HIV positive when tested; it is assumed that the offender transmitted the disease upon defilement.

*Alex Chanda v. The People*¹³

A child was defiled and complained of stomach problems and also had “pain in her private parts” this could potentially have been an STD. The case record does not specify whether the victim had contracted a sexually transmitted disease. In the same record the accused stated that the police refused to examine him and would only examine the child.

¹⁰ Republic of Zambia, Cabinet office, “Gender in development division”, 11.

¹¹ SP3-405 (2008).

¹² SP-873 (2007).

¹³ 2P-79-11 (2011).

In this case when the victim was tested during a medical examination it was found that she had contracted gonorrhoea.

In *The People v. H Suke (2007/8) (unreported)*: An HIV-positive man of Choma was sentenced to 20 years simple imprisonment for defiling his 14 year old niece and infecting her with HIV. Facts before the court were that on unknown dates but in 2005 the accused had carnal knowledge of his niece on several occasions and had been threatening to beat up the girl or wife if they reported to the police. The niece developed an infection on her genitals and informed her aunt, who took her to the hospital where an examination was done and it was revealed that the girl had HIV as a result of defilement.¹⁵

The above is only a fraction of the cases on defilement but what it does show is the vulnerability of girls contracting sexually transmitted diseases and the need to have a mechanism to resolve this problem. Furthermore, the perpetrators are those who are meant to be protecting them such as their guardians, parents and even police officers.¹⁶

2.4 Conclusion

The cases reviewed have illustrated that in cases of defilement medical examinations on the victims are carried out so that post-exposure prophylaxis can be initiated. What was found was that although it was mandatory for the victim to get tested for HIV it was not so for the offender. This was only done if it was found that the victim had tested HIV positive or was found to have another sexually transmitted disease (STD). It submitted that mechanisms

¹⁴ SP2.537 (2008).

¹⁵ *The People v H. Suke*, quoted in, Support to the HIV/AIDS Response in Zambia (SHARe). "HIV and AIDS Reference Materials for the Judiciary in Zambia." SHARe. <http://www.abtassociates.com> (accessed October 10, 2011).

¹⁶ *The People v. Emmiesi Sibuchinga* 2SP.E. (2011). In this case the first accused was a police officer.

should be put in place so that the offender can be tested without the need for the victim to have been found with an STD. However this does cause logistical issues, in that in most instances the victim is tested first as the need to take PEP must be within 72 hours and in most cases the offender may not be apprehended by that time. Furthermore, if the offender is tested and is found to be HIV positive it does little to protect the rights of the child as they have been already infected.

In some cases where the offender wishes to be tested he is refused, this gives rise to a number of issues that will be explored later as it could prove innocence or implicate another perpetrator. In the next chapter the rights of women shall be considered regarding mandatory HIV testing in rape cases.

Chapter Three

The Rights of Women in Rape Cases

3.1 Introduction

Women like girls are susceptible to contracting HIV due their vulnerability and violence which they face as is evident in rape cases. When raped the fundamental rights of the woman are violated at the hands of the perpetrator, worse still there is a high probability of her contracting HIV. Rape is defined as “unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as the nature of the act, or, in the case of a married woman, by personating her husband.”

It is important in the aftermath of a rape that the victim takes an HIV test to determine whether she is HIV negative or positive and also to have follow-up tests to determine whether she becomes HIV positive as a result of the rape.

In practice voluntary testing and counselling as opposed to mandatory testing, regarding victims of rape is conducted. This is because the victim is entitled to privacy. As the law stands the rapist cannot be forced into having an HIV test as it is provided that he too has the right to privacy. This shall be considered further in Chapter Four.

3.2 How are Women’s Rights Protected in Zambia?

Women like any other individual in Zambia are entitled to the protection of their fundamental rights as is provided for in the Constitution.¹

¹ See Paragraph.1.8 above.

In 2011 The Anti-Gender -Based Violence Act was passed in Zambia, it is an Act to “provide for the protection of victims of gender-based violence; Constitute the Anti-Gender-Based violence Committee; establish the Anti-Gender-Based Violence Fund; and provided for the matters connected with or incidental to the foregoing.” This Act is very new and whether it is effective in what it proposes to do is yet to be seen.

3.3 International Instruments Protecting Women’s Rights

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was ratified in Zambia on 21st June 1985. It seeks to eliminate discrimination against women so that they are treated equally. However this Convention has not been fully incorporated into domestic law and its provisions cannot be enforced in domestic courts.

The United Nations declaration on Elimination of All Forms of Violence against Women is a statement that recognises instances of violence in a number of spheres including in families, which includes battering, sexual abuse of female children, dowry related violence, marital rape, female genital mutilation, non-spousal violence and violence related to exploitation.

The Beijing Platform of Action was held in September 1995, the purpose was to look at modes of initiating “Action for Equality, Development and Peace.” For example it looks at “Women and Health Diagnosis” and provides under Strategic Objective C.3 that, governments “should undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS and sexual and reproductive health issues.” Furthermore, it looks at violence against women and provides that States should “enact and/or reinforce penal, civil labour and administrative sanctions in domestic legislation to punish and redress the wrongs

done to women and girls who are subjected to any form of violence whether in the home, the workplace, the community or society.”²

The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, is focused on the rights of Women. Article 4 provides for the right to physical and emotional security it states:

Women shall be entitled to respect of their lives and the integrity of their person. Accordingly the States Parties shall:

(c) Protect girls and women against rape and all other forms of violence including trafficking of girls and women.

Article 5 provides for the elimination of violence against women in sub-section (b) it is stated that States do so by identifying “the cause of the violence against women and ensure that the perpetrators pay adequate compensation.”³

Finally, the Southern African Development Community (SADC) has a Declaration on Gender Development. The Declaration provides that countries should commit to placing gender on the agenda of the SADC Programme of Action and that it is convinced that gender equality is a fundamental human right.⁴

² United Nations, “Beijing Platform of Action,” United Nations, <http://www.un.org/womenwatch/daw/beijing/> (accessed March 29,2012).

³ Human Rights Education Associates, “Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa,” HREA, http://www.hrea.org/index.php?base_id=104&language_id=1&exc_doc_id=806&category_type=&group= (accessed March 29 2012).

⁴ Southern African Development Community, “SADC Declaration on Gender Development,” SADC, <http://www.sadc.int/index/browse/page/174> (accessed March 29, 2012).

3.4 Rape and Mandatory HIV Testing: The Victim's Rights

In *The People v. Elias Mwappe and Charles Zimba*⁵ a 17 year old girl was raped by two perpetrators. She subsequently informed her mother of her ordeal who took her to the hospital so that a medical examination could be conducted on her. It was established that she was raped; there is no mention of such an examination on the defendants.

In cases such as the one above the victim usually confides in someone close to them about their ordeal, that individual is usually the one to encourage them to go for a medical examination. Those who argue in favour of the rights of the victim focus on the health and emotional relief that the rape victim obtains from learning the HIV status of their attacker as opposed to the medical utility of the test.⁶

The victim may face psychological distress following a rape as feelings of anger, disbelief, shock, fear and guilt may manifest into psychological disorders.⁷ Psychiatric symptoms can include “depression, social phobia, obsessive compulsive behaviour and anxiety.”⁸ Furthermore, “[t]he fear of contracting HIV following rape appears to be a significant stressor adding to the incidence, prevalence, and severity of psychiatric morbidity in the rape survivors.”⁹

It has been discovered that the offenders are not systematically tested for HIV following the crimes of defilement and rape as was assumed. This is only done if the victim is found to have an STI or indeed HIV. It was assumed in Chapter One that if the victim's fundamental

⁵ 2SP-F 112 (2010).

⁶ Stacey B. Fishbein, “Pre-conviction Mandatory HIV Testing,” Hofstra University, http://www.hofstra.edu/pdf/Law_Lawrev_Fish.pdf (accessed, March 11, 2012).

⁷ United Nations, “Handbook on Justice for Victims,” United Nations, <http://www.uncjin.org/Standards/9857854.pdf> (accessed, March 11, 2012), 13

⁸ South African Law Commission, “Aspects of the Law Relating to AIDS: Compulsory HIV Testing of Persons Arrested in Sexual offences Cases,” 113

⁹ Ibid.

rights have been curtailed so too should the rights of the offender by imposing a mandatory HIV test. Review of case law has shown that in practicality it is not usually possible because the offender is not immediately detained. The AIDS Law Manual provides that “in an event, the immediate concern should be the interests of the rape survivor.”¹⁰ Testing the offender for HIV before the victim serves no practical purpose because it is the victim who needs to be protected after such a violation so that they can be placed on post-exposure prophylaxis. However, the issue of mandatory HIV testing is significant and has implications to the offender’s case once proceedings begin depending on whether he is found to be HIV positive or negative, or carrying an STI which is found on the victim.

The rape case above was the only case that was reviewed regarding rape as it was realised that the procedure in defilement cases regarding medical examinations conducted on the victims is the same in rape cases. Thus it was viewed as unnecessary to effectively collect the same data.

3.5 Conclusion

The above Chapter considered the vulnerability of women in rape cases and how their fundamental rights are curtailed. The provisions for the protection of women’s rights in the Constitution as well as in International Instruments were also taken into account. What is apparent is that on paper there are a lot of mechanisms to protect women but in practice this is not the case.

It has been shown that when it comes to HIV testing following a rape, the victim is usually encouraged by someone to go for a medical examination; the focus is on the victim as opposed to the offender. It is submitted that this is the correct procedure as the focus should

¹⁰ Alfred Chanda., et al., *AIDSLaw MANUAL*, (Lusaka: ZARAN, 2007), 112.

be on the victim, to possibly prevent them from contracting HIV. The issue of testing the offender mandatorily is still important and shall be considered in the following Chapter.

Chapter Four

The Rights of Offenders in Defilement and Rape Cases

4.1 Introduction

Article 11 of the Zambian Constitution provides as follows:

It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, assembly, movement and association;
- (c) protection of young persons from exploitation;
- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in this Part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.¹

This Article shows that every person in Zambia is entitled to their fundamental rights and freedoms, subject to limitations. These are rights such as the right to life and the right to privacy as provided above. Therefore, a rapist or a defiler has a right to privacy provided that the enjoyment of this right does not prejudice the “rights and interests of others or the public interest.” Therefore conducting a mandatory HIV test is an infringement of their fundamental rights. This is confirmed in *Stanley Kingaipe*, where it was held that carrying out a mandatory HIV test without the informed consent of an individual is a violation of the right to protection from inhuman and degrading treatment and the right to privacy. The issue is

¹ The Constitution of Zambia Act, CAP. 1 of the Laws of Zambia.

whether mandatory HIV testing can be justified as falling under one of the limitations provided for in Article 18.² Furthermore, it is clear that both the victim and offender have rights provided for under the Constitution, the issue is how to balance these rights.

4.2 Mandatory HIV Testing: The Rights of Offenders

The law under the Criminal Procedure Code, Chapter 88 of the Laws of Zambia empowers the courts of law to compel an accused person to undergo medical examination which may include HIV testing in the interest of justice, under section 17(1) it provides:

“A court may, at any stage in a trial or inquiry, order that an accused person be medically examined for the purpose of ascertaining any matter which is or may be, in the opinion of the court, material to the proceedings before the court.”

This provision can be said to balance the rights of the victim against those of the offender, in that there are instances when a Court may order that an offender be tested for HIV. However, Article 18 (2) (a) of the Constitution provides that a person charged with a criminal offence shall be “presumed to be innocent until he is proved or has pleaded guilty.” Imposing a mandatory HIV test on such an individual presumes that the individual is guilty, which is unconstitutional. Furthermore, the question which arises at this stage is whether the mandatory HIV testing of the offender actually does anything in way of protecting the victim’s fundamental rights which have been violated.

4.3 The Argument for Mandatory HIV Testing of Offenders

Victims in defilement and rape cases are vulnerable to contracting HIV from offenders due to the high prevalence of the disease in Zambia. The main argument for mandatory testing of

² Ibid.

offenders is the assumption that on committing a sexual offence the offender forfeits their rights and should subsequently be subjected to a mandatory HIV test in order to protect the victim. The protection afforded being the disclosure of the HIV status of the offender in order to aid in the psychological wellbeing of the victim.³ Arguably the “specific plight of victims of sexual violence (women and girls) should receive precedence over the arrested person’s right to privacy.”⁴ It was stated in Chapter Three that rape victims face psychological distress as a result of their ordeal thus knowing the status of the offender may alleviate this distress.

South Africa like Zambia is a Country with a high prevalence of HIV and also an extremely high incidence of sexual offences. In 2007 the South African government implemented an Act dealing with the issue of compulsory HIV testing of offenders among other things. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 provides for compulsory HIV testing of alleged sex offenders.⁵ Chapter 5 section 30(1) (a) gives provision for the victim of a sexual offence or any interested party to apply within 90 days to a magistrate for an order that the offender be tested for HIV and that the results be disclosed to the victim or interested person. Section 28 emphasises on the importance of post-exposure prophylaxis (PEP) if the victim has been exposed to the risk of being infected with HIV in the aftermath of a sexual offence.

The issue that arises with such a provision is that of the infringement of privacy. Rhoers states that “facts are considered private if the disclosure thereof will cause mental distress and

³ See paragraph 3.4 regarding the psychological effects of rape on the victim.

⁴ The South African Law Commission, “Aspects of the Law Relating to AIDS: Compulsory HIV Testing of Persons Arrested in Sexual Offence Cases”, <http://www.info.gov.za/view/DownloadFileAction?id=123823> (accessed November 2, 2011).

⁵ The Criminal Law (Sexual Offences and Related Matters) Amendment Act Act No. 32 of 2007 (South Africa), <http://www.info.gov.za/view/DownloadFileAction?id=77866> (accessed, March 26, 2012).

injury to anyone possessed of ordinary feelings and intelligence.”⁶ In *NM and Others v. Smith and others*⁷ the constitutional Court of South African recognised that “the disclosure of an individual’s HIV status, particularly in the South African context deserves protection against indiscriminate disclosure.”⁸ The facts of the case were that the names of three women who are HIV positive were disclosed in a book publication. They alleged that the book had been published without their prior consent having been obtained.

Requiring an offender go through a mandatory HIV test and to further require that he disclose that information significantly contravenes with the rights provided for in the Constitution.

In America a number of States have implemented laws which impose mandatory HIV testing on offenders. In California for example a victim of rape can make a request to the Court that the offender be tested for HIV and the result be disclosed to the victim. Section 1524.1 of the Californian Penal Code provides that the testing and disclosure is “for the benefit of the victim of a crime informing the victim whether the defendant is infected with the HIV virus.” It further provides that the purpose of this section is to protect the health of victims of crime and also those accused of committing the crime.

The Fourth Amendment of the American Constitution provides that the “right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated.”⁹ The Fourth Amendment thus protects an individual’s privacy, integrity, and security of individuals against discretionary and invasive searches by the

⁶ Dr. Stefanie Roehrs, “Positive or Negative? Compulsory HIV testing of alleged Sexual Offenders,” Gender, Health and Justice Research Unit, University of Cape Town, <http://www.ghjru.uct.ac.za/pdf/positive-or-negative.pdf> (accessed March 20, 2012).

⁷ CCT 69/05[2007] ZA CC6.

⁸ *Ibid.*, 42.

⁹ U.S Constitution, Amendment 4.

government.¹⁰ The element of reasonableness requires the balance of the individual's rights and also the government's interests. The determining factor as to whether the government acts reasonably is the use of a warrant authorised by law. However in recent years the Supreme Court of the United States of America has held that a warrantless search can be permitted provided, a "special need" arises. In the cases of *Skinner v. Railway Labour Executive's Association*¹¹ and *National Treasury Employees Union v. Von Raab*¹² the Court authorised the government to carry out a mandatory test to check for illegal drug use without a warrant or any particularised suspicion. The Court held that the government's interest in protecting the safety of the passengers and employees of the railway in *Skinner* constituted a "special need."

In *Re Juveniles A,B,C,D,E*¹³ the Washington Supreme court held that the government's interest to impose a mandatory HIV test on a sex offender was so compelling that it outweighed the individual's interest in avoiding testing. It held that in general blood tests were "minimal intrusions."¹⁴ Similarly in *Adams v. State*¹⁵ the Court held that a Statute permitting the victim of a sexual offence or a crime involving significant exposure to the risk of HIV transmission to request that the defendant be tested for HIV, did not constitute an unreasonable search or seizure of the defendant or violate the defendant's rights to equal protection or privacy. Finally, in the case of *People v. Adams*¹⁶ the Illinois Supreme Court upheld a State law which authorised the mandatory HIV testing of persons convicted of prostitution.

¹⁰ Stacey B. Fishbein, "Pre-conviction Mandatory HIV Testing," 841.

¹¹ 489 U.S. 602 (1989).

¹² 489 U.S. 656 (1989).

¹³ 847 P.2d 455 (Wash. 1993).

¹⁴ *Ibid.*, 460.

¹⁵ 498 S.E. 2D 268 (Ga. 1998).

¹⁶ 597 N.E. 2d 574 (Ill.) (1992).

Looking at the American perspective it is evident that the justification for mandatory HIV testing is based on the balancing of interests, specifically that the interests of the government in protecting the victims take precedence over those of the offender.

4.3 The Argument against Mandatory HIV Testing of offenders

The main argument against mandatory HIV testing can be ascertained from the decision in *Stanley Kingaipe* that imposing a mandatory HIV infringes the right to privacy and constitutes inhuman and degrading treatment. Thus proponents would argue that enforcing a mandatory HIV test on an offender would be unconstitutional, “the alleged offender cannot be said to have forfeited his rights, having possibly committed a rape, because he is still an accused and not a convicted criminal.”¹⁷

Some commentators view mandatory HIV testing of offenders as not being in the best interests of the victim. Firstly, the victim seeks such information from the offender for their own wellbeing and peace of mind. The ordinary HIV anti-body test may not show up for up to six months after transmission, what is termed as the ‘window period’. During the first three to six weeks after the initial infection and HIV positive person does not show HIV antibodies in the blood. Therefore, a rapist who tests negative in an anti-body test may have recently been infected so the negative test does not prove that the victim is not in danger of contracting HIV. The victim may act irresponsibly and have a false belief that they are not at risk of getting HIV due to the negative status of the offender.

If the rapist tests positive, the result will only be to inform the victim that she is at risk, which could subsequently increase the trauma. “The bottom line is that the outcome of the HIV test results for the rapist do not and cannot predict whether the rape survivor will be

¹⁷ Dr. Stefanie Roehrs, “Positive or Negative? Compulsory HIV testing of alleged Sexual Offenders,” 33.

infected with HIV. The only way that she can know whether or not she is infected is to be tested herself.”¹⁸

4.4 Conclusion

The offender is protected under law and has a right to the protection of his privacy. Imposing a mandatory HIV test on the offender infringes on such a right furthermore the test does not do much in way of protecting the victim’s rights.

¹⁸ Diane Hubbard, “A Case against Mandatory HIV testing of Rapists,” www.lac.org.na/news/inthenews/pdf/mandatoryhivtest.pdf (accessed March 29, 2012).

Chapter Five

Conclusions and Recommendations

5.1 Conclusion

The main objective of this essay was to consider whether it is acceptable to curtail the rights and liberties of some individuals following the decision in *Stanley Kingaipe*. It was stated above that although it is a welcomed decision, it does not explain instances where mandatory HIV testing is carried out as is the case in the sexual offences of defilement and rape. When it comes to mandatory HIV testing it is clear that the rights of the offender conflict with the rights of the victims. The rights of the following groups were studied:

- People living with HIV/AIDS;
- Children in defilement cases;
- Women in rape cases; and
- Offenders in defilement and rape cases

It was found that while the rights of people living with HIV/AIDSs were protected in the Zambian Constitution and also in International Instruments, this alone was not sufficient due to stigma and discrimination faced by PLWHA. Further, it is apparent that the face of HIV/AIDS is a female one and so too is that of the victim of defilement and rape.

It was assumed that the mandatory HIV testing of offenders would protect the rights of the victim. However it became apparent that this was not necessarily the case as it may do more harm than good by causing trauma to the victim.

Problems arise where the offender is required to undergo a mandatory HIV test before having been convicted as this has serious implications for the presumption of innocence. Furthermore, the offender as an individual also has rights which are protected under the Constitution.

In the cases of defilement reviewed it was found that the mandatory testing for HIV on the offenders was dependant on whether the victim was found with the disease. The focus on the victim is welcomed and it is their health which should be protected after facing such trauma.

It is submitted that although mandatory HIV testing does not do much in way of protecting the victim at the beginning of the trial, it is still an important factor as it may mitigate or increase the sentence of the offender depending on whether he knew he was HIV positive. Furthermore, knowing the status of the offender is some victims may actually help in their psychological wellbeing.

5.2 Recommendations

The law should be clear and consistent regarding the mandatory HIV testing of offenders, currently the Court may make an order that an offender go through a medical examination in the interests of justice.¹ It is proposed that there should be a clear law referring to mandatory HIV testing specifically and also in what circumstances it can be imposed.

In the immediate aftermath of a defilement or rape the focus is on the victim, however more needs to be done regarding counselling of the victim, this can only be achieved through further training of officers.

¹ Section 17, Criminal Procedure Code, CAP. 88 of the Laws of Zambia.

Furthermore, there should be more emphasis on post-exposure prophylaxis in order to protect the victim in case they have been exposed to HIV.

APPENDIX

Table I: Defilement Cases

er	Case Name	Procedure of medical examination for victim (Y/N)	STI, STDS transmitted? (Y/N)	Name of STI/STD.	Procedure of medical examination for the offender (Y/N)
	Saidi Daka v. The People. SP3-405 (2008)	Y	Y	Syphilis	Y
	Irvin Lwabula and Emanuel Nkausu v. The People. (Lusaka Magistrate)(2010)	Y	Y	N/A	N/A
	Mfukwa Nkhata v. The People. SP-873 (2007)	Y	Y	HIV	N/A
	Chares Simwanza v. The people. IP.C. 19 (2009)	Y	N	N/A	N/A
	Godfrey Hangoma v. The People. SP-204 (2008)	Y	N	N/A	N/A

KEY

Y/N= Yes/No

STI/STDs= Sexually Transmitted Infection/Sexually Transmitted Diseases

N/A= Information not provided in case record

Source: Data from case records at the Lusaka Magistrate's Court

Table I: Defilement Cases

Case	Procedure of medical examination for victim (Y/N)	STI, STDS transmitted?	Name of STI/STD.	Procedure of medical examination for the offender (Y/N)
Alex Chanda v. The People 2P-79-11(2011)	Y	Child had stomach problems and also had “pain in her private parts” this is potentially an STI/STD	N/A	The accused stated that the police refused to examine him and that they would only examine the child
Emmiesi Sibuchiga v. The People 2SP-E-32 (2011)	Y	N/A	N/A	N/A
John Mpofu Shawa v. The People SP2-537 (2008)	Y	Y	Gonorrhoea	N/A
Nelson Lubingu v. The People 2SP-F-13 (2009)	Y	Parents took the child to a private clinic where it was found that she had an STI	N/A	Y

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