

**INCREASE IN REPORTING OF SEXUAL OFFENCES IN ZAMBIA:  
WHAT IS THE LAW DOING?**

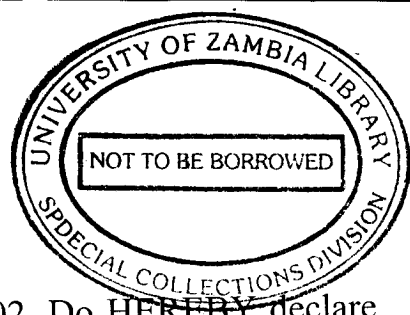
**BY**

**ANDREW CHAKANIKA**

**UNZA**

**2008**

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**INCREASE IN REPORTING OF SEXUAL OFFENCES IN ZAMBIA:  
WHAT IS THE LAW DOING?**

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**An Obligatory Essay submitted to the School of Law of the University of Zambia in  
partial fulfilment of the requirements for the award of the Degree of Bachelor of  
Laws (LLB).**

**The University of Zambia  
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**December 2007**

**THE UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**

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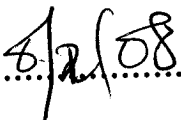
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WHAT IS THE LAW DOING?**

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**Dr. M.MUNALULA**

## **DEDICATION**

**To My Father, Dr. Wanga Weluzani Chakanika and the Memory of my late Mother, Mrs. Ellina Chakanika. Thank you for always teaching me that the sky should not be the limit but my starting point. I will always be indebted for the sacrifices you have made for I am where I am because of your undying love, understanding, encouragement and discipline....I LOVE YOU.**

## ACKNOWLEDGEMENTS

*First and foremost, I would like to thank the Lord God almighty for being my source of strength and guiding me through all my trials and tribulations. Thank you for helping me to draw closer to my dream and giving me the confidence to face each day.*

*I wish to acknowledge my very profound gratitude to my supervisor Dr. M. M. Munalula for according me your intellectual guidance, relentless support, patience, kindness, understanding and invaluable advises. You are truly brilliant, exceptional and deserve great respect. I can not thank you enough.*

*To my brothers, Hezron and Gift. My sisters Sara, Mwai and Zelesi without you guys my life could not be worth looking forward to and there could be nothing worth working hard for. We have come along way and thank you for always being by my side*

*To my best friend Cassandra, you are beautiful. Thank you for being so understanding, patient and loving. Thank you for being by my side through thick and thin. Today I can acknowledge that behind every successful man is a woman. Thank you for all the things you have done, and continue doing, for me most importantly for listening to me whenever I needed someone to talk to*

*Miyoba, Suzyo and Karl...you guys are the greatest. I would never ask for better friends than you. Clifford, Ticklay, Monkozi, Chileshe, Cletus, Brian, Mwenda, Bena & Eve words can't express my gratitude for your friendship wisdom and timely advice and most importantly care.*

*Uncle Phil and Uncle James Zulu thank you for the timely advice, believing in me and for being there for me through out the years. To all my friends and relatives that have not mention, I hope you know that I have not forgotten about you.*

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The United Nations Universal Declaration of Human Rights (UDHR)

## GLOSSARY OF ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CRC	Convention on the Rights of a Child
HIV	Human Immunodeficiency Virus
NGOCC	Non Governmental Organisations Coordinating Council
UDHR	United Nations Universal Declaration of Human Rights
YWCA	Young Women Christian Association

## Abstract

This dissertation was seized with the task of ascertaining what has caused the increase in ~~incidences of~~ <sup>of</sup> reporting sexual offences in Zambia by considering not only the law but also whether the reduction in stigma constitute the means to efficiently prevent incidences of sexual violence. The research endeavoured to ascertain the incidences of sexual offences and the increased levels of reporting. In addition, the study ascertained whether reporting and reduction in stigma constitute the means to more efficiently control or prevent sexual offences.

The study through research and interviews discovered that there has been an increase in reporting of sexual offences in the last decade. Research has attributed this increase to the national wide campaigns mounted by the YWCA and VSU. The establishment of the VSU which co-ordinates with other friendly institutions has played a role in the increased reporting of sexual violence. In addition, women have become self reliant and self dependent thereby removing the dependency syndrome on a bread winner who maybe the perpetrator. It has been further discovered that reporting deters ordinary members of the public and offenders through public reproach and shame. In addition, advocacy campaigns related to reduction in stigma have been cited to assist the prevention of sexual offences as victims feel secure and comfortable to discuss their situations thereby making men aware of their roles and eliminating misconceptions about women. Therefore, the study recommends a change in the penal policy by including provisions which will strengthen the law such as including laws that make reporting compulsory. In addition, every Zambian is encouraged to participate in finding a lasting solution.

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## CHAPTER ONE

### 1.0 INTRODUCTION

Sexual violence has got very devastating effects on its victims in that they are subjected to violence, threats, humiliation, physical or emotional trauma which can cause irreparable damage to the victim's physical, emotional and psychological make-up as well as her self esteem. The advent of HIV/AIDS has made this offence even more life threatening thereby making this research pertinent and timely. This research intends to examine why there has been an increase in the reporting of sexual violence cases in Zambia and how the law has responded. Furthermore, an evaluation as to the efficacy of the laws regulating sexual offences will be carried out.

### 1.1 STATEMENT OF PROBLEM

Sexual offences in Zambia have always been perpetuated but they have been kept secret from the public for a long time. It is against this background that this paper endeavors to discuss the reasons for the high visibility of sexual offences in Zambia currently. The reporting of sexual offences has increased rapidly and this in turn has caused a lot of uproar by the public, who are calling for the enactment of laws which impose stiffer punishment against the offenders. Furthermore, this increase has necessitated the urgent need to strengthen the already existing laws and enforcement mechanisms all in an effort to protect a person's sexual autonomy and defend the sexual morality of our society from infringement. The judiciary, legislature and the church have not been left out on this issue as they too have added a voice of displeasure against this scourge. It must be

acknowledged that the law responds to changes in society that is why it is important to examine the causes of these changes, such as the increase in reporting of sexual offences. It is from this view that this research is dedicated to understanding what has caused the increase in the reporting of sexual offences and whether the reduction in stigma constitutes the means to more efficiently prevent incidences of sexual offences. It is therefore necessary to ascertain as to why there has been such a sudden increase in reporting and what the law is doing to address this increase. There is need to critically ascertain as to why victims of sexual offences never used to report the violence perpetrated against them. In effect what has changed now that makes it easy for the victims to report offences of sexual violence?

## **1.2 DEFINITION OF CONCEPTS**

### **SEXUAL OFFENCE**

Sexual offences are defined as offences which appear to involve or do involve a sexual motivation against the victim.<sup>1</sup>

In addition, Oxford's Dictionary of Law defines a sexual offence as, any crime that involves sexual intercourse or any other sexual act. Many sexual offences can only be committed, by males.<sup>2</sup> In effect, these are acts which appear to involve or do involve a

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<sup>1</sup> J. Herring (2005) *Criminal Law*. p.171

<sup>2</sup> But even in the case of other offences the offenders are predominantly male.

sexual motivation.<sup>3</sup> Sexual violence against women or girls is part of the widespread violence perpetuated by men against women in general.

## RAPE

This is defined according to the Penal Code of Zambia as follows:

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".<sup>4</sup>

The definition of rape was expressed by the House of Lords in *Director of Public Prosecution v. Morgan*<sup>5</sup> that,

"...a man commits the *actus reus* of rape if he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it. The intercourse must be *per vaginam*."

In the case of *R v. Cooper*<sup>6</sup> it was stated that rape is the penile penetration of the victim's vagina without the consent of the victim.

## CARNAL KNOWLEDGE

In the case of *Papadimitropoulos v R*<sup>7</sup> the court defined carnal knowledge as,

"The physical act of penetration which is the entry of the penis into the vagina and the slightest degree is enough and where the penetration is *per vaginam* the hymen need not be broken."

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<sup>3</sup> E. Martin and L. Jonathan (2006) *Oxford Dictionary of Law* 6<sup>th</sup> ed. p.495

<sup>4</sup> section 132 Cap 87

<sup>5</sup> (1975) 2 ALL ER 374

<sup>6</sup> (1994) Crim. LR 531

<sup>7</sup> (1957) 98 CLR 249

Osborn's Concise Law Dictionary defines carnal knowledge as, penetration to the slightest degree by the male organ of generation into the vagina.<sup>8</sup>

## **DEFILEMENT**

According to the Penal Code of Zambia, this offence is described as one that involves a man having sexual intercourse with a girl below the age of sixteen years. The consent of the victim in this particular case is immaterial.<sup>9</sup> Kulusika describes defilement as:

A deliberate, criminal and sexual assault violative of the personal integrity of a girl under sixteen years of age, thereby depriving her of her chastity, in cases involving virgins or otherwise self-esteem, and inflicting serious physical and psychological injuries on her.<sup>10</sup>

## **INDECENT ASSULT**

This offence is provided for by the Penal Code under section 137. An indecent assault is an assault or battery accompanied by circumstances of indecency. Thus merely touching another or making a person apprehend this, without a valid consent on their part or and in circumstances of indecency will suffice.<sup>11</sup> In essence, any conduct such as kissing a girl, with an overt suggestion of sexual activity is sufficient to constitute indecent assault.

### **1.3 OBJECTIVES OF STUDY**

The research seeks to ascertain the incidence of sexual offences in Zambia in relation to the increase in levels of reporting of such offences bearing in mind the high prevalence of HIV/AIDS and STI's which has made such offences life threatening. It is important to

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<sup>8</sup> L. Rutherford and B. Sheila (Eds) (1993) *Osborn's Concise Dictionary*. 8<sup>th</sup> ed p.75

<sup>9</sup> section 138 Cap 87

<sup>10</sup> E.S Kulusika (2006) 'Legislative and Criminal Justice response to sexual violence in Zambia': *Zambia Law Journal*, Vol. 38, pp. 1-41.

<sup>11</sup> Cross & Jones(1980) *Introduction to Criminal Law* 9<sup>th</sup> ed. p.180

evaluate the efficacy of the laws regulating sexual offences and to give recommendations as to how the law can be strengthened to reduce the incidences of sexual offences and increase the levels of reporting of such offences in Zambia. Therefore, the paper is aimed at making a contribution towards making Criminal Law in Zambia more relevant to the social and cultural challenges being faced by society today.

### **1.3 RESEARCH QUESTIONS**

- i) What are the reasons for the high visibility of sexual offences in Zambia currently?
- ii) How has the law responded to the stigma attached the reporting of sexual offences?
- iii) Does reporting and reduction in stigma constitute the means to more efficient control or prevention of sexual offences?
- iv) How can the law be strengthened?

### **1.4 METHODOLOGY**

The research was done mostly by desk research with consulted material being published work. Though unpublished work was also consulted where necessary. Case law as well as the relevant pieces of legislation were also referred to. Direct interviews, where possible, with psycho-social Counselors at YMCA, Police Officers at the VSU and Magistrates courts. Sources from the internet were also used.

### **1.5 LIMITATIONS OF STUDY**

The major problem that this research has faced relates to limited time and other resources. It was difficult to visit all of the Non Governmental Organisation's which deal with sexual offences. This limitation was necessitated by the insufficiency of financial resources. The other limitation related to non-availability, missing or incomplete records

at Lusaka Police Force Headquarters. The statistics relating to reported sexual offences in Zambia for 2006 are not available at the Victim Support Unit (VSU) as they had not been compiled because of lack of funding from government.

## **1.6 CHAPTER OUTLINE .**

Chapter two discusses the law relating to sexual offences in Zambia. This chapter discusses the rationale behind the Penal Code (amendment) Act of 2005 by outlining the provisions relating to sexual offences contained therein. This is aimed at ascertaining the central concern of the Penal Code (amendment) Act in relation to other international instruments such as CEDWA and CRC.

Chapter three of the dissertation focuses on why there has been an increase in reporting of sexual offences. In this chapter, the trends of reported sexual offences over five years, that is, 2001 to 2005, are considered. This is aimed at ascertaining the current high visibility of sexual offences in Zambia. Furthermore, attention is also directed at major causes of sexual violence in Zambia and why people rarely or did not report sexual offences in the recent past. With this analysis, the dissertation sought to establish where the problem lies. In the final part, the same chapter attempts to ascertain why people rarely or did not report sexual offences in the recent past.

Chapter four is aimed at ascertaining whether reporting does in fact efficiently control the occasioning of sexual offences. In this chapter stigma and the resulting actual or feared discrimination are viewed as the most difficult obstacles to the effective prevention of

sexual offences. Therefore, the focus of analysis was whether reduction in stigma is a more efficient means of preventing sexual offences.

The fifth chapter looks at how the law can be strengthened in relation to sexual offences. The thrust of this chapter analyses the possible avenues through which the law relating to sexual offences can be strengthened.

In chapter six, the findings from the research are summarized by making general observations on the research findings, and the conclusions and the recommendations are presented.

## CHAPTER TWO

### THE LAW RELATING TO SEXUAL OFFENCES IN ZAMBIA

#### 2.0 INTRODUCTION

Chapter one gave a definition of concepts in relation to sexual offences. This chapter will discuss the law relating to sexual offences in Zambia as it currently stands.

#### 2.1 THE LAW AS IT CURRENTLY STANDS

Every State criminalises certain conduct and enacts pieces of legislation in order to prevent or eliminate criminal conduct for the good of society. Agencies responsible for criminal justice respond swiftly in the wake of horrific crimes accompanied by public outcries and extensive coverage by the media. On several occasions the Zambian public and the media have expressed similar reaction regarding sexual violence forcing the legislature and other agencies of the criminal justice system to take action.<sup>12</sup> It is worth noting that the sharp increase in <sup>violence</sup> sexual violence in the last ten years has led to legislative changes which have been stimulated by the outrage expressed by different interest groups. In Zambia offences against public morality encompass a large number of offences relating to sexual behaviour.<sup>13</sup> These offences encompass behaviour that violates the integrity of women and subjects them to some risk to life. The Penal code amendment

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<sup>12</sup> E.S. Kulusika, (2006) 'Legislative and Criminal Justice response to sexual violence in Zambia': *Zambia Law Journal*, Vol. 38, pp. 1-41.

<sup>13</sup> CHAPTER XV of the Penal Code Act CAP 87 of the Laws of Zambia

Act of 2005 revised the principal Act that is the Penal Code, through the insertion of a number of new sections.<sup>14</sup> Mrs. Nakatindi Wina stated that:

Currently, the sentences being meted on offenders for sexual offences committed against children were not stiff enough to serve as a deterrent and punishment to would-be offenders. The amendment, therefore, seeks to provide stiffer penalties for sexual offences against children... laws and policies create the framework through which the Government affects the behaviour of people and protects their rights. We believe this amendment to the Penal Code will go a long way in ensuring that those parents or guardians who willfully neglect their children materially or otherwise are deterred from doing so. The intention of these provisions will serve to secure the welfare and wellbeing of our children as advocated in the Convention on the Rights of the Child.<sup>15</sup>

The following are the sexual offences contained under Chapter XV of the Penal Code

Act:

#### **(i) RAPE**

In Zambia, the offence of rape is defined by the Penal Code as:

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..<sup>16</sup>

Therefore, any person who commits or attempts to commit rape is liable to imprisonment for life.<sup>17</sup> In this offence, the law focuses on individual privacy and the violation of one's autonomy. It is submitted that a woman has the right to revoke or withdraw her consent at any time and if the man persists beyond this point, then that man must be punished. This

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<sup>14</sup> Act No. 15 of 2005

<sup>15</sup> Daily Parliamentary Debates (fourth session of the ninth assembly) Tuesday, 9th August, 2005.

<sup>16</sup> Section 132

<sup>17</sup> Sections 133-34

position was fortified in the case of *Kaitamaki v. R*<sup>18</sup> in which a woman revoked her consent during intercourse, but the man refused to withdraw. It was held that persisting with sexual intercourse after consent has been withdrawn is rape. It does not matter whether the accused person committed the crime or attempted to commit the crime. In the case of *Mwale v The People*<sup>19</sup> the appellant was sentenced to cumulative sentences of sixteen years and twelve strokes following conviction on the following charges: firstly indecent assault, secondly assault with intent to commit a felony and thirdly rape. In passing judgment DOYLE, J.A stated:

Sexual offences are on the increase. These offences were not the result of any sudden temptation or any fancied enticement from the victims. They were deliberately conceived and deliberately carried out. At first sight cumulative sentences of sixteen years and twelve strokes may seem severe, but in the light of the facts and the necessity to discourage such offences they do not affect this court with any sense of shock.

## (ii) INDECENT ASSULT

The offence of indecent assault is defined by section 137 as:

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

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

(3) Any person who is found in any building or dwelling-house or in any verandah or passage attached thereto or in any yard, garden or other land adjacent to or within the cartilage of such building or dwelling-house not being a public place-

(a) for the purpose of and from motives of indecent curiosity gazing at or observing any other person or child who may be therein while in a state of undress or semi-undress; or

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<sup>18</sup> [1985] A.C. 147

<sup>19</sup> (1965) Z.R. 156 (C.A.)

(b) with intent to annoy or indecently to assault any child or other person who may be therein;  
commits an offence and is liable, upon conviction, to imprisonment for a term not less than two years and not exceeding five years.<sup>20</sup>

What is described as indecent assault may include a range of activities considered by right minded persons as being offensive to the public and to the victim. Some of these activities involve subjecting the victim to serious indignities.<sup>21</sup> Therefore, it is the circumstances of indecency which make the conduct indecent. In *Mwanza v The People*<sup>22</sup> the court stated that:

It is not possible to say precisely where the line shall be drawn but in this case at hand, where a man vested with authority to search, deliberately strips a suspect of the other sex naked when everybody knows and the common practice is known that men do not search women just as women do not search men and thereby breaks the custom in Zambia, his conduct is indecent.

### **(iii) SEXUAL HARASSMENT**

The principal Act of the Penal Code was amended by the insertion of section 137A which proscribes sexual harassment on a child in any place, with specific mention of 'a work place, institution of learning or elsewhere.'<sup>23</sup> The criminalization of sexual harassment is restrictive in that it is aimed at combating sexual harassment against children. The offence prescribed by this section is a felony and any one who is convicted is liable to imprisonment for a term of not less than three years and not exceeding fifteen years. The rationale behind the insertion of this section was that the legislature intended the Penal Code to cope with contemporary developments in the fields of criminal law and criminal

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<sup>20</sup> Penal Code (Amendment) Act No.15 of 2005

<sup>21</sup> E.S Kulusika, (2006) Text, Cases & Materials on Criminal Law in Zambia p.514

<sup>22</sup> (1976) Z.R. 154 (H.C.)

<sup>23</sup> Act No.15 of 2005

justice.<sup>24</sup> Mr. George Kunda fortified this position when he added that “the Bill introduces a new offence of ‘Sexual Harassment’... We believe that this will protect the women folk, primarily in the work place.”<sup>25</sup>

#### **(iv) DEFILEMENT**

The legislature has not defined the term defilement in the Penal Code. However, section 138 of the Penal Code (amendment) Act states that 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.<sup>26</sup>

The enactment of such a stiff penalty is justifiable in the wake of increased incidences of sexual violence and acts as a deterrent to would be offenders. Mr. George Kunda added that:

there is need to amend the Penal Code so as to address the upsurge of sexual offences committed...This amendment has been necessitated by the increased reports on child related sexual offences. It was noted that the sentences being meted on offenders for sexual offences committed against children were not stiff enough to serve as a deterrent and punishment to would-be offenders. The amendment, therefore, seeks to provide stiffer penalties for sexual offences against children<sup>27</sup>

This penalty was enforced in the case of *The People v. Kebby Mukela*<sup>28</sup> in which a domestic servant was sentenced to thirty five years imprisonment for having unlawful carnal knowledge of his employers daughter aged nine years. Furthermore, in *The People*

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<sup>24</sup> E.S Kulusika, (2006) *Zambia Law Journal*, Vol. 38, pp. 1-41.

<sup>25</sup> Daily Parliamentary Debates (fourth session of the ninth assembly) Tuesday, 9th August, 2005

<sup>26</sup> Act No.15 of 2005

<sup>27</sup> Daily Parliamentary Debates (fourth session of the ninth assembly) Tuesday, 9th August, 2005

<sup>28</sup> HPS/08/2007

v. *David Mbale*<sup>29</sup> the convict was sentenced to thirty years imprisonment with hard labour for having unlawful carnal knowledge of a girl under the age of sixteen years. In addition, the Zambian Constitution provides for the protection of a child from exploitation of any kind.<sup>30</sup> In essence, this includes exploitation of children for sexual gratification.

#### **(v) UNNATURAL OFFENCES**

Any person who:

- (i) has carnal knowledge of a child against the order of nature; or
- (ii) causes a child to have carnal knowledge of an animal; or
- (iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;

that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life.<sup>31</sup> The amendment alters the imprisonment term for the commission of unnatural offences from fourteen years imprisonment as a maximum, to a minimum jail term of fifteen years, and the defendant may be liable to imprisonment to life as a maximum.

#### **(v) HARMFUL CULTURAL PRACTICES**

Section 157 provides:

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

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<sup>29</sup> HPS/17/2007

<sup>30</sup> Article 24 of CAP 1 of the Laws of Zambia

<sup>31</sup> Section 155 as amended by Act no.15 of 2005

(2) In this section “harmful cultural practice” includes sexual cleansing, female genital mutilation or in initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.<sup>32</sup>

By virtue of section 157 a defendant will be held criminally liable, in case he or she conducts or causes to be conducted a specified kind of cultural practice which is presumably harmful or is likely to lead to the transmission of an infectious disease such as HIV and Aids.<sup>33</sup> The Minister of Justice reiterates that:

The Bill introduces a penalty for a person who conducts or causes to be conducted on a child a harmful cultural practice. The bill will make it an offence to prescribe the defilement of a child as a cure for an ailment. This provision has been introduced due to allegations that have been made that the defilement of children is prescribed as a cure for persons suffering from HIV/AIDS.<sup>34</sup>

#### (vi) INCEST

The offence of Incest is provided for under the Penal Code as:

any male person who has carnal knowledge of a female person who is to that person’s knowledge his grandmother, mother, sister, daughter, grand-daughter, aunt or niece commits a felony and is liable, upon conviction, for a term of not less than twenty years and may be liable to imprisonment for life.<sup>35</sup>

For the purposes of this section, it is immaterial that carnal knowledge was had with the consent of the other person.

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<sup>32</sup> Act No. 15 of 2005

<sup>33</sup> E.S Kulusika, (2006) ‘Legislative and Criminal Justice response to sexual violence in Zambia’: *Zambia Law Journal*, Vol. 38, pp. 1-41.

<sup>34</sup> Daily Parliamentary Debates (fourth session of the ninth assembly) Tuesday, 9th August, 2005

<sup>35</sup> Sec 159 (1)

## (vii) CHILD PORNOGRAPHY

By section 177A any person who causes a child to engage in any sort of pornographic activities, and by whatever means, is said to have committed an offence of child pornography. If convicted the defendant is liable to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.<sup>36</sup> There is no mention of a maximum jail term or any other term of imprisonment. The judge is given wide discretion in matters of sentencing. In presenting the Penal Code amendment Bill Mr. George Kunda stated that:

The Bill is also progressive in that it introduces a new provision in relation to child pornography. This provision will deal with situations where offenders exploit children by using them for the said pornography or corrupt the morals of children... great strides have been made technologically and children are at risk of exposure to pornography not only through the Internet, but also through other media, such as individuals who use children for pornography.<sup>37</sup>

It is worth noting that the central concern of the Penal Code (amendment) Act is to strike a balance between different competing interests. Firstly, the State through its many organs wants to show to the general public its determination to eliminate sexual violence against female groups in society. In its own calculation the most conspicuous way to achieve it is the adoption of an aggressive penological policy because it is convinced that the crime reduction or crime control requires tough penal measures.<sup>38</sup> It is the belief of the government that such measures will defuse public outcries depicting deepening concerns of crime throughout the country.

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<sup>36</sup> Act No.15 of 2005

<sup>37</sup> Daily Parliamentary Debates. Tuesday, 9th August, 2005

<sup>38</sup> E.S Kulusika, (2006) *Zambia Law Journal*, Vol. 38, pp. 1-41.

In addition, the Penal Code amendment Bill seeks to domesticate in part the Convention on the Rights of the Child (CRC) and provide for stiffer penalties aimed at deterring offenders who commit heinous sexual offences. Mrs Nakatindi Wina reiterated that the intention of these provisions will serve to secure the welfare and wellbeing of our children as advocated on the Convention on the Rights of the Child.<sup>39</sup> By virtue of being a state party to the CRC, Zambia is under an obligation to ensure that the rights of the child enshrined in the CRC are guaranteed domestically. Article 34 provides that:

State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;
- c) The exploitative use of children in pornographic performances and materials.<sup>40</sup>

The Bill also seeks to implement provisions of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) as they relate to sexual offences committed against women.<sup>41</sup> CEDAW is another international convention that aims to protect women and girls. It specifically provides that “the betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age of marriage and to make the registration of marriages in an official registry compulsory.”<sup>42</sup> This provision of CEDAW is aimed at preventing men having carnal knowledge with girls below consent age, which is sixteen years in Zambia.

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<sup>39</sup> Daily Parliamentary Debates (fourth session of the ninth assembly) Tuesday, 9th August, 2005

<sup>40</sup> United Nations Convention on the Rights of the Child.

<sup>41</sup> Daily Parliamentary Debates. 9th August, 2005

<sup>42</sup> Article 16(2)

The new Act is a progressive step in modernizing the Penal Code as Zambia moves slowly but confidently towards joining the ‘information society’ that is a society where knowledge and information are fundamental to economic, social, cultural, civil and political life.<sup>43</sup>

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<sup>43</sup> E.S Kulusika, (2006) *Zambia Law Journal*, Vol. 38, pp. 1-41.

## CHAPTER THREE

### WHY HAS THERE BEEN AN INCREASE IN REPORTING SEXUAL OFFENCES

#### 3.0 INTRODUCTION

This chapter will look at why there has been an increase in reporting of sexual offences. Firstly, this will be achieved by ascertaining the current high visibility of sexual offences in Zambia. The major causes of sexual violence in Zambia will then be discussed. Thereby looking at the reasons why victims rarely reported sexual offences in the recent past. The final part of this chapter ascertains why victims have suddenly started reporting these offences.

#### 3.1 HAS THERE BEEN HIGH VISIBILITY OF REPORTED SEXUAL OFFENCES IN ZAMBIA?

Rape and defilement are the most serious sexual violence<sup>s</sup> against women and girls which are most frequently reported to the police and covered by both the print and electronic media in Zambia. According to Margaret Kapihya<sup>44</sup>, there has been an increase in the reporting of sexual offences in Zambia. She adds that, “the media should be commended for recognizing the seriousness of sexual violence against women and reporting on it more regularly.” Kulusika adds that “recent reports in the media indicate that sexual offences have risen steadily during the last decade.”<sup>45</sup> Undoubtedly, the media has played a very important role in bringing sexual violence to light. This position has

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<sup>44</sup> Interview: Young Women Christian Association national Chair person, 25<sup>th</sup> September 2007.

<sup>45</sup> Kulusika, E.S (2006) ‘Legislative and Criminal Justice response to sexual violence in Zambia’: *Zambia Law Journal*, Vol. 38, pp. 1-41.

been clearly affirmed by official statistics obtained from the victim support unit which clearly show that there actually is a steady increase in the reporting of sexual offences each year.

**REPORTED SEXUAL OFFENCES**

<b>Offence</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Rape	198	198	308	179	290
Attempted rape	19	11	30	25	24
Defilement	368	870	1237	1634	1386
Attempted defilement -	-	-	-	39	9
Incest	16	21	36	29	-
Sodomy	5	8	26	-	19
<b>Total</b>	<b>606</b>	<b>1108</b>	<b>1637</b>	<b>1906</b>	<b>1728</b>

\* Source; Victim Support Unit (VSU) annual report.

**3.2 WHAT ARE THE MAJOR CAUSES OF SEXUAL OFFENCES IN ZAMBIA**

According to the findings revealed from the field of study, various reasons have been advanced as the causes of sexual offences. Some of the major causes of sexual violence in Zambia include the following:

(i) **Traditional Healers:** The advent of the HIV/AIDS pandemic has posed a dynamic challenge to humanity. HIV is sometimes the very reason why sexual violence is occasioned against women. There are many people masquerading as traditional healers who are prescribing sex with a virgin as some kind of cure for HIV infection. Apart from this reason, some healers are prescribing for their clients to have sex with their grandmothers, mothers, daughters and granddaughters not for treatment purposes but for increasing the amount of wealth the client can have. In addition, these healers purporting to cure infertility take advantage of the desperation of women who are having difficulties getting pregnant. They are having sex with them in purported application of medicines for the treatment and cure on infertility. For instance:

A woman who had difficulty in getting pregnant consulted a healer for assistance. He told her that he had a special prescription that would help her...he apparently told her that the treatment would have to be administered personally by him at night. He said he would first smear some traditional medicine on his penis and that he would use that to then apply the medicine directly into her vagina.<sup>46</sup>

Men have continued to abuse women, young girls, girl infants and young babies to get rich, for ritual purposes, for filling prescriptions for HIV cure, and for some paedophilic pleasure. A fifty seven year old man of Kasama was arrested for allegedly sexually abusing his sixteen year old biological daughter for six months. Kasama police commanding officer stated that the reason why the accused defiled his daughter was to become rich. He further added that “the accused was advised

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<sup>46</sup> The Post Newspaper, Sunday 30<sup>th</sup> September 2007

by his traditional doctor that the only way he could become rich was by sleeping with his biological daughter repeatedly...”<sup>47</sup>

- (ii) **Alcohol abuse:** The lack of strict regulations with regards to the sale of alcohol in Zambia has also been cited as a major cause of sexual violence. Alan Haworth, explains that the use of alcohol, which is a mind-altering drug, has very devastating effects as it contributes to some of the worst cases of sexual violence against women in Zambia.<sup>48</sup> Almost one in four of the female victims of sexual offences were involved with the offenders and the offenders had been drinking...in many cases it was merely stated that the offence had occurred soon after the offender had been drinking and not that the offender had been drinking excessively.<sup>49</sup> In *Mweemba and another v The People*<sup>50</sup> The appellants were convicted of rape. The complainant said that she and her husband had been drinking at a beer hall with the appellants and that shortly after her husband had left to go on duty she also left and proceeded home. On the way, so she alleged, the appellants overtook her and each raped her in turn. This position was further affirmed in the case of *Katundu v The People*<sup>51</sup> in which the appellant stated his grounds of appeal that: “My committal of the offence is due to circumstances that I was drunk and could not act in actual order of sexual intercourse although I had made some sort of arrangements with the woman which she refused later.”(sic) There was no evidence to support the allegation that the woman in this case made

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<sup>47</sup> The Post Newspaper, 13<sup>th</sup> November 2007.

<sup>48</sup> Lusaka-based consultant psychiatrist Times of Zambia (Ndola) September, 25, 2003

<sup>49</sup> Radzinowicz. L, (1957) Sexual Offences: A report of the Cambridge dept. of criminal science. p. 98.

<sup>50</sup> (1973) ZR 127

<sup>51</sup> (1967) ZR 181

any arrangements with the appellant, and the grounds of appeal which had been advanced were therefore not justified.

- (iii) **Pornography:** Alan Haworth further cites watching pornographic and explicit films as a major motivation behind the spate of sexual violence against women. New technological innovations such as the internet have made pornography easily accessible and readily available in the home. Technology has now become so sophisticated that one does not need to own a computer in order to have an easy access to pornographic materials as this can be easily accessed through one's cell phone. Therefore pornography has been brought in to the palm of the perpetrators hand. Haworth alludes to the fact that there is no doubt that pornography creates appetites that should not exist, as it stimulates cravings that should never be satisfied. It is worth noting that most deviant sexual acts are initiated as a result of casual viewing of pornography which eventually escalates in to uncontrollable sexual desires.
- (iv) **Inadequate Housing:** Economic constraints have had adverse effects on the housing policy in Zambia. It is a common trend for a family and its relatives to live together in a house that is characterized by very poor and over crowded housing conditions. The pattern for such arrangements is usually that the mother, father and the youngest child will share one room while the rest of the family members will share the four corners of the remaining room. This situation makes the females in that room susceptible to sexual advances by the older male

relatives who may easily over power the young girl in order to attain some form of sexual gratification. Such situations usually go unnoticed until it is already too late.

- (v) **Putting too much trust in male relatives and male servants:** most spouses are forced to work for long hours due to economic hardships thereby entrusting the care of their female children to male relatives or servants who take advantage of this situation and end up sexually abusing the children left in their care. Human Rights Watch found that among girls who had been orphaned by AIDS, hundreds were being sexually assaulted by family members or guardians.<sup>52</sup> According to inspector Clive Siabona<sup>53</sup> 83% of the defilement cases reported in 2005 were occasioned by close relatives. Most of these relatives were stepbrothers, stepfathers, uncles, brothers-in-law and in one or more cases, the boyfriend of the mother was the accused. In the landmark case of *The People v. David Mbale*<sup>54</sup> the convict was sentenced to thirty years with hard Labour for defiling his employers' daughter. Judge G.S. Phiri stated that:

...the fact that the convict was a domestic servant who decided to abuse the trust bestowed on him by his employers by preying upon their own sibling, is an aggravating factor. Through this conviction, it is necessary that the correct message is sent to all domestic servants that they should never abuse the trust and courtesies they are given by their employers in such a devastating manner.

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<sup>52</sup> J. Csete and J. Kippenberg (2002) Human Rights Watch (HRW)

<sup>53</sup> Interview: Assistant Administrative officer to the National Coordinator (Victim Support Unit), 12<sup>th</sup> October, 2007

<sup>54</sup> HPS/17/2007

This position was fortified in the case of *The People v. Phillip Mwanza*<sup>55</sup> in which the appellant was sentenced to thirty years imprisonment for having unlawful carnal knowledge of his cousin aged eight years. The offence occurred in the family house when the victims' father was sick. Clearly, the perpetrator took advantage of his relationship to the victim as well as the illness of his guardian who was the father of the victim girl child.

- (vi) **Economic Hardships:** The vast majority of sexual offenders are unemployed or are faced with various hardships. This poses a great challenge as prospects of employment are poor due to the winding up and privatization of most parastatal companies which were the major employers. The future is bleak for people caught in the poverty trap and government has tried to reverse this situation but is unable to cope with the high demand. As a result many men are unemployed which leads to their feeling frustrated. In addition, those in formal employment experience the feeling of lack of job satisfaction and end up being frustrated. Katembu Kaumba adds that "the YWCA has discovered that men are taking out frustrations resulting from economic hardship, on women and girls through sexual violence."

### **3.3 WHY VICTIMS RARELY REPORTED SEXUAL OFFENCES IN THE RECENT PAST.**

It is worth noting that the statistics provided do not accurately represent the incidence of sexual offences in Zambia as many cases are still not reported. In the past, statistics involving sexual offences were scanty and unreliable because of low reporting to the

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<sup>55</sup> HPS/16/2007

police and selective recording by the police.<sup>56</sup> From the research carried out, several reasons have been advanced as to why sexual violence was rarely or not reported and these include the following:

Firstly in the recent past, cases of such a nature were not reported especially when they involved a husband or the bread winner of the family. The justification of such reasoning was that in the event of conviction, there would be no one to continue supporting the family. As a result, a lot of victims of sexual offences suffered in silence as most of such cases went unnoticed because no one dared to raise them. A classic example was the case of Chansa a fifteen year old who had been defiled by her stepfather, she stated that “my father who is a government worker defiled me but when I told my mother about it she shut me up and warned me not to disclose to anyone. Mom said that if my father is jailed no one would be there to provide for the family”.<sup>57</sup> This position clearly shows that a woman's limited economic security increases her susceptibility to sexual violence.

Secondly traditional and Cultural beliefs played a part in the failure to report sexual offences. Values of male dominance were imparted in boys as they grew up and as a result women were seen as occupying a subordinate position in society and were supposed to be submissive to men. For instance, there was a misconception that any form of sexual violence which occurred in a marriage or a relationship was viewed as being a “bedroom matter” or a sign of love. In essence, some of the studies explain that sexual violence against women was occasioned as a result of men’s misconception that women

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<sup>56</sup> E.S. Kulusika (2006) ‘Legislative and Criminal Justice response to sexual violence in Zambia’: *Zambia Law Journal*, Vol. 38, pp. 1-41.

<sup>57</sup> *Times of Zambia*, Saturday August 30<sup>th</sup> 2003 p.8

are there for their sexual gratification.<sup>58</sup> Furthermore culture and tradition acted as a blindfold against women as they did not know that sexual violence is a crime against themselves let alone against humanity. It could therefore be stated that the failure to report such offences was attributed to the way in which women were socialized and raised.

Thirdly the shame and fear of being known as a victim of a sexual offence also contributed to the reluctance of people to report such offences in the past. Kaumba<sup>59</sup> explains that women in the high or social classes (professional and educated women) were the most affected by abuse because they felt embarrassed to report abuse to concerned organizations. As a result, such women resorted to silence and were continually tormented. She reiterates that: “when in the higher class they suffered more because they were not able to report the abuse because they suffered from shame and stigma, thus by the time they reported, if at all they did, they had really endured the worst form of abuses.” (*sic*) Therefore, shame and stigma was another reason why sexual violence was not reported.

Fourthly, many cases of sexual violence went unreported and unpunished because the victims of such offences lacked confidence in the justice system in Zambia. The police had a record of being unfriendly, not being accommodative and forceful. Instances of missing dockets, even way before the matter had been taken to court, were quite prevalent. Furthermore, the requirement for a medical examination meant the payment of

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<sup>58</sup> E.S. Kulusika, (2006) Text, Cases & Materials on Criminal Law in Zambia p. 507

<sup>59</sup> Interview: YWCA executive Director, 28<sup>th</sup> September 2007.

high medical fees which were unaffordable for most victims and the net effect was that the victim was further exposed as a victim of the ramifications of sexual violence.

Distance to the nearest police station also contributed to cases of sexual violence going unreported. In both urban and rural areas the distance to the nearest police station discouraged many people from reporting sexual offences. The thought of spending money on traveling to the nearest police station and on medical examinations entailed that the victims were discouraged from reporting sexual offences which proved to be too costly on their parts. This situation was even more pronounced in the rural areas.

Fifthly such offences were rarely reported due to fear of reprisals as in cases where the perpetrator knew the victim. Kaumba echoes this point that abusers threaten victims with further violence and sometimes death which inevitably leads to the victim being silenced effectively. Where an abuser is the guardian, they can threaten to stop supporting the victim or they may threaten to chase the victim out of the house in the event of refusal or disclosure of such sexual abuse.<sup>60</sup> In the case of *Chisoni Banda v The People*<sup>61</sup> the accused was convicted of murder and sentenced to capital punishment because he had injured the deceased's private parts with a knobkerrie and murdered her after she refused his sexual advances. In addition, a sixty two year old pastor was charged with five counts of indecent assault for sexually abusing five girls at Bethel orphanage in Kafue. When one of the girls was asked why she had not reported the matter to anyone, she said that

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<sup>60</sup> Interview: YWCA executive Director, 28<sup>th</sup> September 2007.

<sup>61</sup> (S.C.Z. Judgment no. 8 of 1991)

the accused had been threatening to send the victims away from the orphanage if they 'leaked' the incidences.<sup>62</sup>

### **3.4 WHY VICTIMS HAVE 'SUDDENLY' STARTED REPORTING THESE OFFENCES?**

Sexual violence brings stigma, shame, and reluctance on the part of the victims to speak out about what happened to them. But an increasing number of women and girls in Zambia have begun to tell of their experiences. Kaumba<sup>63</sup> expressed happiness that women in the minority groups were now able to report sexual abuse. She adds that: "we have Europeans and Asians come to ask for help which is a good sign...women have realized that silence does not help the abuse go away." Therefore, victims of sexual offences have suddenly started reporting these offences because of the vigorous nation wide awareness campaigns conducted by both the Victim Support Unit and the YWCA. In essence, women have now become aware that sexual violence is a crime against themselves hence the need for reporting. Kaumba reiterates that: "there is need to continue raising awareness on sexual violence against women so that they are able to report the evils to the relevant authorities."

Furthermore women have become more economically self-reliant and self-dependant as a result; it has become difficult for the perpetrators of such offences to easily take advantage of and manipulate their victims.<sup>64</sup> This is because the fear of losing a bread

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<sup>62</sup> *Zambia Daily Mail*, Friday September 7<sup>th</sup> 2007 p.2

<sup>63</sup> Interview: YWCA executive Director, 28<sup>th</sup> September 2007.

<sup>64</sup> Refer to previous interview

winner has been taken away by the fact that the woman does not depend or rely entirely on the perpetrator for her survival.

Despite there being disparities in statistics between reported cases of sexual offences and those cases actually handled, it must be noted that the fact that there are statistics on which evaluation maybe based, shows that action is being initiated to combat sexual violence. Such actions coupled with infrastructural innovations for crime reduction and the protection of victims of crime will provide impetus for victims of sexual violence to report instances of such violence to the police.<sup>65</sup> For instance, the University Teaching Hospital (UTH) Police Post in Lusaka, in 2005, alone recorded 832 cases of under-age sexual offences, 133 cases of rape, and more than 140 cases of indecent assault.<sup>66</sup> Such statistics are encouraging to a victim of sexual offences and therefore acts as a motivating factor to reporting such violence.

In the past, most cases of sexual violence went unreported and unpunished because the victims of such offences were too ashamed and viewed the Police as being unfriendly, not accommodative and forceful. However, the establishment of user friendly institutions such as the Victim Support Unit (VSU) has played a major role in the increase in reporting of sexual offences as the victims are encouraged to confide in the highly trained officers. As a result, the victims exhibit some level of confidence in the entire institution.

The Zambia Police Act states that:

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<sup>65</sup> E.S. Kulusika (2006)Criminal Law in Zambia p.508

<sup>66</sup> In a Paper presented to a consultative workshop for members of parliament on strengthening the law against sexual offences on 25<sup>th</sup> February 2006.

53(1) There shall be a Victim Support Unit at all police stations and posts to be administered by police officer...The functions of a Victim Support Unit shall be: to provide professional counseling to victims of crime...and to protect citizens from various forms of abuse.

(3) Police officers in the Victim Support Unit may co-ordinate with the civil society and professional bodies in carrying out their duties.<sup>67</sup>

The introduction of the VSU has made it easier for victims of sexual violence to report such offences as they are assured of protection from various forms of abuse. In addition, the police officers who administer the VSU are professionally trained counselors. There is also co-ordination between the VSU and other user friendly institutions which include NGO's such as the YWCA, Women for Change and NGOCC which have mounted nation wide campaigns on violence against women and children and maintain statistics to monitor the incidences.

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<sup>67</sup> Chapter 107 of The Laws of Zambia as Amended by Act No. 14 of 1999.

## CHAPTER FOUR

### DO REPORTING AND REDUCTION IN STIGMA CONSTITUTE THE MEANS TO MORE EFFICIENT CONTROL OR PREVENTION OF SEXUAL OFFENCES?

#### 4.0 INTRODUCTION

This chapter endeavors to determine whether or not reporting and reduction in stigma result in a more efficient means to control or prevent sexual offences. This will be achieved by ascertaining whether reporting does in fact efficiently control the occasioning of sexual offences. Thereby determining whether reduction in stigma is a more efficient means of preventing sexual offences.

#### 4.1 DOES REPORTING EFFICIENTLY CONTROL THE OCCASIONING OF SEXUAL OFFENCES?

The majority of the victims of sexual violence have told no one about their inhuman ordeal but instead they have carried with them the heavy load of anger, resentment, hatred, pain, guilt and shame for many years. In 2006 the Secretary General of the United Nations stated that an estimated 150 million girls under eighteen years of age experienced forced sexual intercourse.<sup>68</sup> It is worth noting that these statistics are staggering and certainly an underestimation. However, cases of reported sexual offences have increased tremendously in Zambia and this is seen as an efficient way of controlling the occasioning of sexual offences. Peter Kanunka states that reported defilement cases have

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<sup>68</sup> World report on violence against children transmitted to the UN General Assembly by Koffi Anan

grown from 260 in 1999 to 1386 in 2005, a rate of over 5 times.<sup>69</sup> The net effect of reporting is that firstly, it deters ordinary members of the public who have not yet indulged or are contemplating to indulge in such criminal behaviour, and secondly, it deters offenders through public reproach and shame thereby making such an experience unbearable for the perpetrator.<sup>70</sup>

Sexual violence is usually perpetrated in isolation and away from the public eye because the offender does not want to be scrutinized or viewed negatively by members of society. The punishment in relation to sexual offences is quite severe. However, sexual offenders still continue to commit such offences with the full knowledge of the consequences of their actions but in the hope that they will not be caught.<sup>71</sup> Such people can only be deterred by extreme fear of being exposed and shamed. The fear must be so severe that their basic instincts are cowed. It is worth noting that reporting has proven to be quite effective as it breaks the silence about sexual violence and exposes the perpetrators. Therefore, because of reporting, the perpetrator is subjected to denial, shame, blame, fear, rejection and resentment by the rest of the community. Philip Mpundu reiterates that sex maniacs should not be allowed to continue living with the rest of society rather, they should be secluded.<sup>72</sup> In essence, the offender loses his dignity as he will no longer be respected by his partner, children, or by members of his household and the community at large. Other members of the public will be deterred from committing the same offence in

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<sup>69</sup> Paper presented to 'uniting against child sex crimes' breakfast meeting participants on 11<sup>th</sup> September 2006 by the Zambia Police Director of Victim Support Unit

<sup>70</sup> J. Hatchard and M. Ndulo (1994) Readings in Criminal Law and Criminology in Zambia. p.69

<sup>71</sup> Ibid p.70

<sup>72</sup> The Post Newspaper. August 25, 2007 p.5. Magistrate Mpundu made the remarks when he committed four men to the High Court for sentencing after they were found guilty of defiling girls between 10 and 14 years of age.

future. Kaumba<sup>73</sup> expressed satisfaction that women in the minority groups as well as in the higher classes were now able to report sexual abuse and that women have now realized that silence did not stop the abuse.

Public opinion suggests that greater emphasis should be placed on reporting, a view which is frequently supported by demands for stiffer penalties. For instance, Edith Nawakwi promised to move a motion in Parliament to enact a stiff law against men found guilty of child rape.<sup>74</sup> Mpundu adds that stiffer penalties should be imposed against offenders so that they should act as a deterrent to all would be offenders.<sup>75</sup> In addition, harmful cultural practices have been criminalized in that: 'a defendant will be held liable, in case he 'conducts' or 'causes' to be conducted a specified kind of cultural practice which is presumably harmful or is likely to lead to the 'transmission of an infectious or life threatening disease or loss of life...'.<sup>76</sup> The imposition of long jail sentences for perpetrators of harmful cultural practices is justifiable in that these practices are not only injurious to health but also may result in permanent disfigurement of or the death of the victim.<sup>77</sup> When presenting the Penal Code (amendment) Bill to Parliament, The Minister of Justice stated that:

there is need to amend the Penal Code so as to address the upsurge of sexual offences committed...This amendment has been necessitated by the increased reports on child related sexual offences. The Bill introduces a penalty for a person who conducts or causes to be conducted on a child a harmful cultural practice.<sup>78</sup>

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<sup>73</sup> Interview: YWCA Executive Director, 28<sup>th</sup> September 2007.

<sup>74</sup> The Times of Zambia. September 29, 2003. sentiments expressed by Forum for Democracy and Development (FDD) opposition party leader

<sup>75</sup> The Post Newspaper. August 25, 2007.

<sup>76</sup> Section 157 of the Penal Code (Amendment) Act No. 15 of 2005

<sup>77</sup> E.S. Kulusika (2006) 'Legislative and Criminal Justice response to sexual violence in Zambia': Zambia Law Journal, Vol. 38, pp. 1-41.

<sup>78</sup> Daily Parliamentary Debates (fourth session of the ninth assembly) Tuesday, 9th August, 2005 p.1-2

Therefore, the insertion of harmful cultural practices as an offence proscribed by section 157 is as a result of continued calls for tougher penalties against the increased incidences of reported sexual violence by members of civil society.

#### **4.2 DOES REDUCTION IN STIGMA ACT AS A MEANS OF PREVENTING SEXUAL OFFENCES?**

Stigma and the resulting actual or feared discrimination are viewed as the most difficult obstacles to the effective prevention of sexual offences. In essence, stigma and discrimination simultaneously reduce the effectiveness of efforts to control such offences and create an ideal climate for their further growth.<sup>79</sup> Where a victim of sexual violence is at risk of rejection and even persecution, it is not easy for them to come out in the open and seek help. In Zambia, reduction in stigma is continuously being promoted through mass media and interpersonal communication. Under the VSU and NGO's such as NGOCC and Women for Change, careful and culturally sensitive advocacy is used to support normative change in relation to perceptions about sexual offences. This is done by increasingly encouraging traditional, religious and political leaders to speak out against sexual violence as well as by systematically documenting positive role models as examples. Carmen Martinez<sup>80</sup> stated that it was gratifying that traditional leaders were speaking against sexual offences. She added that "it is admirable when traditional leaders speak out on such inhuman practices".<sup>81</sup>

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<sup>79</sup> Aids epidemic update 2006. UNAIDS

<sup>80</sup> United States Ambassador to Zambia

<sup>81</sup> The Post Newspaper Saturday 15<sup>th</sup> September 2007.

At the national level, different public personalities including men are encouraged to become advocates and are provided with broad media coverage. In 2003 the brutal death of Nyarai Seke, an eleven year old girl who had contracted multiple sexually transmitted infections after she had been raped by her step brother was a turning point in relation to the stigma associated with sexual violence as most people spoke out against such inhuman behaviour. Former president Kenneth Kaunda was so touched by her story that he vowed to fight the abuse occasioned against young girls. He stated that “raping young girls will not heal the HIV virus...and I will have to take up the campaign against such forms of abuse now.”<sup>82</sup> The advocacy campaign closely related to the reduction in stigma associated with sexual violence has been extended to leaders of institutions, public personalities and the community at large. In addition, the training of health and other care providers now include modules on how to avoid negative attitudes (stigma) and discrimination against victims of sexual violence.<sup>83</sup>

However openly discussing sexual violence is still a taboo in many communities and work places, which has a negative impact on behavioral change and prevention of such offences. Advocacy and support to all employers including public institutions has enabled them to create a supportive and non-discriminatory environment for victims of sexual violence.<sup>84</sup> This change in the environment is an essential first step. Only in such an environment can victims of sexual offences feel secure and comfortable to openly discuss their situations.

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<sup>82</sup> The Times of Zambia, 25<sup>th</sup> September, 2004

<sup>83</sup> Zambia Sexual Behaviour Survey 2006: Central Statistical Office and Ministry of Health

<sup>84</sup> Amnesty International Report: Women, HIV/AIDS and Human Rights, 24<sup>th</sup> November 2004

Stigma and discrimination are key challenges to the prevention and control of sexual offences. Among other things the presence of social stigma leads people to feel a need for secrecy and denial and hinders victims of sexual violence from seeking counseling and from coming out in the open to report the crime. However, such stigma has been reduced significantly due to the partnership between men and women. Including men in gender and sexual violence prevention programs raises awareness in relation to understanding gender roles and relations.<sup>85</sup> This in turn has been viewed as a factor that has led to a reduction in sexual offences as men are made aware of their roles and eliminating misconceptions that women are only there for men's gratification. Clearly, stigma associated with sexual violence can only be reduced by fighting pervasive misinformation upon which it is based and this in turn prevents sexual offences.

Despite concerted efforts in Zambia to address stigma related to sexual violence, many still view victims of sexual violence as shameful and blame them for the violence perpetrated against them. However, it has been possible to some extent to dispel stigma associated with sexual violence as the victims of such offences are increasingly more willing to provide testimonials and talks to other victims about their situations and experiences which has proven to be a critical element in the fight against stigma associated with sexual violence.<sup>86</sup> At individual level, their experiences have proven to be more meaningful and helpful as victims are encouraged to break the silence. Kaumba<sup>87</sup> expressed happiness that women in the minority groups were now able to report sexual abuse. She adds that: "we have Europeans and Asians come to ask for help which is a

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<sup>85</sup> Ibid

<sup>86</sup> Zambia Sexual Behaviour Survey 2006: Central Statistical Office and Ministry of Health

<sup>87</sup> Interview: YWCA executive Director, 28<sup>th</sup> September 2007.

good sign...women have realized that silence does not help the abuse go away.” This helps to restore the confidence and self esteem that had been lost as a result of the traumatic ordeal of being sexually violated.

## CHAPTER FIVE

### WHAT CAN BE DONE TO STRENGTHEN THE LAW?

#### 5.0 INTRODUCTION

Chapter four considered whether or not reporting and reduction in stigma constitute an efficient means of controlling or preventing sexual offences. This chapter will look at what can be done to strengthen the law in relation to sexual offences. In an effort to achieve this, various suggestions will be discussed which can be included in the law in order to strengthen it.

#### 5.1 HOW CAN THE LAW BE STRENGTHENED?

The increase in reported sexual offences poses a great challenge to the law makers to strengthen the law in order to prevent harm to individuals but also to protect society from those hostile forces that are bent on threatening law and order. Despite the punishment being stiffened by the Penal Code (amendment) Act<sup>88</sup>, it has been observed that reported defilement cases in particular have tremendously increased. This position justifies why the law should be further strengthened in order to prevent such offences. A sexual offence is one of the worst kinds of crime, damaging its victim both physically and psychologically. For such a horrific crime, a suitable punishment is needed and the following provisions should be included in order to strengthen the law:

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<sup>88</sup> Act No.15 of 2005

### **(i) Laws that make reporting compulsory**

The loss of a bread winner is viewed as being one of the reasons why victims rarely report sexual violence. In certain situations, the mother or a relative to the victim may be aware of such abuse but because of the fear of losing financial or material support if the perpetrator is imprisoned. As a result they end up shielding him from the law by being silent about such abuse. The law should be amended to include provisions that make reporting compulsory in such situations. In essence, the law should impose a duty on every relative or any other person who knows of such offences being committed to report to the police. A further obligation should be placed on the occupier of the house in which, to his knowledge, such offence was occasioned. Therefore, any person who, being under obligation to report a sexual offence fails, refuses or neglects to report such an offence or who willfully gives any false information regarding the offence should be guilty of an offence.

### **(ii) Castration as a means of punishment for offenders**

The legislature should consider including castration as a means of strengthening the law. With chemical castration, sex offenders are injected with drugs to reduce the amount of the male hormone testosterone in their system while with surgical castration, the testicles are removed.<sup>89</sup> A recent study has shown that inmates who committed crimes of a sexual nature had higher testosterone levels than inmates who were incarcerated for property

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<sup>89</sup> Testosterone is a male sex hormone formed in the testicles. Therefore removing the testicles will mean that this male hormone will not be produced hence eliminating the sex drive completely.

crimes or drug abuse. In addition, it was found that inmates with higher testosterone levels... violated more rules in prison.<sup>90</sup> Surgical castration has been successfully used in countries like Denmark, Finland, Norway, Sweden and Germany, in an effort to stop further crimes by perpetrators of sexual violence.<sup>91</sup> Castration will help the offenders by freeing them from their uncontrollable urges that motivate them to commit the same offence again.<sup>92</sup> Therefore, castration removes the personal suffering of sexual offenders, and should be embraced by the penal system. However, Amnesty International argues that it is the inherent right of all human beings to an intact body without any prejudice whatsoever.<sup>93</sup> Physicians who practice routine castration would violate the first maxim of medical practice, *Primum Non Nocere*<sup>94</sup> and anyone practicing genital mutilation or castration would violate Article V of the United Nations Universal Declaration of Human Rights (UDHR) which provides that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment."<sup>95</sup> Further more the Zambian Constitution provides that a person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment.<sup>96</sup> Therefore including such a provision in the Penal Code would be inconsistent with article 15 of the Constitution and infringe the right to an intact body.

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<sup>90</sup> M. James and J. Dabbs (1995). 'Testosterone, crime, and misbehavior among 692 male prison inmates,' *American Journal of Psychiatry*, Vol. 18 No. 5, pp 151-2

<sup>91</sup> M. James and J. Dabbs (1995). *Journal of Psychiatry*, Vol. 18 No. 5, pp 151-2

<sup>92</sup> M. James and J. Dabbs (1995). *Journal of Psychiatry*, Vol. 18 No. 5, pp 151-2

<sup>93</sup> <http://OneWorldAfrica.net>

<sup>94</sup> Translates as "First, Do No Harm,"

<sup>95</sup> Article 5 (UDHR).

<sup>96</sup> Article 15 CAP 1 of the Laws of Zambia

### **(iii) Offenders to be subjected to a photo parade**

The law should provide that sexual offenders must be photographed and these photographs should be circulated in the print and electronic media. This will also help ease the widespread hysteria about the crimes of a sexual nature in that there will be massive stigmatization of sexual offenders, as they will be 'named and shamed' publicly and hounded off their estates by mobs. This position was reiterated in the case of *The People v. Kebby Mukela*<sup>97</sup> in which Judge G.S. Phiri stated that: "how I wish the amended law had provision for public reproach and shame upon such conviction as part of deterrence. I would have ordered that such convicts be paraded for media photographs." In essence, subjecting perpetrators of sexual violence to some form of media display will make most members of the public wary and alert to the would be offenders as it will be easy to identify them.

### **(iv) Bail should not be granted to sexual offenders**

The laws should further include a provision which provides that perpetrators of sexual violence should not be granted bail by either a subordinate court, the High Court or Supreme Court or be released by any Police Officer. However, the law in its current state seems to be weak in that it does not include sexual offences among the offences where bail is not available.<sup>98</sup>

Section 123 further provides that:

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<sup>97</sup> HPS/08/2007

<sup>98</sup> Section 123(1) of CAP 88 of the Laws of Zambia.

when any person is arrested or detained, or appears before or is brought before a subordinate court, the High Court or Supreme Court he may, at any time while he is in custody, or at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient, in the opinion of the police officer concerned or court, to secure his appearance, or be released upon his own recognizance if such officer or court thinks fit.<sup>99</sup>

In essence, granting bail to a person charged with sexual violence gives the perpetrators a chance to continue committing the same offence with the intention of proving a point to the victim and thereby make them believe that the law is not strong enough to protect them from their assailants. As a result most victims of such offences eventually withdraw their cases because they have lost hope in the entire legal system or may act out of fear of further abuse. Therefore, including such a provision in the law is justifiable in that it will strengthen the law and gives impetus to the victims of such offences to report to the police knowing very well that they will be protected from the wrath of their assailants and reprisal.

How ever it could be argued that denying bail would be an infringement of the right to personal liberty which is enshrined in the Constitution. Article 13(1) states that: h

A person shall not be deprived of his personal liberty except as may be authorized by law except... in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted.<sup>100</sup>

In essence, the granting bail is aimed at protecting ones right to personal liberty. Therefore, were someone has not been convicted they have the right to personal liberty which should not be infringed unless provided for under Article 13(1). Despite this

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<sup>99</sup> The Criminal Procedure Code Act CAP 88 of The laws of Zambia

<sup>100</sup> CAP 1 of the Laws of Zambia

provision, it could be argued that bail should not be granted in order to maintain security of the victim, social order and stability.

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATIONS

#### 6.1 CONCLUSIONS

The focus of this paper has been to ascertain the incidences of sexual offences in Zambia and if there actually has been an increase in the levels of reporting. In addition, an evaluation as to the efficacy of the laws regulating sexual offences has also been done. From the foregoing, it can be stated that the research carried out shows that there has been an increase in the incidences and levels of reporting in Zambia. It is worth noting that between 2001 and 2005 there has been an increase in the reporting of sexual offences with defilement recording the highest number of reported cases in a period of five years while attempted defilement recorded the lowest number of reported cases. However, it must be stated from the onset that the statistics provided do not accurately represent the incidence of sexual offences in Zambia as many cases are still not reported.<sup>101</sup>

Findings from the field of study revealed that there have been various reasons advanced as to the causes of sexual offences in Zambia. The advent of the HIV/AIDS pandemic has posed a dynamic challenge to all concerned in that there are many people masquerading as traditional healers who are prescribing sex with a virgin as some kind of cure for HIV infection. It could thus be stated that HIV/AIDS has contributed to the rise in the incidences of sexual violence. Traditional healers have also greatly contributed to the increase in such incidences in that they have continued to prescribe sex as a means to

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<sup>101</sup> Kulusika, E.S (2006) *Zambia Law Journal*, Vol. 38, pp. 1-41.

increase the wealth of their clients. This dissertation has further shown that alcohol abuse has been cited as a factor that contributes to some of the worst cases of sexual violence against women in Zambia. Inadequate housing is also a factor which has been seen to cause sexual offences in Zambia as over crowding exposes female members of a household to sexual advances by the older male relatives. It has been established that male relatives and male servants entrusted with the care of minors very often take advantage of this situation and sexually abuse the children left in their care. Another factor that has been highlighted by this paper is that men are taking out frustrations arising from economic hardship through sexual violence perpetrated on women and girls. These are some of the factors which this dissertation articulated as the major causes of sexual violence in Zambia.

From the research carried out it was further observed that several reasons have been advanced as to why sexual violence was rarely or not reported at all. One of the main reasons why cases of such a nature were not reported was the status of the perpetrator in the family; for instance a husband or the bread winner of the family. This was as a result of fear for loss of support. Traditional and cultural beliefs also played a part in the failure to report such cases in that there was a misconception that any form of sexual violence which occurred in a marriage or a relationship was viewed as being a private matter. This view was as a result of the socialization process. The shame and fear of being known as a victim of a sexual offence also contributed to the reluctance of victims to report such offences. Another reason that has been advanced is that victims of such offences lacked confidence in the justice system in Zambia in that the police had a record of being

unfriendly, not being accommodative and forceful. Furthermore, the distance to the nearest police station and cost of getting there discouraged many people from reporting sexual offences as well as obtaining medical examinations was quite discouraging to the victims of such offences. Another reason why such offences were rarely reported was fear of reprisals as in cases where the perpetrator knew the victim. It must be noted that the reasons mentioned are not exhaustive as there may be many other reasons which can be advanced in this area.<sup>102</sup>

Change in the levels of reporting sexual offences has been observed over the last few years. It has been observed that an increasing number of women and girls in Zambia have begun to tell of their experiences because of the vigorous nation wide awareness campaigns conducted by both the Victim Support Unit and the YWCA. Another reason for increased reporting is the fact that women have become more economically self-reliant and self-dependent making it difficult for the perpetrators of such offences to easily take advantage of and manipulate their victims. In addition the establishment of user friendly institutions such as the Victim Support Unit (VSU) has played a major role in the increase in reporting of sexual offences. Thus the introduction of the VSU at every police station has made it easier for victims of sexual violence to report such offences.

From the field of work it has been shown that cases of reported sexual offences have increased tremendously in Zambia raising the chances of attaining effective prevention of sexual offences. Reporting is viewed as a deterrent to ordinary members of the public and

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<sup>102</sup> Paper presented to 'uniting against child sex crimes' breakfast meeting participants on 11<sup>th</sup> September 2006 by the Zambia Police Director of Victim Support Unit

offenders through public reproach and shame thereby making such an experience unpleasant for the perpetrator. It has been observed that reporting has proven to be quite effective as it breaks the silence about sexual violence and exposes the perpetrators. As a result, the perpetrator is subjected to fear, rejection and resentment by the rest of the community. Furthermore, women have now realized that silence does not help the abuse go away.

The paper also found that stigma and the resulting actual or feared discrimination are viewed as the most difficult obstacles to the effective prevention of sexual offences. It has been observed that reduction in stigma is continuously being promoted through mass media and interpersonal communication in Zambia. In addition, the advocacy campaign closely related to the reduction in stigma associated with sexual violence has been extended to leaders of institutions, public personalities, healthcare providers and the community at large. It has also been observed that the partnership between men and women has significantly led to the reduction in stigma in Zambia.

Finally it was established that Penal Code (amendment) Act is aimed at striking a balance between different competing interests. The amendment, therefore, seeks to provide stiffer penalties for sexual offences against children. The Penal Code (amendment) Act is a progressive step in modernizing the Penal Code as Zambia moves towards joining a society where knowledge and information are fundamental to economic, social, cultural, civil and political life. The Penal Code (amendment) Act endeavors to show the public the Government's determination to eliminate sexual violence against female groups in

society. In addition, the Penal Code amendment Act has domesticated in part the Convention on the Rights of the Child (CRC) and provisions of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in order to provide for stiffer penalties aimed at deterring offenders who commit heinous sexual offences. It could therefore be said that the law and policy create the framework through which the Government affects the behaviour of people and protects their rights.

## **6.2 RECOMMENDATIONS**

Having discussed the increase in reporting of sexual violence and the full magnitude of this problem in Zambia, there is need for concerted efforts by all sectors of society to establish a nation free from crimes against women. It is against this background that this paper recommends that urgent measures be taken in the following ways:

This dissertation recommends that the requirement for corroboration in order to secure a conviction in relation to sexual offences should be removed. A medical report should not be the only conclusive evidence that a sexual offence has been occasioned because in certain situations there may be the absence of bruises, bloodstains and torn clothes or under garments. Therefore, a claim with other supporting evidence other than a medical report should be sufficient in order to secure a conviction since a victim may not have the financial resources to undergo medical examinations.

The law should be amended to include provisions that make reporting compulsory by impose a duty on any person who knows of such offences being committed to report to the police. In addition, the law should impose a duty on the occupier of the house in which, to his knowledge, such offence was occasioned to report such offence. It is further recommended that any person who, being under obligation to report a sexual offence fails, refuses or neglects to report such an offence or who willfully gives any false information regarding the offence should be guilty of an offence.

The sentencing policy should be changed in order to accommodate the increase in reporting of sexual offences. The High Court is already inundated with pending cases. Therefore, increasing the sentencing powers of the magistrates so that no limitation is placed on the sentences which they impose in relation to sexual offences will assist in the expedient disposal of such cases. In essence, magistrates should be given more powers in order to allow them to impose sentences up to the maximum instead of referring matters to the High Court for sentencing as is the situation for the sexual offences. In addition, the law should also provide for a minimum sentence that a magistrate can impose in order to ensure that they do not impose a sentence below that which has been stipulated.

The age of the victim who has been abused should have an effect on the sentence which is imposed on an offender. It is the recommendation of this dissertation that an offender who sexually abuses a girl, who is aged below ten years old, should be sentenced to life imprisonment.

The government should introduce training which will make people more self reliant. This should apply both to those in employment and those who are unemployed. The rationale behind this recommendation is that it will help in reducing incidences of sexual violence occasioned by those who take out their frustrations on women and girls because of the harsh economic situation. In essence such training will be beneficial because it will provide some form of financial satisfaction for those who have been retired or retrenched.

Perpetrators of such offences usually take advantage of the fact that police officers are underpaid. This enables them to secure release from custody corruptly thereby preventing justice from being served. This paper therefore recommends that the government must increase the budgetary allocation to the Zambia Police Force for their operations and salaries. This will help the Police to improve their services as officers will be less susceptible to corrupt practices. In essence, readily available resources would ensure efficiency and effective response by the police. Therefore, due attention should be paid in providing the basic necessities for the whole justice system in an effort to achieve its set goals.

This paper further recommends the continuous monitoring of offenders of sexual violence. It is quite difficult to measure the deterrence effect of the penalties imposed by the Penal Code (amendment) Act because most offenders and would be offenders are young and can survive the long sentences imposed on them. Such offenders usually come out of prison looking at society with feelings of spite and anger. This is more of a reason

why government should implement a system of continuous monitoring and evaluation of the offenders after their release from prison.

Admittedly sensitization and awareness campaigns are important tools that society and the police at large can use in preventing the occasioning of sexual offences. The government should take a leading role in this campaign by carrying out awareness campaigns in schools, markets and work places. The church, schools, media and parents should also be encouraged to supplement government efforts. Furthermore, it is recommended that sensitization campaigns should not only be confined to the urban areas as the rural areas are the worst affected by this scourge. In essence, traditional leaders should also be encouraged to take a leading role in fighting this inhuman crime. Therefore, there is need to carry out country wide sensitization processes and this will only be achieved through concerted efforts by everyone concerned.

It has been observed that most victims of sexual violence do not report sexual violence because of the unfriendly attitudes which are exhibited by police officers at most stations. Therefore, it will be quite helpful if all police officers were educated on how to handle cases of sexual violence. Such education and training should not only be restricted to officers in the Victim Support Unit as other officers also need to have knowledge of how to deal with sexual offences.

Most parents work long hours in order to alleviate the harsh economic condition which are currently prevalent in Zambia. This paper recommends that government should

establish day care centers or homes where children can be taken in situations where the parents work long hours. This is aimed at avoiding over reliance on male relatives who end up violating the children sexually. Child care centers established by the government would prove to be cheaper as compared to those established by private individuals. It is worth noting that these centers should be managed by highly trained female personnel in order to avoid any kind of sexual abuse.

Most victims of sexual violence end up with drawing their cases due to administrative delays in taking the matter to court. This paper recommends that a system should be established that will enable efficiency in filing litigation documents. This will help the matter to be dealt with expediently by the courts thereby ensuring that justice is served. In addition, the police should improve its record keeping as this will assist in effective planning and measuring of its performance.

Despite arguments advanced by Human rights activists, Castration is recommended as the only avenue through which such offences will be completely eliminated. Sexual violence is the infringement of ones sexual autonomy and is the invasion of the victim's privacy being able to choose who to have sexual relations is regarded by many as a fundamental freedom. Therefore, sexual violence takes away the victims fundamental freedom and perpetrators of such offences need to be castrated in order to protect women's fundamental freedom.

This essay further recommends that the government should look into other aspects of the lives of the victims, offenders and most importantly would be offenders. There is need to re-examine our cultural values and perhaps fuse into them other values which may assist in reducing incidences of these types of crime. In essence, this entails that the government should include in the school curriculum an aspect that will teach social and cultural values which will assist in reducing sexual violence in Zambia.

In order to rectify this crisis, there is need to critically review the law relating to sexual offences in order to finding a lasting solution. In addition, every Zambian must be encouraged to actively participate in finding a solution since this vexing problem touches on the well being, the capacity and enjoyment of life of women and children in our society. It is my sincere hope that this paper has served as an eye opener and has achieved its intended purpose.

## BIBLIOGRAPHY

### BOOKS

Cross, R. and Jones .P. (1980) Introduction to Criminal Law 9<sup>th</sup> Ed. London: Sweet and Maxwell Publishing Co. Ltd.

George, B.V. and Thomas .J.B. (1986) Theoretical Criminology. 3<sup>rd</sup> Ed. London: Oxford University Press.

Hatchard, J. and Ndulo, M. (1994) Readings in Criminal Law and Criminology in Zambia. Lusaka: Multimedia Publications.

Herring, J. (2005) Criminal Law. New York: Palgrave Macmillan.

Kulusika, E.S. (2006) Text, Cases & Materials on Criminal Law in Zambia Lusaka: UNZA Press.

Martin, E. and L. Jonathan (2006) Oxford Dictionary of Law 6<sup>th</sup> Ed. London: Oxford University Press.

Radzinowicz, L. (1957) Sexual Offences: A report of the Cambridge dept. of criminal science London: Macmillan &Co. Ltd.

Rutherford, L. and B. Sheila (1993) Osborn's Concise Dictionary. 8<sup>th</sup> Ed. Delhi: Universal Law Publishing Co. Ltd.

### ARTICLES

Aids epidemic update 2006. UNAIDS

Amnesty International Report: Women, HIV/AIDS and Human Rights (2004)

Daily Parliamentary Debates (fourth session of the ninth assembly) August, 2005

Human Rights Watch (2002)

James, M. and J. Dabbs (1995). 'Testosterone, crime, and misbehavior among 692 male prison inmates,' *American Journal of Psychiatry*, Vol. 18 No. pp 151-2

Kanunka, P. (2006) 'uniting against child sex crimes' Zambia Police.

Kulusika, E.S (2006) 'Legislative and Criminal Justice response to sexual violence in Zambia': *Zambia Law Journal*, Vol. 38, pp 1-41.

The Times of Zambia, 25<sup>th</sup> September 2004

The Times of Zambia, 29<sup>th</sup> September 2003

The Post Newspaper, 25<sup>th</sup> August 2007

The Post Newspaper, 15<sup>th</sup> September 2007

The Post Newspaper, 30<sup>th</sup> September 2007

The Post Newspaper, 13<sup>th</sup> November 2007

Times of Zambia, 30<sup>th</sup> August 2003

Times of Zambia, 25<sup>th</sup> September 2003

World Health Organization Report (2006)

Zambia Daily Mail, 7<sup>th</sup> September 2007

Zambia Sexual Behaviour Survey (2006)

### **INTERNET WEBSITES**

[http://www. OneWorld Africa.net](http://www.OneWorldAfrica.net)

## **INTERVIEWS:**

All the interviews by the author were carried out in English and were carried out in Lusaka using the interview guide attached to Appendix B.

Kapihya, M. 25.09.2007 Lusaka

Kaumba, K. 28.09.2007 Lusaka

Siabona, C. 12.10.2007 Lusaka

## **APPENDICES**

APPENDIX A

**ZAMBIA POLICE SERVICE  
VICTIM SUPPORT UNIT**

Assaults	3022	488	58	525	427	1205	483	652	1315
Rape	126	42	12	38	38	129	43	8	45
Att.Rape	19	0	5	0	8	13	2	4	0
Un-Appealed Remains	43	3	3	12	8	28	17	24	37
Dep Rec Their Benefits	909	87	4	316	184	691	88	260	348
Unemployed	388	47	1	37	181	246	128	11	127
Education	11	7	4	7	6	14	0	2	6
Child Labour	1261	233	7	21	90	301	59	1141	1200
Child Desertion	74	3	0	10	12	38	18	22	33
Def. Arrest/Prob.	0	1	0	0	1	2	0	2	0
Att Murder	0	0	0	0	2	2	0	0	0
Murder	28	0	1	0	17	26	0	0	8
Infantcide	6	0	0	0	3	6	0	0	0
Arrested	3	1	0	1	1	2	0	0	0
Att. Assault	0	1	3	1	0	2	0	0	3
Arrest	16	1	1	2	1	6	1	8	4
Material Damage	47	4	1	1	14	23	3	13	27
Regency	17	7	0	1	4	0	3	1	7
Arrest	18	2	0	0	8	17	3	1	4
Unmatching Evidence	54	4	2	4	0	6	0	41	46
Indecent Ass. Boy 14+	0	0	1	0	0	0	0	0	0
Sex Off. In suit language	78	0	0	3	18	23	1	58	66
F. Prot Marriage	21	0	2	5	4	11	4	6	10
Childbearing	0	1	1	0	3	5	0	0	0
Indecent Contact	0	0	0	0	0	0	0	0	0
Sodomy	8	0	0	1	1	3	1	0	0
Testates	1795	0	0	0	0	1795	2	1793	1795
	1810	533	141	556	506	1510	532	4244	5073

**KEY**

**A=B+C**

**6=2+3+4+5**

**9=7+8**



# ZAMBIA POLICE SERVICE

## Victim Support Unit

YEAR 2003

OFFENCE	Report	Confirmed	Withdrawn	Total	Convictions	Respirable	Withdrawn	Pending	Total
Aggravated Assault	2547	2547	0	2547	566	0	490	100	1888
Assault	302	302	0	302	0	0	0	107	264
Sexual Offences	30	0	0	30	0	1	0	15	27
Sexual Offences (Child)	141	141	0	141	22	4	47	26	124
Sexual Offences (Adult)	141	0	0	141	22	7	17	100	568
Sexual Offences	141	0	0	141	22	7	17	100	1060
Assault	21	0	0	21	0	0	0	0	24
Child Abuse	1421	92	92	1019	0	0	0	0	369
Child Abuse	219	15	54	69	0	0	0	0	160
Child Abuse	4	0	0	0	0	0	0	0	4
Child Abuse	0	0	0	0	0	0	0	0	5
Murder	26	0	0	0	0	0	0	0	15
Murder	11	0	0	0	0	0	0	0	6
Abortion	0	0	0	0	0	0	0	0	8
Abortion	8	0	0	0	0	0	0	4	8
Abortion	14	4	0	10	0	0	0	0	8
Abortion	77	0	28	33	0	0	0	20	44
Abortion	10	0	0	3	0	0	0	2	7
Abortion	36	0	0	0	16	0	0	0	36
Abortion	10	0	0	0	0	0	0	0	27
Abortion (Sexual Offence)	8	0	0	0	0	0	0	0	5
Abortion (Sexual Offence)	202	0	202	270	0	0	0	0	143
Abortion (Sexual Offence)	33	0	0	16	0	0	0	0	17
Abortion (Sexual Offence)	5	0	0	0	0	0	0	0	8
Abortion	25	4	0	0	0	0	0	0	21
Abortion	100	0	100	100	0	0	0	0	70
Abortion (Sexual Offence)	1	0	0	0	0	0	0	0	1
Abortion (Sexual Offence)	1	0	0	0	0	0	0	0	3
Abortion (Sexual Offence)	53	0	0	3	35	0	0	0	50
Abortion (Sexual Offence)	11	4	0	7	0	0	0	0	3
Abortion (Sexual Offence)	10	0	0	0	0	0	0	0	12
Abortion (Sexual Offence)	1	0	0	0	0	0	0	0	12
TOTAL	<b>9585</b>	<b>936</b>	<b>3654</b>	<b>4585</b>	<b>1785</b>	<b>114</b>	<b>1447</b>	<b>1631</b>	





**APPENDIX B**

**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**INTERVIEW GUIDE**

**RESEARCH TOPIC: INCREASE IN REPORTING OF SEXUAL OFFENCES IN  
ZAMBIA: WHAT IS THE LAW DOING?**

Dear respondent,

I am a fourth year student at the University of Zambia in the School of Law, conducting a research on the topic: "increase in reporting of sexual offences in Zambia: what is the law doing?" This is in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws (LLB).

You are humbly requested to answer the questions that follow sincerely and truthfully.

The information that you will give shall be treated in the strictest confidence.

Thank you.

**Part A.        PROFILE OF RESPONDENT**

1.     What is your name?
2.     Sex  
      Male {    }                      Female        {    }
3.     Which organisation do you represent?
4.     What is your position in the said organisation?

**Part B.**

1.     How many cases involving sexual violence are reported on average in a month?
2.     Has there been an increase in reporting of sexual violence from 1997 up to 2007?
3.     Which sex (gender) normally reports these cases?
4.     Are the complainants and the victims related? If so how? And in what percentage of cases?
5.     How do you deal with these reported cases of sexual offences?
6.     If yes to question 2. Why do you think people rarely/did not report sexual offences in the recent past?
7.     If yes to question 2. Why do you think people have suddenly started reporting these offences?
8.     What policies have you put in place to encourage people to make more complaints or to make more reports?
9.     What are the effects of sexual violence on the victims?

10. Are the victims of these offences assisted to come to terms with this situation? If yes how?
11. Do you make any follow ups to see how the victims are coping?