
**INTERROGATING THE EFFICACY OF THE LAW ON NEGLECTING TO PROVIDE
NECESSITIES FOR CHILDREN IN ZAMBIA; AN ANALYSIS OF SECTION 169 OF
THE PENAL CODE (AMENDMENT ACT NO.15 OF 2005):
A STUDY CARRIED OUT IN CHIPATA, ZAMBIA.**

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**A Dissertation submitted in partial fulfilment of the requirements for a Masters Degree in
Women's Law, Southern and Eastern African Regional Centre for Women's Law,
University of Zimbabwe
2012**

Abstract

In order to bring its laws protecting children into line with several relevant regional and international Human Rights instruments (such as the International Convention on the Rights of the Child, CRC), Zambia effected a number of changes to its legislation, including the 2005 amendment of section 169 of its Penal Code, which makes it an offence for a person responsible for maintaining a child to fail wilfully to do so. Conducted as it is by an officer active in the CPU (Child Protection Unit) and the VSU (Victim Support Unit) sections of the Zambian Police Service, the writer of this work offers a unique insight into the efficacy of this law, witnessing at first hand the implementation of the law by the Police, the first agents of the State to process complaints of child neglect. She found the familiar surroundings of her home and work area, Chipata, an ideal site to conduct her case study (involving over 100 respondents and key informants) since it processes the highest number of child maintenance cases (lodged by both rural and urban women complainants) in the Eastern Province of Zambia. After exploring the theoretical and legal framework relevant to child neglect, the writer embarks on her field research using several methodologies including the Grounded Theory and Human Rights Approaches guided overall by the Women's Law Approach which is a unique methodology because it uses women (i.e., the most common complainants in child neglect case) as a starting point by interrogating their lived realities vis-a-vis the law within the wider context of society. She found, among other things, that although women choose to report defaulters to the Police in the hope that the threat of being imprisoned will persuade them to discharge their maintenance obligations to their children, the Police are ineffective at discharging their duties to the extent that no single defaulter has been prosecuted since the inception of the new law. She discovered that reasons for this include the Police's misinterpretation and, hence, misapplication of the law; their incorrect gender based attitude that child neglect cases are domestic as opposed to serious criminal matters which should not warrant use of their time and energy; the reluctance of women complainants to persist with their complaints and eventually cause the incarceration of defaulters (it is the threat of incarceration that they desire; actual incarceration would defeat their purpose: an imprisoned defaulter cannot pay maintenance). Finally, in a detailed action plan, the writer suggests a number of recommendations, especially law reform to elevate the importance of and streamline the law on child neglect; giving magistrates the power to order alternative, more effective punishments, such as community service, which may bring delinquent defaulters to their senses and the training of the Police in the correct interpretation and application of the law, including the proper recording and investigation of child neglect cases.

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Declaration

I, Gloria Mubita, do hereby declare that the thesis is an original work presented towards the Masters Degree in Women's Law, University of Zimbabwe, not previously presented for any degree or other award in any academic institution.

Signed _____ Date _____

This work is approved for submission towards fulfillment of the degree of Masters in Women's Law by the supervisor.

Signed _____ Date _____

MS ROSALIE KATSANDE
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Dedication

To my late father for believing in me, mother for taking care of Musa and to Musa-Ziza Mubanga Bwalya (2years old) for giving me the strength to carry on.

Acknowledgements

I am deeply indebted to NORAD for the financial support without which I would not have pursued this program.

I am also especially highly indebted to my supervisor Rosalie Kumbirai Katsande for the continued guidance without which my work would have been a non-starter.

I also extend my heartfelt gratitude to Professor Julie Stewart and DR Amy Shupikai Tsanga for their tireless efforts in making this program a success.

My special thanks go to the entire SEARCWL staff for their support; Sesedzai, Cecilie, Rudo, Blessing, Primrose and Johnson.

Special tribute goes to VSU officers and Police Prosecutors Chipata, Heads of Government Departments Chipata, The Coordinator YWCA Mrs. Dorothy Ndlovu, Chipata and all the respondents too numerous to mention.

My brother Mubita Mubita for encouraging me to apply for the program.

The Masters Women 's Law class 2011-2012 heartfelt gratitude goes to Justus, Ntombizodwa, Mary, Henry, Sam, Phyllis ,Charles for their encouragement and ideas; Sandra and Mike for making my stay in Zimbabwe home away from home.

And Grace Comfort Kakyofwa for being there when I was not there.

Acronyms

ACC	Anti Corruption Commission
ACRWC	African Charter on the Welfare and Rights of the Child
DEBS	District Education Board Secretary
CEDAW	Convention on the Elimination of Discrimination Against Women
CHIN	Children In Need Network.
CJS	Criminal Justice System
CPC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
CPU	Child Protection Unit
DCIO	Divisional Crimes Investigations Officer
DPP	Director of Public Prosecutions
GRZ	Government of the Republic of Zambia
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
MDGs	Millennium Development Goals
NATSAVE	National Savings and Credit Bank
NCP	National Child Policy
NGOs	Non Governmental Organizations
PEO	Provincial Education Officer
PRM	Principal Resident Magistrate
UCZ	United Church of Zambia
UNICEF	United Nations Childrens' Emergency Fund
WILSA	Women in Law in Southern Africa
VSU	Victim Support Unit
YWCA	Young Women Christian Association
ZAF	Zambia Air Force
ZANACO	Zambia National Commercial Bank
ZESCO	Zambia Electricity Supply Corporation
SGBV	Sexual and Gender-Based Violence
ZPS	Zambia Police Service

List of the Laws of Zambia cited

The Affiliation and Maintenance Child Act, No 55 Of 1995
The Anti-Domestic Violence Act, 2011
The Constitution of the Republic of Zambia
The Criminal Procedure Code
The Penal Code Amendment Act, No.15 of 2005
The Zambia Police Amendment Act, No.14 of 1999

List of International Human Rights Instruments cited

African Charter on the Welfare and Rights of the Child
The Convention on the Rights of Children (CRC)
The Convention on the Elimination of all of Discrimination Against Women (CEDAW)
Millennium Development Goals
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CHAPTER ONE

1.0 INTRODUCTION

Children are the future of every country hence the need to protect them from any form of abuse. Article 1 of the Convention on the Rights of the Child (CRC) defines a child as *'every human being below the age of eighteen years.'* In Zambia the definition of a child varies from statute to statute, but for purposes of this study on child neglect, the definition of the CRC will be used. Women have the burden of care of children from the time of conception; hence they cannot be discussed in isolation from their mothers who bear the huge responsibility of taking care of them.

According to NAP-GBV (2008), *'Wherever women are oppressed by their gender roles, children may be at increased risk of violence.'* Article 19 of the CRC defines violence against children as *'all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.'*

Child neglect is characterized by failure to provide for the child's basic needs. Neglect can be physical, educational, and emotional/psychological. It is very important to distinguish between neglect and a parent or caretaker's failure to provide necessities of life because of poverty or cultural norms (Depanfilis et al, 1992). According to Dawes et al, (2007), child neglect includes situations in which children have suffered harm, their safety has been endangered as a result of the caregiver's failure to provide for or protect them. This study discusses neglect vis -a-vis the four sub-types, namely, (1) physical neglect: which includes inadequate food, clothing, bedding plus unhygienic and dangerous living conditions (shelter); (2) medical neglect, where the child's parent or guardian did not provide or refused to provide medical care for the child; (3) abandonment/ refusal of custody where the child's parent/guardian has died without making adequate provisions for care and custody or the child was in a placement and the guardian refused to take custody and finally; (4) educational neglect where a parent/ guardian failed to enroll the child or did not provide school fees and other school requisites.

In 2005, Government of the Republic of Zambia (GRZ) amended its Penal Code to address crimes affecting women and children. Before 2005, most of the laws protecting women and children attracted minimum sentences; resulting in their escalation. Non-Governmental Organizations (NGOs) therefore lobbied government to stiffen punishment. In Zambia, a lot of research has been carried out on child sexual offences. A study of the Amendment Act No.15 of 2005 reveals that most of the offences relating to children are of a sexual nature. Child neglect has not been an issue of concern to many compared to the attention sexual offences has been given. The Amendment Act No. 15 of 2005 confirms this, as sexual offences like defilement and indecent assault attract a minimum of between fourteen years and life imprisonment. The rationale for amending the penal code is often considered as to stiffen punishment for sexual offenders' e.g., the Declaration and Platform for Action states that government reviewed the penal code through Act No. 15 of 2005 to introduce stiffer penalties for sexual offenders in the cases of defilement, rape, and sexual harassment of children. (National Assembly, 2011).

1.1 Background to the Research

The Women's Law program gave me the opportunity to research one of the most highly publicised forms of child abuse in Chipata. From my daily experiences in the Zambia Police Service (ZPS), I observed that the prevalence of child neglect was very high, the law is in place but police officers do not arrest defaulters. It has been heart breaking as a female officer to see faces of these women who are complainants. Child neglect violates the children's rights.

The ZPS Victim Support Unit (VSU) National Coordinator who was on the Technical Committee explained that child defilement had no minimum sentences; cases concerning children needed to be strengthened. Child neglect which was not considered a serious offence at least is now punishable for three years. He also explained that people were complaining that the increase in sexual offences was because the law was not stiff. He further observed that lack of minimum sentences was problematic and cited an example where a man employed by the Zambia Air Force (ZAF) in Mumbwa was sentenced to a day in jail for defiling a minor and later

sentenced to five years on appeal. If defilement could attract only a day, child neglect then was nothing to talk about.

A Program lawyer at Women In Law in Southern Africa (WILSA) explained that surveys done in Kapiri Mposhi, Monze and Kafue towns revealed that fathers of the children neglect them for different reasons. Her observation was that neglect affected both children born out and within marriage. During consultations, WILSAs' submitted that child neglect was serious in Zambia retards the growth and development, sometimes leads to death and that it somehow contributes to children becoming street children, girls becoming prostitutes and boys thieves. WILSA's submission recognized the need to come up with a law that would criminalize child neglect.

WILSA and other stakeholders had to state their position despite the Maintenance and Affiliations and Matrimonial Causes Act mentioning family neglect. The Maintenance and Affiliations Act mentioned failure to maintain a child but there was no law criminalizing child neglect act with the amendment of the penal code. However, the law was there before the amendment of the penal code in 2005. This shows how unknown the law on child neglect is to both professionals like lawyers as well as women who are likely to report child neglect to the police. In conclusion, the WILSA lawyer observed that overall child neglect affected children; it still affects children psychologically to the extent that WILSA realized that parents reporting these cases were also being affected psychologically. Most of the women who were talking about how this neglect affects them were not working; they were single mothers who were aged between 15 and 30. It was against this background that I took particular interest in child neglect as a field of study.

1.2 Statement of the Problem

The principal Act of the Penal Code was amended by the repeal of section 169 and the substitution of the following:

'169. Any person who being the (a) Parent; (b) Guardian; or (c) Person in charge of a child that is unable to provide for itself, refuses or wilfully neglects to provide for

itself being able to do so, sufficient food, clothes, beddings or other necessities for such child, and thereby injures the health of such child, commits an offence and is liable to, on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding three years or to both.'

This law is in place, complaints are received by the police daily, the police summons defaulters; if they comply, they are zero counselled, if they don't, they are summoned again and followed at times, resulting in a pattern of re-offending, emergence of neglect reports on a daily basis and a situation where some defaulters do not comply with the summon. Consequently, the incidence of child neglect reports is very high.

1.3 Rationale of the Study

The key output of the report is intended to raise awareness amongst police officers on the need to take cases of child neglect seriously. Currently their failure to keep statistics on child neglect indicates that the offence is not given the attention it deserves. The second major output is intended to provide government with data for law review to enable law enforcement officers effectively deal with the problem. The final output is intended to empower women with information to enable them make informed decisions on the prosecution of defaulters.

1.4 Research Objectives

1. To investigate whether the law protects children from wilful neglect by guardians.
2. To find out if complainants have trust in the enforcing power of the police.
3. To investigate why the police are reluctant to arrest alleged offenders and prosecute cases of child neglect.
4. To find out why complainants prefer reporting to the police to suing for maintenance in the local courts.

5. To investigate why defaulters neglect to provide basic necessities for children.
6. To assess the weakness of the law on neglecting to provide basic necessities for children.

1.5 Research Assumptions

1. The law protects children from wilful neglect by guardians and defaulters are liable to punishment.
2. The police are the complainants' first point in accessing justice in the criminal justice system and complainants have trust in their enforcing power.
3. Police are reluctant to arrest and prosecute cases of child neglect because they consider that arresting defaulters will deprive children provision of their basic needs.
4. Complainants prefer reporting to the police to suing for maintenance in the local courts because they anticipate an instant response in the form of compelling defaulters to act immediately as opposed to civil claims that take a long time to be concluded.
5. Defaulters neglect to provide basic necessities for children because they infer that the police may not arrest them since they are summoned by way of a 'call out'.
6. The law on neglecting to provide is difficult to enforce because the priority of the police is for the children to be provided for. Arresting defaulters results in the violation of children's rights.

1.6 Research Questions

1. Does the law protect children from wilful neglect and are defaulters liable to punishment?

2. Do complainants have trust in the enforcing power of the police?
3. Why are the police reluctant to prosecute cases of child neglect?
4. Do complainants prefer reporting to the police to suing for maintenance in the local courts because they anticipate an instant response in the form of compelling defaulters to act immediately?
5. Does the way of summoning defaulters by way of a 'call out' explain why defaulters still neglect to provide basic necessities for children?
6. Why is the law on neglecting to provide difficult to enforce and what should the police do?

1.7 Area of Study/Research Site

The study was done in Chipata, the provincial capital of Eastern Zambia located 510.05 kilometres east of Lusaka and approximately 12 km to the Malawian border and only 130 kilometres to the Malawian Capital Lilongwe. Chipata town has a population of about 85,963 people and is among the fastest growing towns in Zambia. The main economic activity is agriculture. Being a rural Province, it is surrounded by rural communities, meaning reports are made by complainants from both urban and rural areas. Besides all crime statistics from other districts are submitted to Chipata, enabling me to capture reports from other districts of the province.

Firstly, I chose Chipata because working in the VSU and Child Protection Unit (CPU), I realized how high reports of child neglect were. Secondly, living and working in Chipata town, I anticipated few challenges in data collection as am familiar with most people and places.

1.8 Limitations of the Study

The research period ran from October 2011 to January 2012, a period in which Zambia had just completed its September 24, 2011 polls, which ushered in a new government. With this political change I could not get information from the office of the Director of Public Prosecutions (DPP) and Ministry of Justice because lawyers at these institutions were out of office either handling election petitions or attending to events of national importance and also due to uncertainties brought about by the regime change.

Furthermore at Parliament Library, I could not obtain Parliamentary debates as they were missing on the shelves. My task to follow up plaintiffs and defendants that failed to appear before the Local Court Magistrate on the day their cases came up for trial did not materialize as the Magistrate advised me that it was difficult to locate them since most of them came from shanty compounds without house numbers. He explained that during service of summons, the court relies on section chairmen to locate them.

Locating plaintiffs and complainants would have elucidated why they never showed up; this would have explained why complainants prefer reporting neglect to the police to filing maintenance claims in the local court.

In what follows, I discuss feminist theories that informed my study vis-a-vis responsibilities that women have by virtue of being biologically different from men and the intersection between power and women's subordination.

CHAPTER TWO

2.0 THEORETICAL FRAMEWORK AND LAW, POLICY AND LITERATURE REVIEW

2.1 THEORETICAL FRAMEWORK

The study's findings indicate that child neglect is a consequence of male power which subordinates women who complain of child neglect on behalf of children. While the relational theory critiques why women and not men complain on behalf of the neglected children, the dominance theory will critique why men with all their resources neglect children.

2.1.1 The Relational Feminist Theory

This study attempts to bring out why women and not men complain on behalf of the neglected children. I locate the reason why women form the majority complainants in both their sex and gender roles; conception and child birth as well as nurturing roles. According to West (2000), our reproductive role renders us non-autonomous in a second, less obvious, but ultimately more far reaching sense. This is because before and after birth, children depend on their mothers for survival.

Women's lives are not autonomous, they are profoundly relational. This is at least the biological reflection, if not the biological cause of virtually all aspects of our 'difference' (Karlan et al 1993).

The study revealed that most of the complainants were female, all mothers. Only one married man 31, complained against his wife at the time the research was conducted; his complaint was more inclined to the absence of the baby's mother. He said:

My wife is found in bars and leaves the six year old baby. She left her matrimonial two months before and the children are been looked after by their grand-mother. The six months old baby is on the bottle; its mother

is HIV positive. The baby cries a lot it has even lost weight. The child has no care, its mother drinks beer excessively and doesn't pay attention to the child.

His complaint confirmed that women are relational; they take care of children.

As Karlan et al (1993) observe, “perhaps the central insight of feminist theory of the last decade has been that women are “essentially connected” not “essentially separate”, from the rest of human life, both materially, through pregnancy, intercourse, and breastfeeding, and existentially, through the moral and practical life”. It is this connection that forces women to complain on behalf of their neglected children; a connection that makes the children's pain their own. It is the same connection that Karlan and Ortiz (1993) referred to in their assertion that:

When the woman is pregnant, her biological life embraces their needs. The experience of being human, for women, differentially from men, includes the counter-autonomous experience ...of emotional and psychological bond between mother and infant. Women are profoundly relational.

(Karlan & Ortiz, 1993).

West (2000) posits that:

Women s' subjective hedonic lives are different from men's .The quality of our suffering is different from men as is the nature of our joy. Furthermore, and of more direct concern to feminist lawyers, the quantity of pain and pleasure enjoyed or suffered by the two genders is different :women suffer more than men...One reason that women suffer more than men is that women often find painful the same objective event or condition that men find pleasurable.

In child neglect, for example married men may neglect children because of another woman; neglecting children in itself is painful for the woman because seeing her children suffering is awful; the reality of another woman in her husband's life increases her pain, a situation her husband finds pleasure in.

According to West, (2000):

Feminists generally agree that it should not go without saying that women suffer in ways which men do not, and that the gender-specific suffering that women endure is routinely ignored or trivialized in the larger (male) legal culture. Just as women's work is not

recognized or compensated by the market culture, women's injuries are often not recognized or compensated as injuries by the legal culture.

The response of the police to reports of child neglect trivializes women's complaints and increases their suffering. The dismissal of women's' gender-specific suffering comes in various forms, but the outcome is always the same: women s' suffering for one reason or another is outside the scope of legal redress. Thus, women's distinctive, gender-specific injuries are now or have in the recent past been previously dismissed as trivial (West, 2000). The child neglect law if substituted with family neglect would make the defaulter responsible for neglect of the complainant as well. Child neglect suggests that the mother is not important at all, she is invisible.

2.1.2 The Dominance Approach

This theory discusses the equality question in relation to the distribution of power. It is a theory that centres on the most sex differential abuses of women as a gender, abuse that sex equality in its difference garb could not confront (Mackinnon, 1987). Radical feminists tend to understand power in terms of dyadic relations of dominance/subordination, often understood on analogy with the relationship between master and slave. (Allen, 2011). This approach is critical in analyzing the reasons men advance for neglecting children. A close scrutiny of why men neglect children shows that they do it because they are more powerful than the women and children. Women are disadvantaged and suffer with the children. To successfully discuss child neglect using the dominant theory, I will borrow from the scholarly works of Catharine Mackinnon and Simone de Beauvoir.

A good example is drawn from Mackinnon's work in which she views the equality question as a question of the distribution of power. Mackinnon (1989) discusses inequality as a result of sex which defines and situates women as women. According to her:

If the sexes were equal, women would not be economically subjected, their desperation and marginality cultivated, their enforced dependency exploited sexually or

economically. Women would have speech, privacy, authority, respect, and more resources than they have now.

The correlation of Mackinnon's work with this study is that the children men neglect sometimes are born out of men's sexual and economical exploitation. This is true of especially unmarried women who are neglected by men who impregnate them. Men are the defaulters in child neglect, their failure to enact progressive laws which would result in effective enforcement explain their dominant role in the area of law. Demaske (2009) acknowledges Mackinnon's argument that what the legal system says is neutral is actually the male stance or the male point of view in the legal system ensures that woman's point of view is not heard, or, if it is heard, it is dismissed as somehow invalid.

Mackinnon's viewpoint explains why the child neglect law has been difficult to enforce. The failure to effectively enforce the child neglect laws lies in male domination in legislation, the result of which has been that the perpetrator is never brought to book, albeit the physical and emotional suffering of the child.

In her book, "The Second Sex", Simone de Beauvoir developed a framework in which she theorized male domination. Beauvoir's locates the situation of women: the social, cultural, historical and economic conditions that define their existence. According to her,

She is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential. He is the Subject, he is the Absolute – she is the other.

Beauvoir's argument in relation to child neglect raises issues of not only dependency but also of not being important, being secondary. This means that man considers woman as not important at all as such even that which she loves and wants the best for is affected in the process. Man chooses not to care because he dominates. I will conclude with Beauvoir's standpoint that:

There are, to be sure, other cases in which a certain category has been able to dominate another completely for a time.

Men dominate women's lives and have the power to decide whether to provide for children or not. This theory suggests that in child neglect, women are the complainants because their gender and sex roles subject them to domination by men.

Next, I discuss the effort dominant man's point of view in law has made to address child neglect.

2.2 LAW AND POLICY REVIEW

2.2.1 The Constitution

Zambian law has shortcomings in respect of children's rights; there are no children's rights specifically enshrined in the constitution; however, children are entitled rights guaranteed all persons. Article 11(a) guarantees everyone the right to life, liberty, and security of the person. Article 11(c) protects young persons from exploitation.

2.2.2 Penal Code, Act No .15 of 2005

GRZ amended the principal Act by repeal and substitution of section 169 which stipulates that:

“any person who being the- (a) parent;(b) guardian; or (c) person in charge; of a child that is unable to provide for itself, refuses or wilfully neglects to provide, being able to do so, sufficient food, clothes, bedding or other necessities for such child, and thereby injures the health of such child, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding three years or to both.”

2.2.3 The Anti-Gender-Based Violence Act, 2011

Under this Act, neglect is included in Part One 3(a) where 'economic abuse' has been defined to include, among several others, the unreasonable deprivation of any economic or financial resources to which a victim, or family member or dependant of the victim is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household

necessities, medical expenses or school fees and mortgage bond repayments or rent payments in respect of a shared household. *'Neglect'* is also defined in Part One of the Act where *'physical abuse'* is defined and includes among other things the deprivation of another person of access to adequate food, water, clothing, shelter, rest.

The Act defines *'physical, mental, social or economic abuse'* to mean 'any act, omission or behaviour or threat of any act, omission or behaviour which results in death or is likely to result in the direct infliction of physical, sexual or mental injury to any person, and includes –

- (n) *Abuse perpetrated on a person by virtue of the person's age, physical or mental incapacity, disability or illness.'*

Section 5 of Part Two empowers specified people including teachers to take action to (a) inform a victim of their rights and any basic support which may be available to assist them; (b) obtain for the victim, or advise the victim how to obtain shelter, medical treatment, legal services, counselling or other service that may be required in the circumstances and (c) advise the victim of their right to lodge a complaint against the respondent including remedies available to the victim.

The multidimensional approach envisaged in this Act is significant bearing in mind that teachers are responsible for children of school going age and is a far much better one, as Depanfilis et al (1992) observes, child neglect is a community concern. No one agency or profession alone can prevent or treat the problem. The community has a legal, moral, and ethical responsibility to assume an active role in responding to physical, sexual, and emotional abuse and neglect of children.

A child or person ... may be assisted by a next friend to file a complaint of gender based violence as stipulated in section 6(2). This means the responsibility of filing complaints will not be entirely left to their mother or legal guardian. Section 7 compels a police officer to respond promptly to a request by any person for assistance from gender-based violence and shall offer such protection as the circumstances of the case or the person who made the report requires even

when the person reporting is not the victim of the gender-based violence. This is a guideline for police officers not to direct complainants to go and look for the defaulter.

In Section 10(1) a victim may, in the prescribed manner, apply to a court for a protection order to prevent (a) respondent, (b) an associated respondent; or (c) both a respondent and an associated respondent from carrying out a threat of gender-based violence against the victim or to prevent the respondent, an associated respondent, or both, from further committing acts which constitute gender-based violence against the victim. This approach is proactive because neglect can be checked before it becomes more serious.

Realizing that child neglect is a community problem subsection (4) of section 10 lists specified people to apply for protection orders for children; it states that where the gender-based violence involves a child ... the application shall be made by:- a person with whom the child... normally resides or resides on a regular basis; a parent or guardian of the child; a social worker; a police officer or probation officer; a medical officer; a representative of a non-governmental organization; or an institution with information about gender-based violence. Section 15(1)d provides that a protection order may, at the request of the applicant or on the court's own motion, include a provision temporarily directing the respondent to make periodic payments in respect of the maintenance of the applicant, and of any child of the applicant, if the respondent is legally liable to support the applicant or the child, as an emergency measure where no such no maintenance order is already in force, together with such other emergency monetary relief as is appropriate.

2.2.4 Affiliation and Maintenance of Children Act, No.55 of 1995

Section 3 of the Affiliation and Maintenance Act empowers the court to make an affiliation order on the application of a single woman (a) at any time within twelve months after giving birth to a non-marital child. Section 4 also empowers the court, on the application of a single woman who has been delivered of a marital child, to make an affiliation order upon proof that before the birth

she was a party to a marriage which would have been valid but for the fact that she or the other party were under the age at which either might have legally contracted a marriage.

In Section 5, the court may, on the application of a non-marital child made through the child's next friend, make an affiliation order and in Section 7, the court may, either at the time of making an affiliation order or upon subsequent application for a maintenance order, make a maintenance order in respect of the child concerned.

Section 8 (1) stipulates that the court may on the application of either party to a marriage make a maintenance order on the ground that the other party to the marriage has failed to provide, or to make a proper contribution towards, reasonable maintenance for a marital child. Section 9 (1), the court may make a maintenance order in respect of a marital child on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter.

2.2.5 National Child Policy

In 1996 GRZ developed a National Child Policy- a frame work that provides core guidelines for enhancing the welfare and quality of children's lives and for protection and survival of their developmental rights. The NCP's aim was to consolidate existing pieces of legislation into a single comprehensive statute as well as update laws as compliance to the provisions of the CRC. ZPS has a specialized CPU that works closely with the Department of Social Welfare on cases of abused and neglected children.

2.2.6 International Human Rights Instruments

In 1984, Zambia ratified the ICESCR and CEDAW in 1985. The CRC was ratified in 1991 and the ACRWC in 2008. In doing so, she committed herself to guiding, protecting and supporting children, parents and educators in the country. The implication is that children must be given opportunities to grow up in a safe environment. The agreement on the CRC binds participating

countries to make efforts to disseminate information and protect them in order to ensure they attain a standard of living adequate for their development in all spheres of their lives. Children's right to life is specifically addressed in Article 6(1), (2) of the CRC and article 5(1) of the ACRWC. These provisions oblige State Parties to recognize that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child. The Affiliation and Maintenance of Children Act No.55 Of 1995 provides for court orders as to paternity and to consolidate the law relating to the maintenance of children; to bring the law of Zambia into conformity with the CRC. However, this has not been the case for children in Chipata. As they are part of the population of Zambia's children, they are affected by conditions that threaten their right to life as determined by their social and economic wellbeing. Some children of Chipata have inadequate food, no access to proper medicine and also difficulties going to school because no one is paying their school fees.

Some of the children born with HIV consume food deficient in nutrients essential for their CD4 count. This is contrary to the provisions made in the ICESCR that obliges State Parties to the present Covenant to recognize the right of every one to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The lack of adequate food, clothing and housing has forced some children on to the streets of Chipata. In major shopping malls, street children are found doing some form of labour or begging to pay for their school fees or buy their own food and clothes. A boy from Chipata explained that they slept on the floor and used their mother's wrapper to cover themselves; in the cold season they cover their heads with only the wrapper since they do not have blankets. He also said he had no shoes and no food¹.

The Children's right to health is expressly enshrined in Article 24(1) of the CRC and obliges State Parties to recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State Parties shall strive to ensure that no child is deprived of his or her access to such health facilities. In line

¹ This was revealed by a seven year old boy.

with the same article 14(1) of the ACRWC recognizes the right of every child to enjoy the best attainable state of physical, mental and spiritual health. The research showed that some of the children in Chipata lack access to medicine when they are sick. Most women complained that fathers to their children could not give them money to buy medicines for the children when they are given prescriptions at the hospitals. A 37 year old unmarried complainant disclosed that she was given a prescription at the hospital but instead of helping, the defaulter was uncooperative². Article 12(2) of the ICESCR also lays down steps to be taken by State Parties to the present Covenant to achieve the full realization of the right to health to include the provision for the reduction of the stillbirth-rate and infant mortality and for the healthy development of the child.

The right to education is not a right for all children. Despite GRZ introducing free primary education in schools, some children still do not attend class because their parents or guardians who have the money do not care. In addition schools are still demanding payments in form of small contributions. The explicit recognition of education is encompassed in Article 28(1) of the CRC and 11(1) of the ACRWC and obliges State Parties to recognize the right of every child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular (a) make primary education compulsory and available and free to all. In line with children's right to education Article 13(2)1 of the CRC expressly states that primary education shall be compulsory and available and free to all, but this is not the case with some children in Chipata as they still have difficulties going to school due to lack of basic incentives.

Protection of children from all forms of violence, abuse and neglect is provided for in Article 19(1) of the CRC and among other measures, State Parties are obliged to take all appropriate legislative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other or person who has care of the child. The

² This was at the VSU.

principal Act of the Penal Code was amended in 2005 by the repeal of section 169 which gives a mandatory sentence of up to 3 years imprisonment or to a fine or to both to any person convicted of neglect. Article 19(2) of the CRC further states that such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described hereto, and as, appropriate, for judicial involvement.

Article 10(1) of the ICESCR also provides that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while its responsible for the care and education of dependent children.

Article 23(1) of The ICCPR and (18)1of the ACRWC both recognize a family as being a natural and fundamental group entitled to protection by society and the State, the ACRWC further states that no child shall be deprived of maintenance by reference to the parents marital status. In compliance with this requirement, the Penal Code was amended, the Affiliations' and Maintenance law enacted, VSU and CPU established and more recently the Anti-Gender Based Violence Act was passed. Despite these steps children still suffer neglect as either the police do not encourage prosecutions or mothers has reservations about seeking litigation.

The responsibility for the upbringing and development of children is vested in both parents, but while their mothers strive to bring them up, their fathers neglect them. Article 18 provides States Parties to use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case maybe, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interest of the child will be their basic concern. Article 23(4) of the ICCPR corresponds with article 18 of the CRC on the provision that State Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall

be made for the necessary protection of any children. This is not the case as on a daily basis in Chipata mothers report that children are neglected by their fathers. To buttress article 18 of the CRC, article 3(2) of the CRC states that States parties shall undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Finally realizing the role played by women in nurturing children, and in order to empower them to break the barriers in their participation to the growth and prosperity of society and the family, article 5(b) of the Convention on the Elimination of Discrimination Against Women (CEDAW) obliges State Parties to take appropriate measures to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is of primordial consideration at all times. Some men in Chipata neglect their children when they differed with their wives. All the complaining mothers in Chipata were unemployed; article 11(e) of CEDAW recognized the right of women to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work. Some women in Chipata live in very desperate conditions, they are hungry, sick, dirty and social security could help them out of these situations especially where some defaulters opt to provide basics specific for children like nappies, formula etc making them susceptible to hunger. They also suffer emotional and psychological effects arising from the hopeless situation of their neglected children.

2.3 Criminal Laws on Child Neglect in Selected Jurisdictions

This section discusses criminal laws in order to investigate how offenders of child neglect are punished in other jurisdictions. The Criminal Code of Canada plays an essential role in ensuring the safety and well-being of children. It not only provides the justice system with the legal authority to enforce criminal law as it applies to the abuse and neglect of children but also establishes criminal offences, procedures for investigation, and prosecution and sanctions for

offenders. Canadian law mandates that all cases of child abuse be reported; however, not all cases are reported (British Columbia Ministry of Education, 2007).

In America each State also has enacted criminal statutes which define those forms of child abuse and neglect which are criminally punishable (Depanfilis et al, 1992). Responsibility for investigation of crimes related to child abuse and neglect rests with law enforcement agencies and the district attorney or local prosecutor (Depanfilis et al, 1992). They are charged with the responsibility for deciding under what circumstances prosecution of child abuse and neglect will occur. Criminal prosecution may result in such penalties as probation or incarceration in a penal institution, but criminal courts have no authority concerning the child victim (Depanfilis et al, 1992). Thus, criminal prosecution is directed at deterring or rehabilitating the defendant rather than at ensuring the safety of the child (Depanfilis et al, 1992).

Section 28 of the South African Constitution outlines government's commitment to the fulfilment of children's rights. Section 28(2) states that the child's best interest is of paramount importance in every matter concerning the child. Specific rights pertinent to child abuse and neglect include children's justiciable rights (Dawes et al, 2007). These rights oblige the state to act because children have the right to basic nutrition, shelter, basic health care services and social services. Section 1(c) addresses protection from neglectful circumstances. These rights are in addition to the general protections and social-economic rights afforded to all South Africans in the Bill of Rights (Dawes et al, 2007).

The literature in all the three jurisdictions namely Canada, the United States and South Africa present a legal framework with laws that protect children against child abuse and neglect. The studies undertaken above have focused on the extent of the problem of child neglect and laws that protect children from wilful child neglect but do not make a critical analysis of how the laws that are aimed at punishing offenders through incarceration help the children out of these desperate situations.

2.4 LITERATURE REVIEW

2.4.1 *Studies on Child Neglect*

The literature shows that child abuse readily occurs when children live in vulnerable situations or when they are at risk of being deprived of any of their human rights.

UNICEF acknowledges the immensity of the suffering of the children of the world. The children of Zambia are no exception. Each day they suffer from the scourges of poverty and economic crises. They experience hunger and malnutrition. They carry a great burden of sickness and disease. Although they are the country's hope for the future, their present difficulty in meeting their basic needs for food, shelter, clean water, adequate sanitation, good education, and necessary health services does not prepare them well for that future.

(CHIN, 2001)

A report produced for the Reference Group on Child Abuse specified numerous manifestations of child abuse. Motivated by their concern to eliminate or minimize the incidence of child abuse in Zambia, UNICEF and CHIN commissioned a rapid assessment to determine the extent of such abuse, some of its related factors, and the extent to which child abuse is under-reported (CHIN, 2001). Neglecting to provide basic necessities violates the right of every child to a living adequate for the child's physical, mental, spiritual, moral, and social development. CHIN conducted a study in Zambia in 2001 to establish the levels of child abuse in Zambia and to investigate the conditions that make children vulnerable to abuse. The study reached a total of 1,957 children (100 in each district). Out of a sample of 1,957 children, 311 or 15.9% believed that they had suffered neglect. The confidence interval for the percentage of neglect cases is 14.3–17.7%. Applying this finding to children across the country means that between 14 and 18 of every 100 children are likely to experience some form of child neglect (CHIN, 2001).

It is interesting to realize that children themselves are aware of their suffering. The study revealed that children see abuse in every act, deliberate or otherwise, that subjects a child to trauma or danger. Consequently, children feel that they are being abused when they are

neglected, exploited, treated as sexual objects, or denied their rights to food, education, shelter, freedom, life, and movement (CHIN, 2001).

The study's findings also revealed that more than one-third of those who had been mistreated stated that this has taken the form of neglect. The data suggest that at the national level, it is likely that between 14 and 18 children out of every hundred experience abuse through some form of child neglect (CHIN, 2001). Slightly more than 60% of the children who experienced neglect were not attending school (CHIN, 2001). This shows the numbers of children whose future is bleak as a result of educational neglect.

Child neglect is one of the reasons why children find themselves on the streets. An UNODCCP study in Cairo & Alexandria, Egypt, had street children citing neglect (62%) as one of the direct causes for being on the street (UNODCCP, 2009). Another study in South Africa reveals that there are an estimated 10,000 to 12,000 homeless children in South Africa. Children find their way on to the streets because of poverty, overcrowding, abuse, neglect, family disintegration and HIV/AIDS (Save the Children, 2005).

Child neglect is the most prevalent form of child maltreatment in the United States and continues to be a serious and ever-increasing problem. Although the media report extreme and tragic examples of abuse, many children are living in less newsworthy, but alarming circumstances. The statistics are shocking. An incident of child abuse is reported, on average, every 10 seconds (Depanfilis et al, 1992).

The National Incidence Study in the United States estimates that nearly 1 million children nationwide experienced demonstrable harm as a result of maltreatment in 1986 (Depanfilis et al, 1992). According to the same study, almost 1.5 million children nationwide experienced abuse or neglect if children "at risk of or threatened with harm" are included in the estimate. In addition, 1,100 children are known to have died as a result of abuse or neglect in 1986. In comparing the 1986 overall incidence rate with the 1980 rate, the number of children who experienced demonstrable harm from abuse or neglect increased 51 percent (Depanfilis et al, 1992). The 1986 National Incidence Study found that the majority of child maltreatment cases

(64 percent) involved neglect (917,200 children or 14.6 per 1,000) and concludes that this increase may be more reflective of increased recognition and reporting of child maltreatment than of an actual increase in incidence (Depanfilis et al,1992).

A recent Government National Study reported that more than 2.9 million reports of possible maltreatment involving children were made to child protective services in 2003. The actual incidence of abuse and neglect, however, is estimated to be three times greater than the number reported to authorities (Depanfilis et al, 1992). According to the same study, the types of reported maltreatment included: neglect (61%), physical abuse (19%), sexual abuse (10%), psychological maltreatment (5%), and medical maltreatment (2%), other (17%). The consequences to the children and families involved and to society are incalculable.

The National Child Abuse and Neglect Data System (NCANDS), asserts that, *“of the approximately 899,000 children in the United States who were victims of abuse and neglect in 2005, 62.8 percent (564,765 children) suffered from neglect alone, including medical neglect.”* (USDHHS, 2007). NCANDS also reveals that, 42.2 percent of child maltreatment fatalities in the United States in 2005 occurred as a result of neglect only, 24.1 percent as a result of physical abuse and neglect, and 27.3 percent as a result of multiple maltreatment types (USDHHS, 2007). In 2000, an estimated 1,356 children died as a result of child abuse and neglect, nearly four children every day. (Peddle et al, 2002). NCANDS reported an increase of approximately 20,000 victims between 2004 and 2005. This is largely due to the inclusion of data from Alaska and Puerto Rico in the 2005 dataset (USDHHS, 2007).

According to the Canadian Incidence Study of Reported Child Abuse and Neglect, there were 103,297 substantiated cases in 2003 across Canada (excluding Quebec), a 125% increase in documented child abuse since 1998 (CRCVC, 2006).

This increase is considered a result of improvements in reporting and investigative methods for child abuse, as well as enhanced awareness and understanding of child abuse, not necessarily an increase in the amount of abuse (CRCVC, 2006).

Research undertaken as revealed in the literature only points out to the incidence or prevalence of child neglect. The studies do not show whether or not the laws alone have the capacity to protect children. There is need for research to evaluate if criminal law has the potential to protect children from effects of neglect alongside punishing the defaulter.

2.5 The Effects of Child Neglect

Neglected children are physically and cognitively comprised and exhibit developmental and neurological impairment. These deficits may be attributed to insufficient or inappropriate parenting during the critical periods of infancy and early childhood (Ammerman et al, 2000) and can be physical, psychological or behavioural.

2.5.1 Physical Effects

Physical effects include failure of the brain to develop properly due to malnutrition and other medical issues: also, poor physical health in general which can lead to an array of problems later on (Barbel, 2011). Ching –Tung Wang et al (2007) in their study agree with Barbel (2011) that children who have been abused and neglected are more likely to experience adverse outcomes throughout their lifespan in a number of areas. They identify in addition to those mentioned above; chronic fatigue, altered immune function, hypertension, sexual transmitted diseases and obesity.

2.5.2 Psychological Effects

Children who have suffered neglect also manifest psychological consequences such as low self-esteem, problems maintaining healthy relationships, depression, Post Stress Traumatic Disorder (PSTD), eating disorders, suicide attempts, cognitive/learning disabilities, social disabilities. (Barbel, 2011). According to Chin-Tung Wang et al (2007), cognitive learning dysfunctions e.g.

deficits in attention, abstract reasoning, language development, and problem solving skills, ultimately affect academic achievement and school performance.

2.5.3 Behavioural Effects

While Barbel (2011) cites juvenile delinquency, alcohol and drug abuse, criminal or abusive behaviour, Chin –Tung Wang et al (2007) identify high risk health behaviour e.g. a higher number of lifetime sexual partners, younger age at first voluntary intercourse, teen pregnancy, alcohol and substance abuse. Other effects include behavioural problems like aggression, adult criminality and abusive or violent behaviour. Chin–Tung Wang et al (2007) argue that child neglect can lead to such an array of development and psychological problems because children (particularly, infants) need a certain amount and type of input for their brain development to proceed normally through its various growth states. When deprived of appropriate input and stimulation, the brain may not develop normally, and this can affect brain functioning later on, which can affect an individual in many ways.

The dangers of neglect can be dire for a child’s healthy development. Without proper care, children are in danger of not developing properly due to malnutrition, physical injury, or illness. But the hidden danger of child neglect - the one that may not be apparent for many years but which can stick with a person for a life time - is the risk of PTSD which can affect them psychologically and emotionally in the long term. (Barbel, 2011).

Barbel (2011) acknowledges the research, “*What happens to children who do not form secure attachments?*” by psychologist Mary Ainsworth in the 1970s which suggests that failure to form secure attachments early in life can have a negative impact on behaviour in later childhood and throughout their life. Children diagnosed with oppositional-defiant disorder (ODD), conduct disorder (CD), or PTSD frequently display attachment problems, possibly due to early abuse, neglect, or trauma. In other words, children who experience neglect in life may be at risk for a lifetime of trouble attaching properly in relationships (Barbel, 2011). The psychological principle of attachment theory proposes that children become psychologically attached to their

caregivers as infants in order to establish a vital sense of security. In nature's terms, keeping a child attached to the mother increases its chances of survival. So it stands to reason that being neglected is an affront to the "healthy, normal" sense of attachment that nature desires for children to have with their caregivers (Barbel, 2011). Barbel (2011) concludes that not all children who experience neglect will experience long-term reactions and identifies factors that determining effects of abuse as long-term; the child's age when the neglect occurred, the type of neglect and the frequency and duration.

In its attempt to collect data to enhance the lives of children at risk of suffering from effects of child neglect, this study employed methodologies and methods discussed in the chapter that follows.

CHAPTER THREE

3.0 RESEARCH METHODOLOGIES AND METHODS

3.1 Introduction

This chapter discusses methodologies the study employed to come up with findings.

3.2 METHODOLOGICAL APPROACHES

3.2.1 The Women's Law Approach

A woman cares for her child from conception. Conversely, this does not end at birth; the care goes on until the child is grown up. Thus taking care of children is a huge and costly responsibility. The women's law approach was used to find out what women's experiences were. It enabled me understand their lived realities; what they went through as they endeavour to raise children they did not bring on earth by themselves, children who are the future and whose future needs to be secured. The Women's Law Approach is a woman-centred approach which takes women's actual lived experiences as a starting point for analysis and from that point interrogates and investigates the law (Bentzon et al,1998). It was imperative to find out how the police responds to child neglect and how protective the law was to neglected children. My unwritten assumption when going in the field was that children born out of wedlock and to divorced parents suffered more neglect than those born in marriages. The women's law approach however, demonstrated that even children whose parents are married also suffer neglect. I took advantage of the interactive process that is established between the researcher and the women and asked them their opinion on why fathers of the children neglected them and their response to the negligent situation.

From my interactions with the women, I realized that men neglect their children for many reasons. Since the research heavily relied on female complainants, their views on a number of

issues were collected. Firstly I sought to find out if they were aware that child neglect was an offence, why they came to the police, which other places they had gone to seek interventions, their opinion on why the defaulters neglected the children and just what they were going through as a result. I also enquired if they were aware they could file claims of maintenance in the local court and why they chose VSU and not the local court. Thus The women 's law approach was significant because it illustrated that regardless of their marital status, women still complained of child neglect.

A 28 year old single mother narrated that since the birth of her twins, the defaulter never bought a single thing. When approached for the babies' soap and milk, he told her to get weeds and sell so she could buy the things she needed. When delivering a letter of invitation from YWCA (summon as they call it), he beat her in public. She said she watered bricks and earned K5000 (\$1) when she watered a big drum. She complained of the distance from her home and the bricks and from the bricks to the source of water.

One 44 year old married woman disclosed that she was entirely surviving on Nyazongo, a wild vegetable she cooked with only salt to taste. In response to her concerns over the deteriorating situation, the defaulter advised her to have sexual intercourse with her neighbour, the section chairman, in exchange for help.

A divorced woman aged 30 narrated that her baby's father did not support her until she exhausted the capital for her salaula (second hands) business. Being HIV positive, she was advised not to breast feed by the medical personnel but however, decided to breastfeed for three months, while hoping to find formula, since the hospital gave an option of breast feeding up to six months.

3.2.2 Grounded Theory

This study employed the grounded approach to assess the validity of data collected e.g. the major respondents from the state were police officers in the VSU and CPU. Next were magistrates next with the officer-in-charge crime registry being last. This approach was instrumental in verifying data collected from the first source, e.g. when asked if they had made arrests on child neglect, all VSU officers admitted not having arrested any one. Prosecutors also admitted not having prosecuted defaulters of child neglect. Magistrates confirmed that cases of child neglect never reached the court. The Senior Clerk of court also substantiated that cases of child neglect ended at the police station. Lastly, the officer in-charge of the criminal registry confirmed not having filed any cases of child neglect.

Government departments and NGOs held that child neglect was prevalent. The Department of Social Welfare confirmed receiving reports of neglected children. The Provincial Social Welfare Officer said, *“Reports of child neglect are quite high, the children at Shoprite have both parents, their presence on the streets is a case of pure negligence.”* A Senior Social Welfare Officer’s position was that *“neglecting to provide necessities for children should be criminal for people who are able to provide because it is child abuse and as an office we are aware of cases where children have been neglected by parents.”*

The Acting Senior Labour Officer confirmed receiving reports of children involved in child labour as a consequence of child neglect. At the Human Rights Commission (HRC), the Investigations officer-in-charge of Eastern Province said the Commission received reports of child neglect. The Provincial Youth Coordinator said the Department of Youth, received reports of neglect from children who they referred to the Department of Social Welfare.

A statistician in the Department of Education said they referred cases of child neglect to relevant authorities like VSU and the Department of Social Welfare. His immediate supervisor, the District Education Board Secretary (DEBS) made reference to the year 2009 when the office recorded two cases of teachers from Kanyindula who had neglected their children. In one of the cases the defaulter, a Deputy Head teacher at the School had neglected his daughter at St Monica’s Secondary. He explained that the girl had written a very touching letter to him as

DEBS. The background to the issue under discussion was that her father and mother had separated.

Another case was from Chiparamba where he, (DEBS) had to talk to the manager for National Credit and Savings Bank (NATSAVE) who gave the boy a soft loan which his father paid for through his salary. He explained that the money went directly to the boy's school. The boy's father neglected the child out of sheer nonsense of beer drinking. He says he had to block his salary through the manager of Zambia National Commercial Bank (ZANACO) where he would only be paid his salary with a letter from DEBS, in the company of his wife, through the manager ZANACO. The DEBS's immediate supervisor, the Provincial Education Office (PEO) attested o prevalence of child neglect when she said, *"another measure the office took in the case of the head teacher who had neglected his children due to excessive drinking is that I instructed DEBS to withhold the deputy head's salary and sent an officer to accompany him to the bank to ensure groceries were bought for the child."*

The Provincial Sports Coordinator said that the department received reports of child neglect from communities because sport attracts children, during interactions they inquire about their wellbeing and some children disclose that they are not in school. A sports development officer in the same department also said they received reports of child neglect through children agencies they worked with e.g. Smiling Kids, Chisomo.

The Coordinator at Smiling Kids reported that the home had a total of thirteen neglected children eight of whom were boys. A 21 year old Musonda Xavier, who had been with Smiling Kids since he was 15, disclosed during the interview that he was a double orphan whose parents died when he was a baby. He said, *"I have relatives but they cannot help me. I had no shelter and no place to call home and I used to sleep on the streets."* The above accounts show how the grounded theory approach allowed for triangulation of data among major role-players. Hence the grounded approach is a tool for triangulation of data.

3.2.3 Human Rights Approach

This approach was employed because child neglect violates the rights of both the women and children. A human rights based approach is a conceptual framework that uses the guidelines of human rights standards and principles to analyze inequalities lying at the heart of development problems and redress discriminatory practices and unjust power relations that impede human development without discrimination (Office of the High Commissioner for Human Rights,2010).

Three of my assumptions touched on human rights. Assumption one was that the law protects children from wilful neglect by guardians and defaulters are liable to punishment. The third assumption was that the Police are reluctant to arrest and prosecute cases of child neglect because they consider that arresting defaulters will deprive children provision of their basic needs. The last assumption was that the law on neglecting to provide is difficult to enforce because the priority of the police is for the children to be provided for. Arresting defaulters results in the violation of children's rights. This approach was significant because a comparative analysis of child neglect in terms of it being a violation of children's rights and arresting and prosecuting defaulters is also an intervention that violates the rights of children was made.

Efforts in the human rights approach to child neglect were directed to provision of basic necessities bearing in mind that parents' or guardians have the primary responsibility to secure, within their abilities and financial capacities conditions of living necessary for the children's development. To establish the economic status of women, the study was guided by Millennium Development Goal (MDG) 3 which seeks to promote gender equality and empower women. MDG 3 indicators track key elements of women's social, economic and political participation and guides the building of gender-equitable societies. Empowerment of women, including ensuring access to health information and control of resources such as money, is important for achieving gender equality and health equity. However, the ratio of female-to-male earned income is well below parity in all countries for which data are available (WHO, 2012).

This study showed that women under whose custody children are were poor and lived under desperate conditions. The human rights approach furthermore made these women aware of the

children's rights as the police informed them of the children's right to food, shelter, clothing, beddings, education etc by their parents or anyone having financial responsibility for them and a breach of which amounted to an offence. Some of the women who reported child neglect to the Sexual and Gender Based Violence (SGBV) and the police were not aware that child neglect was a criminal offence for which a person could be arrested and liable on conviction to a fine or imprisonment for a term not exceeding three years or to both. This information was empowering to the women, thus they not only exercised their right to information but also learnt that the defaulter could be punished. This information therefore enabled them to make informed decisions and choices regarding defaulters. Most of the women were able to state their positions on how the case should proceed and what they would do if the situation did not improve even after counselling was done. However, their choices to have or not to have defaulters arrested and prosecuted, is a matter subject to discussion and analysis in the chapters that follow.

The human rights approach awakened me to the fact that government as the legislator needed to be in touch with the law enforcement officers and magistrates to see if the laws in place were effective and if not, propose what could be done to change the situation. Police officers reported challenges in enforcing the law, a situation that left both the women and the police at the mercy of the defaulter.

The principles and standards enshrined in the international human rights framework must guide development processes, including policy choices, budget decisions and their outcomes. Human rights have an intrinsic value; they are holistic in their vision and states have voluntarily accepted obligations to realize human rights for all. Human rights have an instrumental value as their application creates an enabling environment for the achievement of development outcomes and goals while increasing the meaningfulness and legitimacy of development outcomes.

(Office of the High Commissioner for Human Rights, 2010).

3.2.4 Legal Centralist

This approach focuses on state law. It was used because the state has the duty and has to that effect enacted laws that protect children from being neglected. This shows the extent to which the state protects children from wilful neglect by their guardians. Conversely, this approach indicated that law alone was not the answer. Other strategies can be devised to curb child neglect, e.g. the involvement of marriage counsellors and advocates, the church, government departments and NGOS. The approach moreover showed that law alone cannot be relied upon in child protection as issues of effective enforcement came into play.

3.2.5 The Actors and Structures Approach

The third assumption was that Police are reluctant to arrest and prosecute cases of child neglect because they consider that arresting defaulters will deprive children provision of their basic needs. I attributed the failure by the police to arrest to being just lazy and not wanting to go through the process of arresting, preparing dockets and testifying in court. However, when the police officers asked the women what they wanted the police to do, they said it was up to the police to decide because it was their job, that they came to the police to be assisted. When the officers informed them that the offence the defaulters were committing was punishable by law and attracted a jail sentence, their reaction was to categorically state that they did not wish to have the defaulter arrested but that they only wanted defaulters to be counselled and also be detained in police custody. According to them, prosecution would worsen the situation as there would be no one to take care of the children.

Listening to the women speak made me realize that insisting on prosecuting defaulters would not change their minds as along the way to the courts there was a very high possibility that they would withdraw or become very hostile witnesses. However, the police also are obliged to explain that prosecuting the defaulters does not always lead to imprisonment as there is an option of a fine or suspended sentences. I realized that this would not work because for a government worker or any worker in stable employment, a mere arrest warrants for suspension and interdiction at the work place so however ways it was a challenge.

The actors and structures approach made me realize firstly that regardless of their powers of arrest, police officers could not arrest a defaulter if a complainant was not willing to proceed to court.

3.2.6 Gender and Sex Analysis

The child neglect law punishes any parent, guardian or person in charge of a child that is unable to provide for itself, meaning that both women and men who neglect children contrary to section 169 of the Penal Code commit an offence. Any person, male or female, can therefore be a complainant. In order to establish which among the two sexes was affected by child neglect, which sex complained most and which was complained against, the gender and sex analysis was used. My interest during the research lay in the nurturing roles of women. I was also interested in assessing the caring nature of men in relation to women as regards meeting the needs of children.

NAP-GBV (2008) reports that:

Gender refers to the socially determined differences between men and women. These differences encompass roles, responsibilities, opportunities, privileges, expectations and limitations prescribed to males and to females in any culture. Thus these socially constructed and context based roles determine many aspects of relationships between and among both males and females.

This study unearthed notions about women's bonding with infants from conception, birth, breastfeeding until the child grows up. It was clear that men do not relate with children the way women do. Meeting the children's needs would reflect their care. Women's burden of care is compounded by that of looking for means of livelihood to meet the children's unmet needs.

The study also revealed health implications associated with children. I realized that the status of HIV positive mothers worsened the situation because they had to look for alternative formula for their babies who were born negative. Child neglect increased the risk of post-natal HIV transmission from mother to child through breastfeeding. One 30 year old HIV mother disclosed that she had no option but to breastfeed her one month old baby because she could not afford

formula. For those who chose not to breastfeed, the implications were that the babies were malnourished due to inadequate milk required for their healthy development. The children's rights to health and life were consequently violated. This study also showed that child neglect contributed to infant mortality as a result of inadequate nutritious food.

Education is a cornerstone of development. The gender and sex analysis showed educational disparities between men and women. Women who complained of child neglect by fathers of their children were either uneducated and unemployed or worked as maids, did part time manual work locally referred to as *ganyu* or were engaged in petty vending locally called *n'gwa'ngwazi* or *igo-igo* where they earned very little money. The study besides showed that not only children were neglected, their mothers were too. The fact that educated women as well as women with good incomes were not reporting child neglect is an indicator that empowered women are not likely to report child neglect. Thus the gender and sex analysis brings out the significance of empowering women so that they provide for their children.

Finally, initially I thought mostly single and divorced women were affected by child neglect but the gender and sex analysis showed me that regardless of marital status women were affected by child neglect.

3.2.7 Semi-Autonomous Social Fields

Semi autonomous social fields are institutions consisting of non-state actors. This approach was chosen because I wanted to know how women viewed domestic problems, what immediate steps they took and in which direction they focused their problem; where else other than the state they sought help. This approach was instrumental in making me realize how powerful non-state institutions are. It became clear that if their problems were handled outside state intervention, the women would not report to state institutions. Most married women reported their domestic problems to a '*nkhoswe*', their marriage advocate, and only when the *nkhoswe* failed to solve their problem were they given a go ahead to report the matter to relevant authorities. This approach also identified the family as an important institution when it came to matters of

domestic nature. Thus the approach not only unveiled to me factors that influenced the woman's decision to report to the police but also the extent of the neglect and period over which it had been going on.

A VSU officer observed that complainants came to the police because they did not have anywhere to go, this approach showed me that these women came to the police after their attempts at solving the problem outside the police failed. A 28 year old unmarried complainant of Malawi road said she informed her neighbour about her problem and explained that though she knew about VSU, she only reported when her neighbour advised her to.

A married 26 year old complainant, unemployed said she had informed her sister-in-law who had talked to them but that the defaulter never changed. A divorced 30 year old complainant of Chimwemwe compound said she told the Vice Principal at Chipata College of Education; her ex-husband's employer who advised her to go back to court because her ex-husband was a crook.

While a divorced 20 year old complainant from Mwami Border said she had informed her brother-in-law about the problem, a married 25 year old complainant of New Jim said she had informed her *Nkhoswe* (marriage advocate) about the problem but that the *nkhoswe* had given up.

A divorced 24 year old unemployed complainant of Chisitu reported telling her brother-in-law that she had decided to go either to court or VSU to seek help and that he had encouraged her to go ahead and report him. A 23 year old married mother from Nabvutika compound revealed that she informed his grandfather as was typical. However he had given up on them as was the case with all his relatives who had labelled him as stubborn and advised to take whichever action she deemed necessary.

One young woman aged 19 of Mchini compound said she had informed his brother and her sister and disclosed that his brother had told them he was tired of advising him to change, while her sister didn't say anything. A business lady aged 36 said she told her elder sister who advised her to go a step further. The last respondent aged 36, married and unemployed admitted consulting her *nkhoswe* (marriage advocate), who talked to him.

This approach was instrumental in showing me how important non-state actors are and evoked in me considerations on the possibilities of embracing a multi-dimensional approach that would include non-state actors to protect children from child neglect because as Depanfilis et al (1992) observes child neglect is a community concern.

3.3 Emerging Issues

3.3.1 Police Officers and Magistrates

Issues that emerged during data collection were cultural; e.g. that married women are not expected by Zambian traditional standards to report their husbands to the police because it is considered a taboo. The other was whether the law was inadequate and ought to be amended.

3.3.2 Government Employees, Non-Governmental Organizations and the Church

I saw the need to find out whether officers outside the CJS (criminal justice system) were aware of the child neglect law and how, if confronted with neglect reports, the respective departments responded and if imprisonment and fines were the best way of protecting children and, if not, possible alternatives to imprisonment. Also I found out if there was still a culture of people looking after their non-biological children. I also collected data on whether men with children out of wedlock maintained them. Data on the importance of finding out if religion and culture had an influence on our national laws was also collected.

3.3.3 Complainants

Issues in this group included whether they were aware child neglect was an offence and why defaulters neglected children.

3.3.4 Defaulters

The issue was to find out if defaulters themselves were aware of the law on child neglect and why they neglected children.

3.3.5 Children

I interviewed children to find out their experiences and if neglect was the cause of their being on the streets and if otherwise, why they were on the streets as well as whom they lived with.

3.4 METHODS OF DATA COLLECTION

3.4.1 Sample Size and Selection

The sample was drawn from complainants and defaulters of child neglect mainly at police VSU and SGBV, from VSU officers, prosecutors, magistrates and court staff. In order to obtain data on whether they were aware of the law on child neglect, respondents from mainly government departments not in law enforcement but whose departments are relevant to the contribution on the topic under investigation were selected. A smaller representation from NGOS also formed part of respondents. The table below shows all the respondents.

Table 1: Showing Key Informants and Respondents

NO.	Institution/Dept	Respondents/key informants	Sex	No. of persons
1	Police VSU	Complainants	F	17
2	Police VSU	Defaulters	M	11
3	SGBV(YWCA)	Complainants	F	17
4	SGBV(YWCA)	Complainants	M	01
5	SGBV(YWCA)	Defaulters	M	11
6	Police	Officers	M	13
7	Police	Officer	F	04
8	Magistrates Court	Magistrate	F	01
9	Magistrates Court	Magistrate	M	02
19	Magistrates Court	Clerks	M	02
21	Crime Registry	Officer	M	01
22	Local Court	Magistrate	M	01
23	Local Court	Clerk	M	01
24	Education	Officer	F	01
25	Education	Officers	M	02
27	Social Welfare	Officers	M	03
30	Labour	Officer	M	01
31	Human Rights Commission	Officer	M	01
32	Anti-Corruption Commission	Officers	M	02
34	Youth	Officer	M	01
35	Sports	Officer	M	02
37	Community Development	Officer	F	01
38	Health	Doctor	M	01
39	Smiling Kids	Worker	F	01
40	Agriculture	Officer	M	01
41	Church	Reverends	M	02
42	Cheshire Home	Nun	F	01
43	WILSA	Lawyer	F	01
45	Ministry of Justice	Lawyer	F	01
46	Police	Child Victim	M	01
47	Police	Street children	M	07
48	SGBV	Child Victim	M	01
Total				113

Source: Field data 20011/2012

Selection of key respondents was on the basis of their jobs, i.e., police officers and magistrates. Other respondents were selected by virtue of their being complainants, defaulters or victims of child neglect. The selection criterion for heads of government departments and NGOS was based on their mandates as ministries and organizations that dealt with a specific type of neglect e.g. education, health, shelter etc.

3.4.2 Individual in-depth Interviews

All 113 respondents were individually interviewed. The respondents were selected purposefully. This was possible because most women came up with different types of complaints; I selected only cases of child neglect. I interviewed complainants of child neglect as well as defaulters. 97% of the complainants were women. This category of respondents was among other things asked to give their opinions on why the defaulters neglected children and whether they were aware child neglect was a criminal offence. This question was also posed to the defaulters. Heads of government departments were interviewed from their offices during working hours. They were also asked if they were aware of the law on child neglect and also asked to give their opinion on the law on child neglect.

Each category of respondents had their own interview guide in order to answer the questions the study was asking. The categories comprised: (1) law enforcement officers and magistrates; (2) complainants and or defaulters; (3) Heads of government departments; (4) NGOS; (5) Churches and (6) child victims.

Category 1 comprising law enforcement officers and magistrates included part A which made inquiries into how long they had served as VSU officers, prosecutors or magistrates. This was meant to establish if any VSU officer had arrested any one for child neglect, if any prosecutor had prosecuted any case, and if any magistrate had adjudicated over a child neglect case. Enquiries into whether the law protected children from wilful neglect by guardians, the police were the first point in accessing justice in the CJS and if complainants trusted their enforcing power, why the police were reluctant to prosecute cases of child neglect, whether complainants

prefer reporting to the police to suing for maintenance in the local courts, whether the 'call out' system of summoning defaulters was good, and why claims that the child neglect law on neglecting was unenforceable were made. This part also sought to find out if the law was adequate in its present form as well as whether alternatives to punishment were available. This information was crucial in ascertaining what police officers and magistrates consider as protecting children, i.e. whether a law that was not enforced protected children, also to find out why complainants still reported child neglect to the police. Furthermore the data would be useful in checking if defaulters responded positively when issued with a 'call out', if there was any need for amending the law, and whether alternatives to punishment would improve the situation.

Category 2 comprising complainants and defaulters had questions about where neglect was reported before coming to the police. This was meant to uncover the steps complainants took to solve the problem, what they expected at the police; this was to establish what action they wanted and also if they had trust in the system, whether they were aware they could file claims of maintenance and why they came to the police instead; this was meant to establish what they saw wrong in the court system, why defaulters neglect children; I wanted to find out if the 'call out' mechanism had effects on how they responded to neglect, did it make the offence less serious?

The interview guide for Category 3, 4 and 5 comprising heads of government departments, NGOS and the church had two parts A and B as follows:

Part A included questions about, their position, how long they had served, whether they were aware of the law on child neglect. This made me assess how popular the law was and also how to proceed with the interview. For those that were not aware I gave them the background of the law in question. Part A also sought to find out whether criminal law was the answer to protecting children against neglect. This information was useful in examining the efficacy of the law. In addition it sought to find out whether they had reports of child neglect, whether they knew parents who neglected children, any available statistics, what measures they took as departments or churches and the best way to protect children from neglect. This information was meant to explore the incidence of child neglect as a problem.

Part B was more personal, with enquiries into whether they kept non-biological children, or if they had children out of wedlock, whether they maintained them and why not if they did not. This information was required to ascertain if people still had the culture of keeping non-biological children as well as provide data on why men with children out of wedlock do not maintain them. For the church being among the last to be interviewed and as an emerging issue I asked if our laws were influenced by culture and religion.

The last category, category 6 asked children of their experiences, why they were in that state and whether they wanted to go to school, who they lived with and whether they slept on the streets in the case of street children or whether they had a home to go back to. This data was important as it indicated which of their rights were violated as a result of neglect and whether they had any one responsible for them. For the street children the data was important as it established reasons why they were on the street.

After the interviews respondents were asked if there was anything to say about something they had not been asked about. The interviews were effective because I was able to probe further when the respondents ventured into issues that initially did not form part of my interview. This helped me understand the respondents' views and reactions deeper as well as formulate more useful questions. This also enabled me capture emerging issues.

3.4.3 Observations (of in-depth Interviews with Individuals)

I observed 14 out of 57 individual interviews on complainants and defaulters at VSU and SGBV. This was where I only interviewed the respondents immediately after the dealing officer had finished attending to them. This enabled me to observe how the complaints were handled the first time an initial complaint was made. The complainants did not pay anything at VSU and SGBV. I also managed to observe the officers' response when the complaint was a follow up case. Of the 14 observations, 4 of them were follow-up cases. In cases where mothers carried their babies,

I observed that some of them were very dirty, had no clothes and were looking unhealthy. Some mothers also looked dirty. This was an indicator of the extent of neglect.

3.4.4 Observations

I observed that complainants or plaintiffs were mostly women. There was one male plaintiff at the local court and one male complainant at SGBV. At the local court, the process involved observing how many people attended court sessions when cases of child maintenance came up as well as observing how frequently child maintenance cases were listed on the cause lists. I observed that the local court lacked privacy because cases were held in a fully packed courtroom forcing some to hear the proceedings outside through the windows. I also observed how the magistrate addressed the plaintiffs and defendants and the language which he used when asking them questions. The plaintiff and the defendant paid (K15, 100 approximately US\$3) upon entry into the witness boxes. This method as a tool of data collection enabled me to directly get information from the source without any form of compromise and made me confirm and identify exaggerated data gathered from interviews. Hence observation also acts as a tool for triangulation of data.

Table 2: Showing the cases in the local court which were attended and observed.

Civil case NO.	Claim	Sex of plaintiff	Sex of defendant	Present	Absent
1274	Child maintenance	F	M	Plaintiff	Defendant
1258	Child maintenance	F	M	Both	
1309	Child maintenance	F	M		Both
1310	Child maintenance	F	M	Both	
1311	Reconciliation over child custody	M	F	Both	
1335	Child maintenance	F	M		Both
1145	Child maintenance	F	M	Both	
-	Child maintenance	F	M	Plaintiff	Defendant
Total cases observed					04/08

Source; Field data 2011/2012

3.5 Evaluation of Research Methodology

At first I thought carrying out interviews as a police officer would add value to the research process. It was only when my supervisor advised me to work as a researcher that I realized the impact; as a police officer the women are used to, with their authority and attitudes, the women had their limitations. It was very encouraging to them to be interviewed by a researcher; the implication was that better solutions to their problems would be found as the researcher had their interests at heart. The solutions these women expected were not only to do with actual change but the attentiveness their stories received were enough.

At VSU, when a complaint is received, the dealing officer informs the complainant to state their complaint, most if not all the complaints are not child neglect only, the women narrate their problems deeper than child neglect and usually are told to be brief as details would be required

when the defaulter came. After the complaint is established as child neglect, a 'call out' is issued to the complainant to serve the defaulter, if the defaulter is violent, the complainant is usually advised to give the section chairman or the defaulter's employer if he is employed. So as a researcher, I also did not interview some women further because I assumed I would interview them when they showed up with the defaulter. Unfortunately, I never interviewed them as they either came before or after I had left the office.

Lastly, since the interviews were oral, I had to listen and take note of their stories, sometimes I missed what they said because their stories were lengthy and my recording pace was slower than their narrating pace. Similarly, I had respondents who said a lot when asked about a single issue, in these instances, I also missed a few important things. In both instances, I treated such omissions as if they were never said in the first place.

In the local court, I thought the magistrate was very cautious about how he handled the proceedings as he was aware of my presence as I had to seek his permission to do research in his court.

Despite the limitations, the methods of data collection I used were to a large extent effective as to the study to the extent that it came up with findings pertinent to interrogating the efficacy of the Zambian law on child neglect as discussed in chapter 4.

CHAPTER FOUR

4.0 IS THE LAW INEFFECTIVE OR IS IT INEFFECTIVELY ENFORCED?

4.1 Introduction

In this chapter, I present the findings and analysis of my study on the efficacy of the law on neglecting to provide necessities for children in Zambia. The discussions highlight some key concerns regarding the issues under investigation. Neglecting to provide necessities for children violates a wide range of their rights.

The study's first objective was to investigate whether the law protects children from wilful neglect by guardians; I interviewed officers within and outside the CJS. The major debates concerning the efficacy of the law on neglecting to provide necessities that emerged were whether by virtue of the penal provisions, the law protects children; or whether the law only protects children if the response by the police is effective in dealing with child neglect. There was a controversy on the best interests of the child.

The provision in Article 3(1) of the CRC is that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 18 of the CRC stipulates that:

State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case maybe, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interest of the child will be their basic concern.

The questions the CRC provisions raised were; at which stage officers should consider best interests of the child? Is it at the police station or at the courts of law? Details of answers to this question will be discussed further in the next pages.

4.2 Are there Gaps between the Law and Practice?

Most of the police officers and magistrates said the law was adequate to protect children from neglect; the problem however lay in ineffective enforcement strategies. VSU officers and prosecutors who deal with child neglect were interviewed. One officer said:

The law does protect children from wilful neglect by parents or guardians because there is a provision in the penal code. The law is adequate and there is no need to amend it further. The law helps protect children.

This opened a debate on the law versus effective enforcement. To them, the mere penal provisions on child neglect meant the law protects children from neglect. Children are still protected without effective enforcement. Few officers, however, felt the law did not protect children.

A senior officer in CPU said:

The law is not protecting children because the police normally want or promote counselling and reconciliation as opposed to taking parents to court. After counselling, some defaulters change temporarily, and then tend to relax. I handle similar cases where defaulters promise to change and some change while some go for good and so children are vulnerable.

A Senior Agriculture Mechanization Specialist said:

The law on child neglect offers protection to children theoretically and practically it does not. The police tell people to go and discuss with a view to resolving the matter back home. There isn't enough will to prosecute and there is evidence in the presence of street children at Shoprite Checkers. The law is only on paper.

The above outlook shows that even officers outside the CJS consider effectively enforced child neglect laws to be those where positive results are achieved. In my view, the law however, does not protect children from neglect because of ineffective enforcement. While I appreciate the fact

that the law is adequate to deal with child neglect, the law does not protect children from neglect because defaulters are not punished which means that the law does not act as a deterrent. My experience in VSU shows that some cases of child neglect are the same old cases. Some complainants become so tired of trying to enforce their rights that they just give up and continue suffering. Moreover reports of neglect in the VSU are still high; an indication that the law does not protect children from neglect.

Thus the officers sealed the debate on efficacy of the law based on what is obtaining on the ground. Unlike the other officers, they argued that the law does not protect children because so far no one has been punished. The senior officer from CPU justified the reason the law does not protect officers as being failure of some defaulters to change even after counselling and that while some defaulters change temporarily and revert to re-offending, others go for good leaving the children vulnerable.

Thus while the study's findings were that majority of members from the CJS felt the law protected children from neglect by virtue of the provisions of section 169 of the penal code reasoning that only when the law on child neglect was non-existent would the law not protect children; most of those outside the CJS felt the presence of the law did not protect children from neglect. My viewpoint is also that the provision of the law on child neglect is one thing while its ability to change lives is another. The law therefore can only protect children from neglect if the complainants of child neglect are adequately dealt with to deter would be offenders so as to reduce emerging reports of child neglect as well as not have a re-offending pattern.

People who break the law should be held accountable. Whereas it can be acknowledged that people who commit crimes will have to be punished, punishment should go beyond the 'retribution and punishment' fits the crime 'philosophy'. Punishment should have the capacity to prevent re-offending, protect the community and offer scope for the rehabilitation, re-integration and resettlement of the offender back into the community (Human Rights Watch, 2010). It should provide the offender with the opportunity to develop appropriate and relevant new skills that empower the offender to live a law abiding lifestyle in his /her community. However, this is

not the case with defaulters of child neglect. Demaske (2009) says about Mackinnon's dominance theory that,

She deconstructs the epistemological underpinnings of the legal system and finds it to be a patriarchal institution that subordinates women by perpetuating the status quo which is inherently filled with inequality...The male perspective is systematic and hegemonic...Each sex has its role, but their stakes and power are not equal.

Men are not punished because they are the providers and punishing them is not in the best interests of the children. According to Demaske (2009),

Mackinnon argues that what the legal system says is neutral is actually the male stance. The legal system ensures that the female point of view is not heard, or if it is heard, it is dismissed as somehow invalid. Combining a legal system weighted against women with the view that this imbalance is socially constructed and thus reinforced through the institutions that perpetuate it.

Demaske (2009) asserts that Mackinnon develops the dominance theory to demonstrate that women as a group will continue to be dominated by men unless a complete overhaul of the legal system takes place.

As a VSU officer, my observation is that VSU officers have a culture of referring complainants to the local court in cases where the defaulter has a record of re-offending .The research I did at the local court revealed that most plaintiffs in the local court told the magistrate they had been to VSU and explained what VSU had advised them. This is an indicator that the law does not protect children. Police officers should be made to realize that a law without enforcement does not change the situation of those it intends to protect and that there is much more to protection than merely printing a law on a piece of paper.

4.3 Are there other points of access to justice in the CJS?

Before I went in the field, my assumption was that in the CJS, the police was the complainants' initial point in accessing justice because child neglect is a criminal matter in which police officers have the power to arrest offenders. An interview with a Community Education Officer at

Anti-Corruption Commission (ACC) revealed that complainants report neglects the ACC but also to the Human Rights Commission (HRC). He narrated that:

One business lady got married to a man she helped start a business by providing with capital. When his business grew he married another woman and neglected his first family. The woman filed a claim of divorce and surprisingly judgment favoured her husband to the extent that he wasn't ordered to maintain the children. She reported the matter to ACC who intervened because the judgment didn't make sense. After our intervention, he was ordered to maintain the children and the house was given to the woman upon appealing.

The study found that while some complainants reported neglect directly to the police, others reported elsewhere. Most complainants usually reported neglect elsewhere other than the police. One woman aged 44 narrated that she went to HRC when the situation deteriorated. The study shows that after HRC's intervention, the defaulter changed temporarily. Some complainants report neglect to other institutions and only report to the police if the results are not desirable or when they institution refers them to VSU. This shows that some complainants consider VSU a point of last resort.

Thus the study's finding is that some women do not use the police as their first point in accessing justice for their neglected children. Statistics obtained from the office of the Clerk of Court also indicate that some applicants apply for registration of subordinate court orders in the subordinate court of the first class. The 2010 statistics however show that only three applicants filed claims of maintenance in the subordinate court of the first class as shown in Table 1.2 below. The study found that women do not always initially go to the police to report neglect; they at times go to the HRC and ACC. This singles out the need to adopt a multi-team disciplinary approach as the interventions offered at HRC are similar to those made at the police. Moreover, the police may be overburdened to deal with neglect cases owing to their incidence as weighed against their manpower, resources as well as their legal mandate. Furthermore the attitude of the police is not affirmative in some cases.

When one 36 year old married unemployed woman who, with her baby both visibly frail begged for help and indicated that she might not survive the weekend due to extreme hunger one Friday,

a VSU officer told me he did not care even if she died because there was no fuel. This attitude is very discouraging and falls short of the functions for which the VSU was created. Section 53(b) of the Zambia Police Act stipulates functions of the police as to protect citizens from various forms of abuse. However, this is not the case as the police at times lack the will to protect people from abuses. Therefore, bringing on board other institutions can mitigate this problem.

4.3.1 *Is it worth trusting the enforcement powers of the Police?*

All the complainants affirmed their trust in the enforcing power of the police. Complainant confidence comes from knowing the duties of police officers as some alluded that they trusted the police because it was their job and they knew they assisted people who report problems. Others said they trusted the police because of success stories they had heard. From my experience as a police officer, some defaulters change after they are counselled while others change for fear of being detained in police custody. Success stories from VSU emanate from defaulters who resume the duty of providing for children. While some complainants disclosed that VSU accorded them opportunities to express their views, others said they trusted the VSU because the police took care of people's lives as they did not want them to suffer. I agree with the above assertions because the police have a duty to protect people from abuse and from experience, when a case is reported, and a person charged, the police make attempts to follow it; it is other factors like best interest of the child, mobility of defaulter and lack of resources that sometimes prevents them from solving the problem. While I agree that some officers sometimes have poor attitudes, despite these shortcomings, complainants still rate the police first.

The study's findings also revealed that police officers and magistrates are aware that complainants trust their enforcing power. All of the police officers and magistrates agreed that complainants had trust in the police. One police officer said:

Complainants have trust in the enforcing power of the police, and they have faith in us as police because we are custodians of the law.

The Principal Resident Magistrate simply said:

The complainants very much trust the enforcing powers of the police.

Police officers compel people to provide for their children either verbally by they threaten to arrest or they actually lock them up. As a police officer, I have on several occasions seen defaulters locked up for a few days in cells for neglecting their children.

The implication is that the police will continue receiving considerably higher reports of neglect because of this outlook. Complainants hope the police will solve their problems not only because of some success stories they hear in communities but because of their powers of arrest.

4.4 How is the child neglect law enforced?

All the police officers admitted settling for non-prosecution of child neglect cases. Complainants were reported not to cooperate when officers decided to arrest the defaulter because they wanted him to just provide for his children. According to the study's findings incarceration would deprive them of a potential provider; so in short the complainants only wanted the police to help them get support from the defaulter. One complainant explained that;

I just want him to support the children and don't want him to be arrested because if he is arrested the children will not be supported.

The police also reported that even in instances where a complainant had initially shown interest in prosecuting the defaulter, they withdrew opting for an out of police reconciliatory settlement. This attitude discouraged and made police officers reluctant to effectively deal with child neglect. From experience, the arresting procedure needs commitment as compilation of a docket is quite demanding both in terms of time and resources. VSU receives very little funding as its monthly GRZ allocation and is usually diverted to operations deemed significant by the police command. From experience, complainants usually refuse to have defaulter prosecuted. All the police officers admitted to never having prosecuted a case of child neglect; the officer-in-charge

of the crime registry said he had never filed a case of neglect in the criminal registry ever since 2003 when he got deployed.

While the complainants do not cooperate, police officers also have contributed to child neglect cases being dealt with in the manner they are. A question about why the police were reluctant to arrest defaulters was answered with connotations of considering the best interests of the child by the majority of officers. One prosecutor said:

The police are reluctant to prosecute cases of child neglect because the child will suffer more if the defaulter is incarcerated.

The U.S Department of Justice (2007) observes that a child's best interest can be served only when the various professionals that are involved understand their respective roles. The best interest principle is for the courts and not the police. Thus the reasons advanced by both complainants are the same as they want the defaulter to provide for the children and not to be imprisoned. The question that I should have asked them is: at what stage should the best interests of the child be considered? Is it at the police station or the court?

The Zambia Police Act makes provisions that:

- (3) *It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, ..., to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient grounds exist.*

Section 30(1) stipulates that it is an offence against discipline when a police officer neglects, or without good and sufficient cause omits, promptly and diligently to attend to or carry out anything which it is his duty as a police officer to attend to or carry out. Police officers therefore commit offences against discipline everyday as they counsel each and every case of neglect reported.

While I appreciate the role of counselling as a pre-trial condition to dismiss a case and recognize its potential to positively change defaulters and thus protect children from neglect, I do not

support its over-use as it is unlikely that defaulters in all sessions will change. My view is that officers must try as much as possible to allow counselling to follow a criminal conviction.

Dr. John Mersch, a medical expert on child abuse and child abuse prevention, says parenting counselling and support groups can be highly effective in giving at-risk parents the support they need to find and use healthy parenting skills³. My view is that causes of neglect cannot be ignored in determining whether a defaulter will adopt healthy parenting skills after counselling or not. The social relation between the sexes is organized so that men may dominate and women must submit and this relation is sexual — in fact, is sex (MacKinnon, 1987). Mackinnon tends to presuppose a dyadic conception of domination, according to which individual women are subject to the will of individual men. If male domination is pervasive and women are powerless by definition, then it follows that female power is a contradiction in terms, socially speaking⁴. Mackinnon(1989) observes that no woman escapes the meaning of being a woman in a gendered social system, and sex inequality is not only pervasive but maybe universal....So even after counselling, a man will decide within the confines of his home, whether to comply or continue defaulting.

The police's reluctance is evident in their failure to create a data base for child neglect cases. Despite evidence of daily reports made in the VSU, there are no available statistics on the incidence of child neglect as shown in Appendix 1. Statistics of child neglect are, however, available at SGBV, and the Department of Social Welfare as shown in Appendix 2.

4.5 How effective is the 'call out' procedure in summoning defaulters of child neglect?

The Zambia Police Act allows summoning officers by a call out as stipulated below;

³ An article by Karen Boyd "How does counselling work in the Criminal Justice System?"

⁴ Stanford Encyclopedia of Philosophy, 2011.

18. *It shall be lawful for any police officer to lay any information before a magistrate and to apply for summons; warrant, search warrant, or such other legal process as may by law issue against any person.*

A 'call out' is an official document ordering a person to whom it is addressed to report at the police at a time specified therein for an interview. So when a complainant reports neglect, the officer on duty issues a call out to the defaulter through the complainant who is expected to serve it on the defaulter. The successful appearance of the defaulter depends on whether the complainant knows where to find him, if he will comply, and whether he will show up in time for the counselling. I observed call outs being issued to complainants. In some instances complainants informed officers that the defaulter was unlikely to come and sometimes that he was violent. The officers in such instances advised the complainant to serve the call out through his employer or section head. Even when they finally showed up, the police simply counselled them. Some women had to wait for almost the whole day for the defaulter to show up.

Although the call out procedure is an adequate way of summoning defaulters to the police, the procedure itself contributes to the ineffective handling of child neglect cases because some defaulters do not show up at all, and the police lack the capacity to follow up on each and every defaulter. From experience, when a defaulter does not show up after issuance of more than one call out, complainants give up because some of them have to travel long distances. The study's findings were that as much as police officers acknowledged their significance, they also noted that call outs were not a very good way of bringing defaulters to justice because they offered them room to escape their obligations. Furthermore the study revealed that call outs reduced child neglect cases from criminal to civil offences. A female prosecutor observed:

The call out way of summoning defaulters makes child neglect appear not serious, unimportant and it doesn't carry weight as compared to court summons.

These call outs have resulted in disputes and women being beaten by violent defaulters thereby increasing cases of gender-based violence. From experience some women report that the call out was torn or the defaulter refused to comply with the orders specified therein. Since police officers usually inquire if the defaulter's character depicts compliance or not, defaulters who are

reportedly unlikely to show up or are violent should be picked by the police. The police therefore should only take note of the contact details of the complainant and address of the defaulter and complainants advised that the follow up might not be immediate because of transport and fuel shortages as the VSU vehicles deals with other crimes like defilement.

A 36 year old married and unemployed respondent of Kapara lamented that:

At VSU I was given a call out which I gave to my husband's landlord and the following week we met here where he was counselled. He explained that he hadn't yet been given money. The police advised him not to leave me hungry and gave him an ultimatum of seven days meaning he was supposed to be here today the 27th of January but he hasn't come. The police say they do not have fuel. The officer who handled my case told me to wait up to 14hrs; I have been here since 09hrs. He doesn't fear the court or the police and says I can go anywhere and get call outs or letters he will use them as toilet paper.

This shows the extent to which defaulters disregard call outs and are not likely to comply with the orders specified therein. Findings show some flaws in the procedures used by VSU. The way defaulters are expected to appear before the police for questioning and counselling gives less hope for the children and the women. The Zambia Police Act further prescribes punishment for any person who refuses to comply as set down below.

20(3) Any person who refuses to comply with any lawful requirement of a police officer in the performance of his duty under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding four hundred penalty units or to imprisonment for a period not exceeding three months.

However, when a person refuses to comply the police do nothing, a situation that has rendered the call out ineffective. One reason why the study interviewed more complainants than defaulters was because some defaulters never showed up. The study revealed that the call out was not an effective way of summoning defaulters because whereas some came very late, others never showed up at all. Besides police officers shifted their duty to complainants; a procedure which was not only unprofessional but also an offence contrary to section 30(1)(iv) of the Zambia Police Act; which stipulates that '*an officer commits an offence against discipline when knowing where an offender is to be found fails to report the same or to exert himself to make the offender*

amendable to the law.' Police officers therefore commit offences against discipline as they are duty bound to serve the call outs on the defaulters.

4.6 The Choice between seeking redress through the Local Courts or the Police

Complainants in cases of child neglect can seek litigation either through the police or directly at the magistrates' or local court by filing claims of maintenance as provided for in the Maintenance and Affiliations Act. The study revealed that very few go directly through the magistrates' court (as shown in Table 3, below) as compared to the local courts as shown in Table 4, below. The Acting Clerk of Court (Table 3) observed that statistics indicate that child neglect cases are not very prevalent because complainants do not report them.

Table 3: Showing the number of child maintenance cases in the subordinate court of the first class for 2010

NO.	Sex of Applicant	Sex of Respondent
1	F	M
2	F	M
3	F	M
Total	03	03

Source; Office of the Clerk of Court

Table 4: Showing the number of child maintenance cases in the Local Courts for 2010 and 2011 in Chipata and the Eastern Province

YEAR	AREA	NUMBER
2010	Chipata	400
2011	Chipata	420
2010	Eastern province	712
2011	Eastern province	690

Source; Provincial Local Court Office

In 2010, Chipata alone accounted for 56.17 % of the total cases while in 2011 Chipata recorded an increase representing 60.86% of all the cases heard in the Province.

However, despite the steady increase in the cases heard by the local court from 2010 to 2011, the study revealed that complainants prefer reporting to the VSU to the courts for several reasons. Only one divorced complainant aged 35, of Kapata Compound said she preferred the local court to the VSU. She said:

I prefer going to court because when my first born daughter had gone to VSU to report, he never paid for her school fees despite the fact that at the police he had agreed to pay for her. My daughter didn't go back to VSU because he did nothing for her.

Her reaction to the response her daughter got from VSU shows that counselling should not be relied upon because sometimes it does not work. Despite her response all the women interviewed said they preferred the police. Some women said they reported to VSU because they were able to express themselves and correct any misunderstandings in case of emerging issues. At the court, I observed that each time the plaintiff brought up issues the court deemed irrelevant, they were stopped and guided. Thus there were restrictions on what and how much to say. Whereas complainants at VSU were asked how best they thought they could be helped, the court ordered them what to say. While ordering them may not be bad at all as it shows the authority the court has, complainants should be free to bring out issues that affect them. Thus the study revealed that complainants are free to report neglect at the police.

Other complainants said they reported neglect to the police because matters at the court were heard in open courts while VSU handled matters with confidentiality and respect. The small courtroom was usually fully packed forcing some people to stand in windows to follow proceedings. This aspect of hearings in open courts creates an environment not conducive as the plaintiff is not free. Furthermore in child neglect cases, sex always comes in as an emerging issue. At the VSU from my experience, complainants are not allowed to complain in the presence of other complainants. In addition, even when both the defaulter and complainant are in the company of friends or relatives, the police usually ask if they are comfortable to make their complaint in their presence; if they are not, they are called in only when it is necessary.

One single complainant aged 37, of Kamusisi gave the following account:

I know that the local court handles these issues, but I didn't go there because matters there are heard in open courts, at VSU matters are handled with confidentiality, there is respect, at the courts there are so many people that some even stand in windows. I want to respect him because he accuses me of talking too much. I also don't want the church to know.

While matters of child neglect can be heard in camera, this is only possible after a successful application to the magistrate. Though the study did not find out if they were aware whether their cases could be heard in camera, it is very likely that, majority of the plaintiffs may not be aware of the provision as they are illiterate. Moreover the magistrate informed me that in most cases he dismissed applications for cases to be heard in camera because he wanted people to be aware of child neglect cases. I observed only one session in which a man employed by Zambia Electricity Supply Corporation (ZESCO) applied for his case to be held in camera.

Most women reported that while they were aware they could file claims of maintenance in the local court, they did not have money for summons. I was informed by the Assistant Clerk of Court that summons cost K5100 (US\$1) and on the day of hearing both the plaintiff and the defendant paid a hearing fee. I observed K15000 (US\$3) being paid by both the defendant and the plaintiff. The Assistant Clerk reasoned that during judgment, neither of the parties knew the outcome of the judgment and so both paid hearing fees. The money was returned to the winner and the one who lost the case was issued with a receipt as the money was deposited in a government account.

While the study revealed that majority of the complainants' preferred reporting neglect to VSU to filing claims of maintenance in the local court, the local court plays a very significant role in protecting children from neglect. Government should scrap the fees it charges for summons because these women are usually poor and desperate and doing so is tantamount to denying children justice.

Some women reported neglect to VSU because VSU was faster than the local court. A divorced complainant aged 31 said:

I prefer the police because I am suffering with the children and the police are quicker in response than the court.

An interview with the Assistant Clerk of Court revealed that if the plaintiff was from within the district, seven days was allowed for summons to mature. He explained that the length of the cases depended on certain factors and that usually 75% of the cases ended within a day while 25% dragged on due to non availability of witnesses especially if they lived in distant places or if they were ill. Child neglect cases require speedy attention because the longer they take, the more the situation deteriorates and denying victims justice.

The study also found that most women reported neglect to VSU because they knew the defaulter could be detained in police custody. Police custody negates the defaulters' position that might change for fear of the cells. Police officers use the cells to instantly punish defaulters who are warned of having to spend more time in prison once convicted.

An unemployed 26 year old complainant said:

I prefer the police because the defaulter can be detained in police custody. The court is fine as well but the police are better because it is better the defaulter sleeps in cells.

Thus complainants report neglect to the police because they want defaulters to sleep in the police cells. The idea of detaining them in custody acts as the only deterrent in child neglect. I strongly support this because some reasons defaulters give for neglecting children are shocking and forcing them to be responsible is a short cut to securing basic necessities for children. One defaulter when asked why he neglected his child said:

I don't provide necessities for my children who are living with my ex-wife because doing so will make it look as if I am still married to my ex-wife making it seem as though it's a polygamous marriage.

Since his children were aged 3 years and 8 years, he should have demonstrated his commitment to the duty of providing by applying for custody of the 8year old since Zambian law allows a father to have custody of a child of or above the age of seven. This mentality is what needs to be punished because a defaulter should not be allowed to punish his innocent children.

4.7 Challenges faced by the Police face when enforcing the law on child neglect

Protection of children from all forms of violence, abuse and neglect is provided for in Article 19(1) of the CRC and among other measures, State Parties are obliged to take all appropriate legislative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other or person who has care of the child. The children's right to protection from all forms of abuse is violated when the police fail to enforce the law and thus bring change in their lives.

Many issues confront police officers during law enforcement. One would expect a newly amended law to be effectively enforced, but this is not the case with the child neglect law as the study indicates. A question on why the law on child neglect is difficult to enforce was qualified with various reasons. While the majority of police officers agreed that the difficulties encountered when enforcing the child neglect law arose from the unwillingness on the part of the complainants, most of them also admitted finding difficulties because they considered that arresting and prosecuting offenders was not in the best interest of the children as it would deprive children of a provider. In as much as I agree with the above position, I feel police officers over use their discretion. If the police had the will to prosecute, Chipata would have recorded at least even one prosecuted case of child neglect. Though they would not admit it, in severe cases of neglect, police lack the will to prosecute. From my experience in the VSU, I have heard officers discouraging complainants from insisting on having the defaulter arrested as no one would provide for the child. The best interest of the child excuse covers up for their lack of will to prosecute.

One officer explained that:

Complainants and defaulters sometimes live in the same house and usually the complainants are bent towards having defaulter start or resume his duty of providing for the children. Complainants are not ready to have cases taken to court as all they want is for the defaulter to maintain the child. As police we rely on complainants input and willingness to proceed with the case to court, otherwise the police risk having hostile witnesses in court. Cases also are likely to be withdrawn and so it is difficult under the circumstances for the police to insist on prosecuting cases of child neglect. The police are reluctant to arrest breadwinners because doing so will compound the situation of the child.

To buttress the above observations, a 36 year old married and unemployed woman of Kapara said:

I know it's an offence, he was told on Friday, they wanted to lock him but I said I just want help, let him work so that he helps us. I wouldn't want him to be arrested if he doesn't want to help its okay. If I have him arrested his relatives will blame me for having him arrested just for support, I just want help only. He can be punished in other ways not being arrested.

One prosecutor revealed that the police view child neglect as domestic matter that can be sorted out away from the police and so don't find reasons to arrest. This shows the joint role officers and complainants play in making the child neglect law difficult to enforce. My view is that if the police had the will to prosecute, a few cases would be reaching the courts and reports of how complainants become hostile and withdraw cases would be recorded. At the moment, no case ever reaches the court. The study also indicates that police officers find the child neglect law difficult to enforce because a warrant of arrest has to be obtained from the magistrates' court. Furthermore the study 's findings indicate that the assessment of whether a person neglecting to provide is doing so deliberately or is just unable to was one reason why the law not enforceable. This clearly indicates the extent to which police officers do not understand the law they are mandated to enforce. The law on child neglect excludes defaulters who are unable to provide due to poverty. Her observation suggests that the police are not even sure who should be accountable for the child neglect offence. Another officer explained that the law does not define whether it

includes children born in or outside wedlock; that children born outside wedlock are not taken care of by the penal provisions and that the way our law is framed is a major problem.

He was not even sure who a child by law is. The study also indicates that officers do not know the duration for which neglect should have occurred for one to be charged e.g. one officer explained that the law does not specify the period within which one stopped providing for the children. The extent to which the police officers displayed their ignorance of the law is worrying. I attribute this to the counselling approach they use in child neglect. Police officers should at least try to arrest defaulters to enhance their policing skills.

The study further indicates that apart from the child neglect law, police officers do not understand the CPC. A Principal Resident Magistrate (PRM) observed that the child neglect law is difficult to enforce because the police do not understand section 90 of the CPC. I concur with his assertion because during the study, one officer explained that a warrant of arrest has to be obtained from the local court while another did not even know what the document obtainable from the court was called as he simply referred to it 'a document'. However, the PRM clarified that under Section 90 of the CPC regarding child neglect cases, complainants can complain both to the courts and to the police stations and at the court, magistrates can arrest on the warrant.

Section 8 of the CPC says in criminal cases, a subordinate court may promote reconciliation, and facilitate the settlement in an amicable way, of proceedings for assault, or for any other offence of a personal or private nature, not amounting to a felony and not aggravated in degree, in terms of payment or compensation or to other terms approved by such court and may therefore, order the proceedings to be stayed.

In view of the above provisions, police officers just need to arrest and leave the courts to reconcile parties or deliver judgment based on facts of individual cases. The view of one officer that the police opt for non prosecution of cases of child neglect because there is provision of counselling parties involved is flawed. Counselling should be done to defaulters whose reasons may not be deliberate per se. This issue of counselling is not done at the appropriate time because counselling especially to defaulters of grave neglect should be left to the court.

Currently, police officers have hijacked the role of magistrates by not understanding the provisions on counselling enshrined in the *Zambian Police Act*.

The study also revealed that the police lack resources to investigate child neglect cases. This is true, CPU in Chipata neither has manpower nor funding with one coordinator who squats at the department of Social Welfare due to lack of office space. The unit has not made progress since its creation. VSU's allocation of funding is not only insufficient but is usually diverted. Moreover, priority is given to felonies like murder.

A statement made by one officer that "*after all an arrest is not always necessary*" shows the need to retrain officers when to apply it otherwise the community risks living with criminals. What exacerbates the operations of VSU as a unit is that the Divisional Motor Transport Officer from my experience sometimes refuses to refuel VSU motor vehicles and only prefers refuelling the vehicle for cases other than VSU cases, including senior officers' private and unofficial errands.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The study proved that the current law on child neglect in force is not effective in dealing with child neglect. The Affirmative policy and legislative developments in an effort to curb child neglect in compliance with international instruments to which Zambia is a party have resulted in a solid frame work to protect children from neglect. Government's commitment is commendable only on paper, as law enforcement officers fail to work within the existing legal frame work. While legislative developments show that government knows what must be done to protect children from neglect, this has not been prioritized in terms of: firstly, monitoring and developing data capturing procedures to create records of cases of deliberate neglect inflicted on children; secondly, in terms of resources to train and re-train law enforcement officers to investigate these cases; and, thirdly, in terms of resources for support systems for neglected children and, finally, in terms of the holding of consultative meetings on challenges the police face in enforcing the law and feasible review of the law. Thus the affirmative policy and legislative developments have not had the desired impact for the majority of women who complain on behalf of these neglected children.

While the study revealed that the police are not the complainants' first point of access to justice in cases of child neglect, the majority of the complainants trusted the enforcing power of the police. However, the police are reluctant to arrest and prosecute defaulters and so the child neglect law has not served as a deterrent at all to defaulters. Their response to child neglect is not desirable as counselling does not necessarily improve the situation and, when it does, it only does so to a slight extent. The 'call out' way of summoning defaulters to the police is sometimes not complied with, as some defaulters choose not to show up or show up very late subjecting the complainant to hardships including hunger and lack of toilet facilities resulting from having to wait long hours for the defaulter. While evidence shows that some non-compliant defaulters are arrested, this is not a must as the police lack resources to arrest every non-compliant defaulter.

From the findings it is evident that the law is difficult to enforce; the police do not understand the very law on child neglect that they are enforcing, a situation which is exacerbated by their lack of knowledge of the CPC. Furthermore, the relationship between defaulter and complainant, which forces the complainant to withdraw their complaints before proceeding to court, makes the probability of withdrawals possible as the law does not give full authority to law enforcement officers to compel complainants to go to court. The police's considerations of the best interest of the child makes them fail to arrest defaulters because they believe that arresting defaulters causes more harm to children because, while in prison, defaulters are unable to raise money to support them. Despite their being trained and attested officers, with the establishment of VSU and CPU, it is shocking that the police still view neglect as a domestic matter that can be sorted out away from the police, and, as a result, do not find reasons to arrest. The police also grapple with problems of resources; CPU lacks office space, transport and manpower.

These findings call for realistic interventions as discussed on below to address the issues raised so that the quality of lives of both women and children is enhanced to secure a better future for children. Child abuse can be overcome. Given the necessary information, means and support, individuals and communities can protect children from abuse⁵. Therefore, the study makes recommendations in the following areas.

5.2 Recommendations

5.2.1 Law Reform

In criminal offences, effective enforcement is achieved by a law that addresses child neglect practically. The Penal Code should be amended to make child neglect a felony and to introduce counselling, community service and payment of maintenance as alternatives to punishments,

⁵ Remarks made by Stella Goings the then Zambian Resident UNICEF Representative.

especially imprisonment, which are currently stipulated in the Penal Code. Legislation must be reviewed to specify which cases may be treated with counselling at the police station. The CPC should be amended to empower officers to give full authority to law enforcement officers to compel complainants to go to court, especially in cases where the extent of the neglect is grave.

5.2.2 Integration of Members of Criminal Justice System

The CJS should not rely on the Police alone to deal with child neglect. Any member in the CJS who interacts with children in any capacity should be given a mandate to deal with child neglect including powers of arrest.

5.2.3 Monitoring the Implementation of Enacted Laws

The Anti-Gender Violence Act 2011 has integrated some officers to apply for protection orders for children; however the situation still remains the same as police officers have not yet acquainted themselves with the provisions of the Act and so GRZ must train them to ensure contents enshrined in the Act are implemented. GRZ must also form committees to monitor the implementation of the laws.

5.2.4 Establishment of Family Courts and Child Community Services

Since both the police officers and complainants are not willing to take cases to the courts, family courts should be set up to introduce the idea of moving away from the general courts of law. Since child neglect is a major community concern, local child community services through neighbourhood watch groups should be established in the communities to enable people to report neglect to any member of the CJS mandated by law to deal with child neglect. GRZ must allocate funding to the CPUs to enable them to investigate cases effectively.

5.2.5 Specialization

VSU deals with all forms of abuses and should be delinked from dealing with issues concerning children. CPUs should be strengthened to improve the quality of services in the system.

5.2.6 *Abolishing of Summon Fees*

Fees for summons should be scrapped to allow the poor majority to access the court.

5.2.7 *Re-designing of the Curriculum*

The Police curriculum should be re-designed to incorporate training on how all officers should respond to child neglect cases. Officers should be trained on the CPC regarding the correct procedures to be adopted when summoning defaulters to the police for questioning. Although the police are required to exercise their discretion in the exercise of their duties, the CPC clearly gives to magistrates the decision as to what is in best interest of children; the Police should not usurp this power and prevent child abuse cases from proceeding to court so that magistrates can make this decision.

5.2.8 *Strengthening of CPU*

CPU should be created by an Act of Parliament to facilitate development of an establishment to enable adequate manpower be deployed and funding be allocated. It is difficult under the circumstances for both human and material resources to be allocated because there is no establishment for CPU.

The action plan in Table 5, below, offers a vision of how the child neglect law can effectively be enforced through performance appraisal by identifying and prioritizing activities that will ensure that the set target goals are achieved within a given time framework.

Table 5: Showing an Action Plan to put the Research's Recommendations into effect

Objective	Proposed Action	Key Task	Responsible person/Body	Partners to consult	Progress	Target Date	Success Indicator
To make child neglect a felony	Law Reform	Make child neglect a felony	Ministry of Justice & Zambia Law Development Commission(ZLDC)	Members of Criminal Justice System(CJS)&NGOS	A Number of consultative workshops held	2015	Section 169 of the penal code amended
To amend police Act to recognize child protection unit(CPU)	Law Reform	To Strengthen CPU	Ministry of Justice & ZLDC	CJS members & NGOS	A number of consultative workshops held	2015	Police Act amended to recognize CPU
To review types of punishment meted by the courts	Law Reform	Include counselling, community service & child maintenance as alternatives to punishment	Ministry of Justice & ZLDC	CJS members & NGOS	Number of consultative meetings held	2015	Section 169 of Penal code amended to include counselling, community service & compel defaulters to maintain their children

To amend CPC to specify circumstances under which counselling can be offered at the police.	Law Reform	To amend CPC to specify when counselling can be done at the police.	Ministry of Justice & ZLDC	CJS members & NGOS	Number of meetings held	2015	Section 90 of CPC amended to specify circumstances under which counselling can be done at the police
To reduce withdrawals in child neglect	Law Reform	Amend CPC to prevent complainants from withdrawing cases at will.	Ministry of Justice & ZLDC	CJS members & NGOS	Number of meetings held	2015	CPC amended to integrate other players
To adopt a multi-dimensional approach in dealing with child neglect	Create child protection committees	Integrate other players	Ministry of Community Development, Mother & child health	CJS & line ministries, churches & NGOS	Planning meeting held	2013	Child protection committees created to integrate other players
To create an enabling environment for hearing of family matters, speedy	Law Reform	Set up Family Courts & Child Community Services	Ministry of Justice & ZLDC	CJS members & NGOS and local leaders	Consultative meetings held	2015	Subordinate Court & Police Act amended

conclusions of cases & enable detection of child neglect in communities							
To enable poor women access the local courts	Law Reform	Abolish Summon Fees	Ministry of Justice & ZLDC	NGOS, magistrates	Stake holders meeting held	2015	Local Courts Act amended
To ensure that laws are implemented	Monitoring Implementation	To come up with a monitoring & Implementation framework	NGOS, International Child rights organizations, media	NGOS & International Organizations	TV & Radio programs featuring NGOS and International Child Rights Organizations, Contributions from members of the public	June 2012	evaluation of crime statistics
Separate Child protection from VSU	Specialization	To improve way cases are handled	Police stations	Officers-in charge, VSU & CPU officers	Invitation letters sent to VSU, CPU & officers-in-charge of stations to attend a specialization meeting	2013	Handling of child issues by CPU

To include child rights course in the syllabus	Curriculum Re-design	Develop a child rights course syllabus at police college	police college	Gender Ministry, ,Human rights organizations	Meeting with stakeholders	2013	Included in the 2013 syllabus intake
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Appendix 1: Table showing the Police's failure to report child neglect cases at the VSU despite its receipt of daily reports

Part of the Returns for the Year 2011

Offence	Report	C/ Forward	W/ Drawn at Police	Conviction	Acquittals	Cases in Court	W/drawn at Court	Reconciliation	TOTAL
Assault OABH	122	22	5	31	0	24	10	30	122
Rape	8	4	0	0	0	4	0	0	8
Attempted Rape	2	2	0	0	0	0	0	0	2
Indecent Assault On Female	3	1	0	0	0	2	0	0	3
Dep/Of Their Benefits	0	0	0	0	0	0	0	0	0
Defilement	80	48	5	16	0	2	9	0	80

Child Neglect	0	0	0	0	0	0	0	0	0
Theft	11	1	3	5	0	0	0	2	11
Abduction	2	0	1	1	0	0	0	0	2
Use Of Insulting Language	15	0	0	2	0	0	5	8	15
Child Desertion	4	0	0	0	0	0	0	4	4

Source: Divisional VSU office 2011.

Appendix 2: Table showing statistics of child neglect cases which are recorded at SGBV

Statistics of from January to 24th November 2011

First Quarter

Age range	Females	males
10-14	07	13
15-19	20	20

Second Quarter

Age range	Females	males
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5-9	12	11
10-14	06	11

Source: District Social Welfare Office 2011.

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