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AN ANALYSIS OF THE LAW AND THE EFFECTIVENESS OF GOVERNMENT'S AND  
NON-GOVERNMENTAL ORGANISATIONS' INTERVENTIONS IN CURBING  
UNDER-AGE COMMERCIAL SEX WORK IN EPWORTH AND ALONG THE  
MUKUVISI RIVER BANK, HARARE, ZIMBABWE

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By

TECKLA SEKAI NYAKURERWA

Supervisor: Professor Julie Stewart

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Women's Law, Southern and Eastern African Regional Centre for Women's Law, University  
of Zimbabwe

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## *Abstract*

Child prostitution has become a global phenomenon which raises concern and alarm. In Zimbabwe children as young as eight years old are engaging in prostitution in the area along the Mukuvisi River and in Epworth, Harare, Zimbabwe's capital city. Child prostitution has become an acceptable source of livelihood in these two communities, due to a lack of alternatives. Despite the prevalence of the practice and a comprehensive legal framework to curb it, implementation of the law is lacking and young girls continue to be sexually abused.

This study investigates interventions that have been made by the government and by non-governmental organisations in curbing the practice in line with human rights obligations. The research adopted several methodological approaches. The women's law approach was important to show the interplay between the law, policy and life. The lived experiences of the young girls in prostitution were used as the starting point. This approach in combination with the grounded approach unearthed the reasons behind this disturbing practice as well as the gaps in the implementation of the law. The human rights approach was employed to show the deficiencies in the law and its implementation in comparison to international human rights standards. Qualitative research methods were an important source of information through the use of interviews. The research revealed a number of factors which have pushed children into prostitution. The demand side of child prostitution was investigated and findings were made as to why young girls were in demand. Emerging issues such as the influence of relatives and peers offered new perspectives on the issue under research. The role of law enforcement and social services is also investigated to highlight the deficiencies in the law and policy.

Interventions and strategies are proposed to effectively end the abuse and exploitation of children involved in prostitution. The interventions include legal, social and political interventions. The strategies point to the need to fully implement the law and policy in order to afford full protection against child sexual abuse to children in prostitution.

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## **Declaration**

I, Teckla Sekai Nyakurerwa, certify that this dissertation is my original work. It is an honest and true effort of my research. I certify that the work has not been presented before in any other thesis.

SIGNED: .....

DATE: .....

This dissertation was submitted for examination with my approval as the University Supervisor.

SIGNED: .....

DATE: .....

Professor J.E. Stewart

Director of the Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe

SIGNED: .....

DATE: .....

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## **Abbreviations and acronyms**

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune-Deficiency Syndrome
BEAM	Basic Education Assistance Module
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	United Nations Convention on the Rights of the Child
HIV	Human Immune-Deficiency Syndrome
ICESCR	International Covenant on Economic, Social and Cultural Rights
JCT	Justice for Children Trust
MSF	Medecins Sans Frontiers
NAP	National Action Plan
NAPOVC	National Action Plan (NAP) for orphans and vulnerable children (OVC)
NGO	Non-governmental organisation
OPC	Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
OVC	Orphans and Vulnerable Children
PEP	Post-exposure prophylaxis
STI	Sexually transmitted infection
UDHR	Universal Declaration of Human Rights
VFU	Victim Friendly Unit
ZLHR	Zimbabwe Lawyers for Human Rights

## **List of statutes and national policies**

Constitution of Zimbabwe

The Children's Act [Chapter 5:06]

The Criminal Law (Codification and Reform) Act [Chapter 9:23]

The Criminal Procedure and Evidence Act [Chapter 9:07]

The National Action Plan for Orphans and Vulnerable Children (NAPOVC)

## **List of international human rights instruments**

African Charter on Human and Peoples' Rights (1981)(ACHPR)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

African Charter on the Rights and Welfare of the Child (1990)(ACRWC)

Convention on the Elimination of All Forms of Discrimination Against Women (1981)(CEDAW)

International Covenant on Economic, Social and Cultural Rights (1976)

Universal Declaration of Human Rights (1948)(UDHR)

United Nations Convention on the Rights of the Child (1990) (CRC)

Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000)

## **List of cases**

*Chipo Nyamanhindi and 8 Others v Minister of Home Affairs* CCZ 2015

*Mudzuru and Another v Minister of Justice and Parliamentary Affairs and 2 Others* CCZ-12-2015

*S v Banda; S v Chakamoga* HH-47-2016

*S v Dube* HB-116-2010; 2010 (2) ZLR 400 (H)

*S v Mhondiwa* HB-112-2010

*S v Mushore* HH-188-2011



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## **Executive summary**

Newspapers make headlines of stories of children in prostitution as a marketing strategy. Yet this kind of attention only magnifies the problem by telling sensational versions of the practice. Children in prostitution face abuse and exploitation. The purpose of this research was therefore to investigate government and non-governmental interventions in ensuring that young girls are protected from engaging in prostitution. Zimbabwe has an all inclusive legal framework to effectively curb all forms of child sexual abuse including abuse of children in prostitution. Children's rights are also protected in terms of international human rights conventions, a number of which Zimbabwe has ratified. However despite the protection afforded in terms of local and international law child prostitution and consequently child sexual abuse continues.

A number of assumptions were formulated to guide the research ranging from establishing the existence of child prostitution along the Mukuvisi River bank and in Epworth to the need for interventions to curb the practice. Assumptions 1 to 3 relate to the involvement of young girls in prostitution and the disturbing fact that some adults, including their relatives, have used the practice as a way of making an income for themselves. Assumptions 4 to 6 relate to the factors which push the young girls into sex work as well the health and physical risks encountered in prostitution by the children. Assumptions 7 to 10 analyse the interventions by different players to get the girls out of this situation.

In order to get the real facts on the ground I used a variety of methodologies. The women's law approach was an invaluable tool to help me understand the factors behind the decision by the girls to become sex workers at such a young age. Economic difficulties were found to be the most common factor. The majority of respondents interviewed were orphans and in a bid to make an income they viewed prostitution as the only option. This was also linked to low levels of education and a lack of technical skills. New discoveries that were being made in the field and had not been previously anticipated were addressed using grounded theory. Sex and gender analysis was useful in explaining why girls in prostitution were in demand hence the increase in the number of girls being recruited into prostitution. Focus was also on the law and international human rights provisions in order to see where gaps exist and suggest necessary recommendations.

Literature on child prostitution in countries such as Malaysia, where the practice is prevalent, points to the involvement of pimps who control the young girls' activities for the pimps' own personal gain. In Epworth and at Mukuvisi the involvement of adults took various forms.

At the Mukuvisi River the findings were that the need for shelter has forced girls as young as eight years old into prostitution. An adult sex worker who owns a shack along the river bank has recruited two young girls who were previously living on the streets of Harare and offered them a place to live. However the catch is that they had to engage in prostitution and make money for their own upkeep as well as for the upkeep of the adult sex worker and her children. In Epworth it emerged that some mothers were introducing their daughters into prostitution to supplement the family income.

Zimbabwe's legal framework offers protection of children's rights by ensuring that children under the age of sixteen are protected from sexual abuse. This is in terms of the Constitution, the Criminal Law (Codification and Reform) Act and the Children's Act. Zimbabwe is also a signatory of the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (CRC). Zimbabwe therefore has an obligation to combat the exploitation of children. Child commercial sex work falls into this category. Socio-economic hardships were identified as the driving force behind young girls engaging in sex work. In order to eradicate poverty international human rights instruments place an obligation on state parties to ensure that every person has access to housing, health, food, and medical care among others. Despite the existence of various protective laws it emerged that their implementation is lacking.

In addition to putting legislative measures in place, implementation of these laws needs to be addressed. Parents, home owners and bar owners continue to exploit children in sex work for their own financial benefit. Despite the existence of legislation which covers this exploitation, law enforcement has turned a blind eye focusing only on the sex workers without dealing with the whole human chain which perpetuates it. Judicial officers also have a role to play. The sentences which are being imposed are not deterrent enough to end child sexual abuse. As highlighted, magistrates tend to look at children in sex work with a biased lens and are likely to acquit the perpetrator. The issue therefore is about attitudes. There is a need to train judicial officers about child rights as well as the specialised skills required in handling cases

involving children. Child prostitution should be treated differently from adult prostitution and also it should be recognised it as a form of child sexual victimisation, not as child deviance.

Investigating and prosecuting cases of children in sex workers requires adequate resources in order to gather the evidence needed. A lack of resources has hampered efforts to deal with the cases and in fact the police officers and the prosecutors I spoke to lacked motivation as a result. Financial resources are needed to ensure that the medical reports are available as it was found that the inability to acquire them has led to the abandonment of cases. The issue of transport came up as another major hurdle. The officers require transport to carry out investigations and to take both the accused persons and witnesses to court. Cases are taking a long time to complete due to a lack of transport and interventions in terms of budgeting are needed in this area.

While the law is an important tool in the protection of children's rights there is a need to address the root causes of child prostitution. This entails improving the children's economic standing to ensure that they resort to sex work as the easy way out of their situation. The first step is to come up with a register of the numbers of children in need of help. To date the National Action Plan has no estimates regarding the number of vulnerable children. Added to this is a lack of adequate resources to ensure that the Social Services Department works efficiently. There is a need to increase funding to the Department of Social Services so that it can fulfil its mandate.

The conclusion reached is that commercial child sex work is a reality in Zimbabwe, and children as young as eight years old have resorted to prostitution for different socio-economic reasons. The situation is made worse by adults who consider the demand for young girls' services as a chance to make money. Attitudes about prostitution also seem to have a bearing on the way law enforcement agencies handle cases of children in prostitution. Addressing the causes of child prostitution such as limited educational opportunities, unemployment and a lack of basic necessities such as shelter and food would be the first step in ending sexual exploitation of children. Ensuring that the law is fully implemented and strengthening social services would ensure that the root causes are addressed. The National Action Plan for Orphans and Vulnerable Children offers a framework for the provision of these social services. What remains to be done is to ensure that adequate provisions are made in terms of budgetary allocations.

## CHAPTER ONE

### 1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

#### 1.1 Is this real? Going beyond the sensationalism

The number of children who are becoming victims of child sexual abuse by engaging in prostitution is increasing. By engaging in prostitution children are deprived of their innocent childhood (World Congress on the Commercial and Sexual Exploitation of Children, Sweden, 1996). In particular education, good health and play are affected. The term 'child prostitution' refers to the engagement of children in sexual activities for remuneration (United Nations, 1995). In Zimbabwe the Criminal Law (Codification and Reform) Act [Chapter 9:23] (the Criminal Code) does not define prostitution but gives a general reference to soliciting in section 81 in terms of which soliciting for the purposes of prostitution is criminalised. The meaning given to 'soliciting' is soliciting in a public or private public or by publication in print or electronic media. The offence of soliciting another person is soliciting and the person is liable to pay a fine or imprisonment not exceeding six months (section 81(2) of the Criminal Code).

There has been an increase in the number of newspaper reports on children being involved in sex work in the area along the Mukuvisi River. The articles caught my attention not because of their flashy headlines such as, 'Teen strippers evade ghettos' (Weekend Post, 5-11 February 2016) but because of the general lack of concern for the young girls' health and legal rights. The analysis of language in discussions of issues of child sexual abuse has become the subject of research (Goddard *et al.*, 2005). The discussions have focused on the negative portrayal of children in print media and the minimisation of the seriousness of the issues of child abuse. The newspaper articles I came across made headline stories of these young girls in sex work and such catchy titles were used to boost newspaper sales but they had a complete disregard for the need to safeguard the rights of children. But the articles, despite the sensationalism, still highlighted a problem that needed to be explored on another level. The fact that these issues were being reported means that they are known yet it seems nothing was being done about them despite the fact that children were involved. I therefore set out to find out what was happening in reality.

During the second semester of the Masters in Women's Law in the sexuality class the topic on commercial sex work was discussed with a strong emphasis on arguments in favour of decriminalisation of sex work related to adult sex workers who were voluntarily engaging in work. There have been calls to consider sex work as work and to get rid of the negative labels attached to prostitution (Barry, 1995). However, in relation to children in prostitution these arguments are not applicable as children lack the ability to make decisions regarding their sexuality and the power dynamics between adults and children further leads to the exploitation of children (Barrett, 1997). For this reason it was clear in my mind that sex work which involved children was a violation of their legal rights and could not be ignored.

## **1.2 Why doesn't anyone care?**

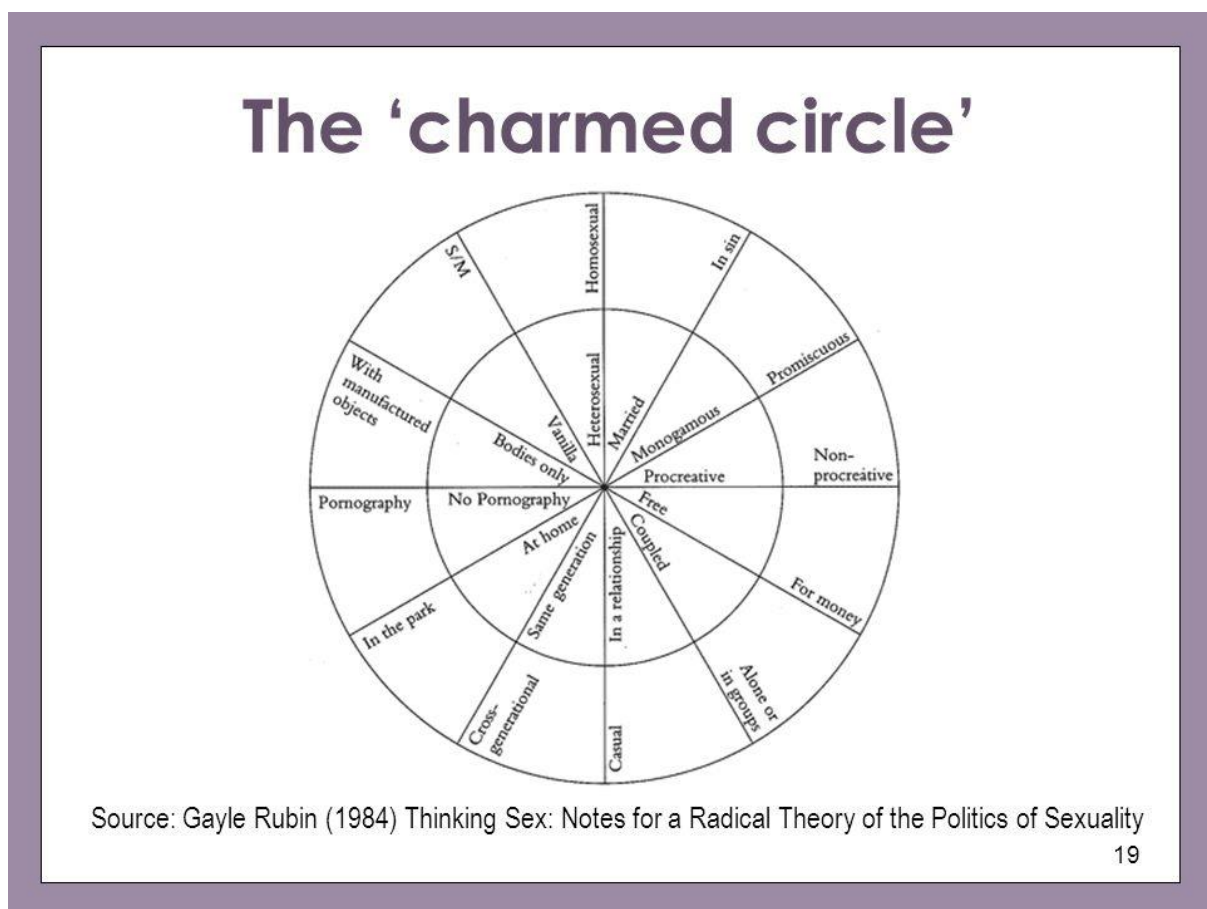
As a lawyer I was aware that section 70 of the Criminal Code of Zimbabwe deals with issues of child sexual abuse comprehensively yet young girls were being reported to be freely involved in sex work. Protection of children from all forms of abuse is further provided for in the Constitution and the Children's Act [Chapter 5:06]. Engaging in sexual intercourse with a girl under the age of sixteen constitutes a criminal offence in terms of the Criminal Code. It therefore follows that engaging the services of a child in sex work is an offence despite the presence of consent on the part of the minor.

Sexual abuse and exploitation of children includes child prostitution, pornography, trafficking, and abduction. Early and forced marriage is also another form of abuse. Sexual exploitation of girls in prostitution results in exposure to HIV and AIDS. The Department of Child Welfare and Protection Services is mandated to offer protection to children in need of care in terms of the National Action Plan for Orphans and Vulnerable Children. Non-governmental organisations also provide support in this area. Yet I found that young girls, for varied reasons continue to be abused and no major steps are being taken to end it.

Despite all the efforts to curb child sexual abuse child prostitution still persists. The law has proved to be inadequate to address the problem of child prostitution. There is a need for other interventions to get the young girls in prostitution out of their situation. As I was exploring this phenomenon my analysis was that the reason why children in prostitution were not receiving the attention that is required had to do with perceptions about prostitution and sex work. Punitive and extreme stigma leads to certain types of sexual behaviour being ranked

lowly and sanctions being imposed on those who practise them (Rubin, 1984). According to Gayle Rubin's 'charmed circle' (Figure 1) sexuality which is good, natural and normal falls within the inner circle and is encouraged. Any sexual behaviour which violates these standards is considered abnormal and unnatural and is criminalised. Prostitution falls into this category. Arguments to explain why this is so point to the fact that women in prostitution wield some power and control over their sexuality and in that way they subvert dominant male sexualities (Tamale, 2011).

**Figure 1: Gayle Rubin's Charmed Circle (Rubin, 1984)**



As a result no attention is given to matters involving sex work except ensuring that it is criminalised. The failure to recognise that children are increasingly becoming involved in sex work means that they are lumped together with adults and the same moralistic attitudes applied to adults in sex work are applied to children. Unfortunately this stigma causes harm and leads to alienation of a group of individuals who require protection.

### **1.3 Statement of the problem**

There is an unprecedented increase in the number of girls under the age of 16 years being involved in sex work in Epworth and operating along the Mukuvisi River bank. In Epworth sex work among young girls has become an acceptable source of livelihood due to economic and social factors. These economic factors have particularly driven girls out of school and into sex work as they seek to make a living for themselves and their families. Sex work, for young girls, besides being sexual abuse has health risks and exposes girls to physical abuse. Although Zimbabwe has comprehensive legislation to curb child sexual abuse and has ratified international conventions for the protection of children's rights, the prevalence of young girls engaging in sex work still remains high. While these laws are there on paper in reality implementation of the laws is lacking and girls therefore continue to be abused. This suggests that other interventions are required to afford their full protection.

### **1.4 Objectives of the study**

The main aim of the study was:

- To investigate why, despite the existence of comprehensive legislation, Constitutional provisions and international human rights instruments on child sexual abuse, young girls continue to be sexually abused through involvement in sex work.

The objectives from this overarching aim are:

- To find out if young girls under the age of 16 years are engaging in sex work.
- To analyse why, despite existence of laws, the implementation of the laws on child sexual abuse is lacking.
- To analyse current interventions by the government and non-governmental organisations in curbing child prostitution.
- In light of the above to come up with strategies to address the deficiencies in curbing child prostitution.



## **1.5 The definition of a child**

Section 81 of the Constitution of Zimbabwe defines a child as every boy and girl under the age of eighteen years. This is in line with Article 1 of the Convention on the Rights of the Child which sets the age at eighteen years. However in Zimbabwe certain statutes are not consistent with the provisions in the Constitution. In section 2 of the Children's Act [Chapter 5:06] a child is defined as any person under the age of sixteen years.

The Criminal Code provides for offences relating to sexual intercourse with a young person and the criminal offence refers to sexual intercourse with a male and female person under the age of 16 years. Zimbabwe has a plural legal system where general law operates alongside customary law. Under customary law there is no set definition of a child or set rules as to when a person is no longer a child. The determining factor is not age but physical growth, initiation, marriage and the setting up of a separate household (Stewart, 1990).

These inconsistencies in the law need to be addressed to match the Constitutional provisions. For the purposes of the current research the age of 16 years, being the age which constitutes statutory rape in terms of the Criminal Code, will be used.

## **1.6 Research assumptions**

The following assumptions informed the research:

1. There are young girls under the age of 16 years involved in commercial sex work in the area along the Mukuvisi River and in Epworth in Harare.
2. There are older women and men in these areas who introduced the young girls into sex work.
3. These older women are living off the money made by the young girls from sex work.
4. The young girls under 16 years of age were forced into sex work by economic and social difficulties.
5. The young girls are exposed to HIV, AIDS and other sexually transmitted diseases because they engage in unprotected sex.
6. There is physical and sexual exploitation of these young girls by older men who seek their services.

7. Despite knowing that young girls are in sex work, the police have not intervened to protect these girls from being exploited.
8. There are inadequate interventions by the government to protect girls under the age of 16 years from abuse and exploitation.
9. There are inadequate interventions by non-governmental organisations to protect these young girls from exploitation.
10. There is a need for legal, non-legal, and policy strategies to protect girl children from engaging in sex work at a young age.

### **1.7 Research questions**

The following research questions were based on the abovementioned research assumptions:

1. Are there young girls under the age of 16 years involved in commercial sex work in the area along the Mukuvisi River and in Epworth in Harare?
2. Are there older women and men in these areas who introduced the young girls into sex work?
3. Are these older women living off the money made by the young girls from sex work?
4. Are the young girls under 16 years of age forced into sex work by economic and social difficulties?
5. Are the young girls exposed to HIV, AIDS and other sexually transmitted diseases because they engage in unprotected sex?
6. Is there physical and sexual exploitation of these young girls by older men who seek their services?
7. Despite knowing that young girls are in sex work have the police intervened to protect these girls from being exploited?
8. Are the interventions by the government to protect girls under the age of 16 years from abuse and exploitation inadequate?
9. Are the interventions by non-governmental organisations to protect these young girls from exploitation inadequate?
10. Is there a need for legal, non-legal, and policy strategies to protect girl children from engaging in sex work at a young age?

## 1.8 Demarcation of the study

Initially the research was intended to be limited to the Mukuvisi River and its environs, close to Seke road in Harare. However, after my first field visit I discovered that a large number of the girls operating in the area had come from Epworth and were now living there or they come there on a daily basis to look for clients. Epworth is located 14 km from Harare and the Mukuvisi River flows from the east of Harare and flows through the city centre (Figure 2). It is in this area in the city centre where sex workers, including young sex workers, have found a base targeting mainly clients from the Graniteside industrial area. In Epworth the research was limited to the Magada area, Overspill and Domboramwari.

**Figure 2: Map of Epworth, Harare (Source: Google, 2016)**



## **CHAPTER TWO**

### **2.0 RESEARCH METHODOLOGY AND METHODS**

#### **2.1 The journey: Methodological approaches**

In the research process methodologies, theories and methods are all linked. A researcher needs to identify empirical sources which will assist in answering the research questions (Bentzon *et al.*, 1998). The chapter is a description of my journey and my experiences in the field as I collected data.

In order to find out what is happening on the ground I went to the Mukuvisi River bank to explore the realities of the girls under the age of 16 years who are involved in sex work. The women's law approach entails collecting data as the starting point to unearth the interaction between law, policy and reality. The main purpose is to understand and improve women's position in society (Dahl, 1987). I therefore sought to find the young girls themselves along the river bank.

Identifying key respondents was not easy at first because discussing issues of sexuality causes discomfort to many people. Particularly in our African culture these issues are not meant to be discussed with children. So explaining that I was looking for children who engage in prostitution had to be done tactfully. I decided to talk to various people I met to find information about the issues I was exploring. In no time I was linked to an adult sex worker who linked me to the respondents I was looking for. I was then able to conduct interviews with the young sex workers. I spoke to them about the reasons they were engaging in commercial sex work and the realities of their day to day lives living on the river bank. Adult sex workers were also interviewed with a view to establish their influence and relationship with the young sex workers.

The same women's law approach was employed in Epworth particularly to establish that girls were indeed engaging in sex work. The lived realities of the young girls in Epworth pointed to lack of educational opportunities, poor living conditions and lack of protection from law enforcement agencies. One of my assumptions addressed the risks involved in sex work including the risk of exposure to sexually transmitted diseases.

Through the use of interviews with the young girls I acquired information regarding the health risks involved and I was indeed able to see for myself the effects of the diseases on young girls. At the Mukuvisi River a young girl was visibly sick and in need of medication and interviewing her unearthed some realities which could not have been seen without employing the women's law approach. Beauty, aged thirteen, was suffering from a sexually transmitted disease, according to an older sex worker who lives with her. I was informed that although no proper diagnosis had been made the older sex worker had seen the same signs in other sex workers who had been diagnosed with STIs. Mai Brendon, the adult sex worker, was supplying the young girl with medication in the form of painkillers. She said that she did not have money to take her to a clinic and moreover the nurses at the clinic ask too many questions. Although the purpose of my visit had been to get information I found myself getting emotionally involved. I felt that I had a moral duty to assist this young girl who seemed to be getting weaker by the minute. I gave Mai Brendon some money for transport so that she could take Beauty to a clinic in Mbare. I returned to the place a few weeks later and was relieved to find Beauty well healed and fully recovered.

By engaging with the girls I was able to unearth the reasons why the police have not adequately dealt with cases of children in sex work despite a legal framework which provides for their protection. The women's law approach's thrust towards understanding the complexities of women's interaction with the law was also instrumental in researching the treatment of children in sex work within the criminal justice system. The young girls narrated how they get caught up in police round ups. This was an important finding to develop arguments as to whether the girls are offenders or victims in our legal system. The women's law approach was also instrumental in understanding the attitudes of judicial officers such as magistrates in handling cases involving children in sex work. This helped to explain why children continue to engage in prostitution as it was clear that attitudes influence judgments and ultimately the fight to end child prostitution.

As I collected data from adult and child sex workers I picked up new leads and needed to follow up on these to come up with answers for the new questions. My assumptions directed the initial questions and as I collected data I then realised the need to analyse the data and from there I got new directions and new sources of data. This approach is referred to as the dung beetle method and through this process new methodologies, perspectives and theories are hatched (Bentzon *et al.*, 1998: 18).

Initially interviews targeted mainly sex workers, that is, both young and adult sex workers. As I collected data new leads came up. I realised that landlords and mothers of young sex workers play an important role in the lives of the girls and therefore the need to understand how their roles arose. Through interviews I was able to engage with these new leads. The reasons given for engaging in sex work led me to new sources of data.

Another key issue which arose is one of health risks faced by underage sex workers. My assumptions regarding health risks were that children in sex work are exposed to sexually transmitted diseases but as I interviewed the young sex workers I realised that it was not only the exposure to diseases which posed problems but access to healthcare as well. It was discovered that there were complications which the girls encounter and the issues which arose had human rights implications which needed to be addressed. Healthcare facilities which had not been targeted as respondents in the research design suddenly became relevant. Domboramwari Clinic, a council clinic, became an important source of informants and after interviewing officials at the MSF Clinic, a non-governmental health facility also became a new source of data.

Although the police were one of my key informants an analysis of the data collected from sex workers raised new questions which had not been on my list of questions for the police and these questions needed to be answered by the police. Using the grounded theory I went beyond my prepared questions to ask new ones about how the police handle young sex workers when they come across them during their raids.

As I was collecting data I kept in mind the state's obligations under various human rights instruments relating to protection of young women and children from sexual exploitation. There was a need to find out whether local legislation was in conformity with international standards. Further, data collection included finding out if human rights issues were being addressed through interventions and support based activities. There has been debate regarding sex work with advocates calling for decriminalisation of sex work for persons over the age of 18. However, sex work involving girls under the age of 18 years has been described as exploitation. Protection of children from exploitation in prostitution and trafficking of persons is provided for in various human rights instruments.

The Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Protocol to the African Charter on Human and Peoples' Rights On the Rights Of Women in Africa (Maputo Protocol) state that state parties should adopt measures to ensure protection of children. During the research it became clear that one of the major driving forces behind child sex work was the lack of implementation of the law. Although on paper the state has come up with a comprehensive framework for the protection of children this has proved to be ineffective. Interacting with law enforcement agencies was important in investigating assumptions about interventions by the state to curb child prostitution, which is a human rights issue.

The best interest of the child principle is central to the discourse around children's rights. Throughout the research the aim was to analyse whether the state was meeting its obligations under international law through coming up with measures, including the implementation of laws to ensure that the best interests of the child are upheld. Early in the research a male respondent indicated that young sex workers were easier to negotiate with and to control. In order to explore concepts of masculinities, the sex and gender analysis was used. As a result I found it important to interview a number of men and organisations which deal with male issues to find if such beliefs are still prevalent and their effect on the fight against child prostitution which constitutes child sexual abuse.

Hegemonic masculinity refers to institutions which are structured to support male domination of females (Ratele, 2011: 399). It is these notions of masculinity and femininity which impact on sexuality in society (Zinanga, 1996). It is not uncommon for men to have multiple concurrent sexual partners. The fact that young girls were involved in sex work meant that there was a market for their services, in the form of men who prefer young girls. I set out to interview men to find out what attracted them to young girls.

Related offences in terms of the Criminal Code were an important component of the study. Zimbabwe has comprehensive legislation to curb child sexual abuse yet young girls continue to be abused. Child prostitution related offences which include sexual intercourse with a young person, soliciting, living off or facilitating prostitution, permitting a young person to resort to a place for the purpose of engaging in lawful sexual conduct and allowing a child to become a prostitute formed a central part of the study. The Legal Centralism approach starts from a standpoint that state recognised or enforced law is the important normative order

(Bentzon *et al.*, 1998: 31). From this premise I used the approach to interrogate the legal framework and to establish why it has failed to adequately deal with child prostitution. Using this method I interviewed law enforcement agents, analysed court judgments and legislation in order to investigate how the girls interact with the law.

There are normative structures and institutions which influence peoples' lives other than the formal law (Bentzon *et al.*, 1998: 101). So a further aim of the research was to analyse social, cultural, and legal institutions which have an effect on the young girls in sex work. I sought to examine the efforts being made by each of these to curb child prostitution. The influence of the society in Epworth was investigated to see how it contributed to the decision by the girls to engage in sex work. Interviewing the officials in various government and non-governmental organisations offices gave me answers to some questions raised by respondents. I interviewed officials from Justice for Children Trust as well as Padare Men's Forum to understand the extent of their interventions in line with my assumptions. Similarly governmental departments such as the Department of Child Welfare and Domboramwari Clinic were interviewed.

The actors and the structures approach was particularly helpful in engaging with the police to find out how they handle children in sex work. As a law officer with the Ministry of Justice I encountered no problems in getting permission to do my interviews with the police. I was even requested to assist with their awareness campaigns which they hold at the station in the mornings. Using this approach I was able to unearth reasons why the number of children in sex work was growing in Epworth as interviewing police officers showed that misinterpretation of the law has had a negative effect on the fight against child prostitution.

## **2.2 Research methods**

The purpose of the present study was to investigate why despite criminalisation girls under the age of 16 years continued to engage in sex work and to ascertain the extent to which interventions were working. To this end, qualitative research methods were used to get a deeper appreciation of the issues. Through qualitative research methods elements that are present in a setting are investigated through the use of people as the primary sources of data (Tsanga 2003: 41).



### 2.2.1 Individual interviews

Individual interviews with key informants were the primary source of data. Table 1 gives details of the respondents who were interviewed. Questions were drafted from my assumptions to ensure comprehensive coverage of the issues to be discussed. However I left some room for divergence where appropriate and in this way some emerging issues came up which were important. I was able to interview young girls in sex work in some instances individually but in most cases in the presence of other young sex workers or adult sex workers as in most instances interviews were done at places of residence.

Despite the lengthy processes involved in order to secure permission to interview government officials the wait was worth it. Officials were forthcoming during the interviews and I managed to get accurate information about issues being explored. At Domboramwari Police Station after getting permission from the officer in charge the officers in the victim friendly unit provided information including statics as well taking me into the community for clarification of certain issues.

**Table 1: Showing the number of respondents interviewed**

<b>INFORMANT</b>	<b>NO. INTERVIEWED</b>	<b>MALE</b>	<b>FEMALE</b>
Sex workers under the age of 16 years	20	-	20
Adult sex workers	3	-	3
Child welfare officers	1	1	-
Non-governmental officials	2	2	-
Police officers	4	3	1
Prosecutors	2	-	2
Health officials	1	-	1
Landlords	4	-	4
<b>TOTAL</b>	<b>37</b>	<b>6</b>	<b>31</b>

### 2.2.2 *Group discussions*

Group discussions became a valuable tool in collecting data although the group discussions had not been planned. It was during group discussions with sex workers, both young and adult, that I gathered valuable information relating to police raids. Group discussions offered different views on issues as well as opportunities to hear examples from different people. Talking to different age groups was helpful in understanding the causes of child prostitution.

**Table 2: Showing the list of group discussions**

<b>GROUP</b>	<b>NUMBER</b>
Sex workers	<b>6</b>
Community	<b>31</b>
<b>TOTAL</b>	<b>38</b>

### 2.2.3 *Secondary data sources*

The use of other sources of data such as books and internet sources was important in analysing issues as they provided other insights into the issues I was researching. Literature on child sexual abuse and child prostitution was available online and although it was not specific on Zimbabwe general discussions therein were valuable. Further, the comparisons with other countries were also important. In order to understand the courts' role in curbing child sex work I intended to peruse court documents to see how the courts were dealing with offences related to child prostitution in terms of section 70 and sections 81 to 87 of the Criminal Code. I failed to get the permission to peruse court records and had to resort to using online sources. In this way I was able to get court judgments and to analyse the sentences imposed to determine whether they were effective in curbing child prostitution. This method has its limitations as it does not provide the full picture to answer some of my questions. Triangulation with court officials such as magistrates and prosecutors becomes relevant in this case but permission to interview magistrates was also denied. The media has been awash with stories about teenage girls being involved in prostitution. Although these are not reliable sources of data they provided another perspective to the issue being the media's influence on child sexual abuse and exploitation.

### **2.3 Permission denied: Bureaucratic hurdles**

Some of the key respondents I had identified in the research design were magistrates. Cases involving children in prostitution are dealt with in terms of the Criminal Code and I therefore wanted to interview magistrates at the criminal court. Permission to interview magistrates was denied by the Judicial Services Commission and no official reasons were given. I followed up on the matter and wrote a letter giving fuller details to explain that the information was solely for research purposes but to no avail. Fortunately I have colleagues who are prosecutors in the criminal court and I overcame this hurdle by interviewing them.

### **2.4 Researcher's dilemma**

Listening to the accounts of young girls of how they ended up in sex work and their daily operations was emotionally draining. I was faced with a situation where I was interacting with children who clearly needed help but I could not do anything about it. Throughout the research process I was faced with questions which needed answers. Although my interaction with the young girls in sex work was for the purposes of my research I was confronted with ethical issues which I could not ignore. My first visit to the Mukuvisi River was particularly disturbing and I seriously considered dropping the topic to take up one which was less emotionally taxing. My supervisor offered invaluable support during our discussions and that encouraged me to assist in the small way that I could by working with law enforcement agents.

I was coming across people who were introducing children into sex work, brothels which are illegal under our law and night clubs which allowed children entry, among other illegal activities. I was faced with a difficult situation where I had to decide whether to report to the police or to leave it. At the same time it was clear that the police obviously knew that young girls were engaging in sex work but they were indifferent to the reality they were facing. After discussions with my supervisor I was advised to report my findings to the police in a bid to bring to their attention the goings on in Epworth. I went to Domboramwari Police Station to find out whether they were aware of the abuse of young girls in prostitution and to remind them again it was their duty to protect these girls. After raising my concerns one police officer remarked:

*'Ndiyo Epworth yacho iyoyo. Kuno uku zvinhu zvakadaro hazvichatityisi.'*

(Translation: ‘That is how it is in Epworth. Anything goes and we are not surprised by what you are saying.’)

This is the attitude of the police officers and despite their duty as officers in the victim friendly unit to assist children I got the feeling that in their opinion children in sex work are delinquents. A few days after raising the issue of children in sex work with the police they raided nightclubs in the Domboramwari area and rounded up sex workers including girls less than 18 years and beat them up and then released them without charge. I received a phone call from the girls I had interviewed explaining what had happened.

This was not the reaction I had anticipated. It is common for police officers to carry out raids at public places such as bars at night and to arrest sex workers. The charge in that case would be soliciting and the person would be liable to pay a fine. The police make no distinction between children in prostitution and adult sex workers. A more protective attitude needs to be adopted and cultivated when dealing with children in conflict with the law. This is the approach I had in my head when I engaged with the police. Ideally the police, in conjunction with the Social Services Department, are supposed to assist to get these girls out of their situation. Unfortunately, because of attitudes towards prostitution, the children in prostitution are treated as deviants. There was nothing more I could do about the completely unexpected results of my intervention save to advise the girls to approach the Zimbabwe Lawyers for Human Rights to report the assault by the police.

## **CHAPTER THREE**

### **3.0 CONCEPTUALISING CHILD PROSTITUTION AS CHILD SEXUAL ABUSE**

#### **3.1 Introduction**

The adage ‘caught between a rock and a hard place’ clearly applies to children in prostitution. On the one hand is the law which seeks to protect children from sexual abuse yet on the other hand, the same children often found themselves in conflict with the same law. This chapter is a discussion of the complexities of child prostitution as regards their interaction with the law.

#### **3.2 Child prostitution as child sexual abuse and exploitation**

Child sexual exploitation has been equated to child abuse (Bounds, 2015). Sexual exploitation however goes further to include an element of financial gain. Child sexual abuse would therefore involve sexual abuse of a child by an adult in exchange for cash, paid to the child or a person in control of the child (World Congress against Sexual Exploitation of Children, 1996). Child prostitution is a form of child sexual abuse and exploitation due to the power imbalances between the child and the adult seeking the child’s services.

#### **3.3 Children in prostitution: Offenders or victims?**

Young offenders in Zimbabwe are dealt with in terms of the Children’s Act and the Criminal Procedure and Evidence Act. The Magistrates’ Court and the Children’s Court handle children’s matters where children are in conflict with the law. The Children’s Act requires that when a child appears in court, a probation officer should be present to safeguard the interests of the child. The interests referred to include the special circumstances of the child which should be considered in order to ensure juvenile justice. Contrary to these requirements in the law, children in prostitution are arrested in the same manner in which adults are arrested. The charge is usually soliciting and the manner of arrest is rounding up. At the police station sex workers are usually released upon payment of a fine. For the young girls in prostitution the police do not treat them differently.

The same requirement for a probation officer to be present as provided for in the Act should apply at arrest. At the Mukuvisi River the young girls I interviewed said that when the police raided the area to arrest sex workers, they took all the women suspected of being sex workers

including the young girls. The issue of the use of force also came up in that the police used excessive force against the young girls when arresting them. One respondent described the police raids as follows:

‘The treatment is cruel and degrading. We are made to lie on the dirty ground and some police officers assault us by kicking or stepping on our backs. Sometimes they take us to the police station but if we do not have money to pay fines they release us without charge.’

My analysis of the reasons why the police are not protective towards children in prostitution stems from the fact that soliciting is an adult crime and children are therefore treated as adults. Moreover the criminalisation of prostitution means that children in prostitution are viewed as deviants as opposed to children who are being sexually abused and therefore in need of protection by the law. In the Zimbabwean Constitutional case of *Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs and 2 Others* (CCZ-12-2015) the court noted that children are in the category of weak and vulnerable persons in society and the law recognises this weakness of vulnerable persons.

In circumstances where a child in prostitution is raped or the police have arrested an adult who engages in sexual intercourse with a young person involved in sex work the rape trial poses problems of its own for a child in prostitution. Preconceived attitudes about women and sexuality make the rape trial a contest between the woman and the court where the woman is disqualified at every turn (Smart, 1989). As regards children the courts treat their evidence with caution as children are said to be suggestible, excitable and capable of easily forgetting evidence (*S v Mushore* HH-188-2011). Children in prostitution face double discrimination as female victims and as children. A prosecutor commented during an interview:

‘Magistrates attitudes are influenced by the circumstances surrounding the case. Where it is established that the young person was a child in prostitution the court will most likely acquit or impose a fine unless the perpetrator has infected the child with HIV.’

The court’s perceptions are different in a case where a child is raped for example by her father within the home as opposed to a child in prostitution who gets raped. The fact that a child offered sexual services is considered a mitigating factor in rape cases and indeed the child is deemed to have invited the rape. Children are forced into prostitution by their socio-

economic circumstances. This does not mean that the violation of their rights should be treated with any less compassion or importance than the violation of those of other children.

### **3.4 International human rights framework on child sexual abuse and exploitation**

Zimbabwe is a signatory of the ACRWC and the CRC. Zimbabwe therefore has an obligation to combat the exploitation of children. Child commercial sex work falls into this category. Socio-economic hardships were identified as the driving force behind young girls engaging in sex work. In order to eradicate poverty international human rights instruments place an obligation on state parties to ensure that every person has access to housing, health, food, and medical care among others. The Universal Declaration of Human Rights has this provision in Article 25; articles 15 and 16 of the Women's Protocol also provide for the same while ICESR places this obligation in article 11. The CRC elaborates this right by making the parents or guardians of the child the primary care givers in ensuring that a child has adequate nutrition, clothing and housing.

Ensuring that children are in school is another way of curbing child sexual abuse and prevent young girls from venturing into child prostitution. The right to education is provided for in numerous instruments including article 26 of the UDHR, article 17 of the ACHCR as well as article 13 of the ICESR. Of note are the provisions in article 28 of the CRC relating to education. Here state parties are called upon to provide free education at primary level and to ensure that secondary and vocational education is available and accessible to all children. Article 28(2) particularly addresses drop outs. This is taken further in CEDAW in order to address gender inequalities. The human rights framework therefore recognises the importance of providing educational opportunities to children to ensure that they get employment opportunities.

As regards child sexual abuse and exploitation, articles 19 and 34 of the CRC calls upon state parties to take all administrative, educational and administrative steps to protect children from abuse. Here exploitation is defined to include sexual abuse. In article 34(b) child prostitution is specifically addressed as the exploitative use of children. Articles 16 and 29 of the ACRWC incorporate the same provisions of the CRC by providing for protection against child sexual abuse.

Article 6 of CEDAW places an obligation on state parties to make legislative provisions as well as put programmes in place to ensure that all forms of exploitation of women in prostitution are suppressed. Within the African context article 4 of the Maputo Protocol further strengthens this provision. General Recommendation number 19 of CEDAW lists poverty and lack of employment opportunities as some of the factors which force young girls and women into prostitution. The status of prostitute is given as the reason for their marginalisation and a call is made to ensure that laws are put in place to protect them from rape.

Article 10 of the ICESCR states that special measures should be put in place on behalf of children to protect them from social and economic exploitation. Reference is also made to the need to protect children from work that is harmful to their development, health and morals. Zimbabwe has also ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPC). Article 2 of the OPC gives the definition of child prostitution as the use of a child in sexual activities for remuneration. The best interests of the child are to be considered in matters to do with children in prostitution including the provision of psychological, financial and medical care.

### **3.5 The Zimbabwean legal framework**

In Zimbabwe prostitution is illegal and legislation has been put in place to criminalise it. The Criminal Code deals specifically with prostitution and other laws are there to protect children from sexual abuse which is a component of child prostitution. The Criminal Code, the Constitution, and the Children's Act offer a comprehensive framework for the protection of children from sexual abuse.

The Constitution of Zimbabwe (section 19) provides that the best interests of the child should be considered in policies that affect children. The state undertakes to protect children from neglect or abuse in all its forms. The state also undertakes to provide shelter, nutrition, social services and access to education and training. These provisions are in the national objectives section of the Constitution meaning that they can only be fulfilled depending on the availability of resources. However the state still has an obligation to ensure that they are fulfilled. Section 81 of the Constitution provides for the rights of children including the right to education, health care services, shelter and nutrition. Protection from economic



exploitation, sexual exploitation, neglect and any form of abuse is provided for in terms of section 81(1)(e).

### **3.6 The Zimbabwean Criminal Code**

Prostitution is a criminal offence in terms of the Criminal Code. Division E of the Code, from section 81 to section 87 deals with crimes relating to prostitution or the facilitation of sexual crimes. In section 81 soliciting is defined as soliciting in a public place and the section also covers the means used to solicit such as print or electronic media. The charge is given as soliciting and a fine or a prison term of six months can be imposed in such circumstances. Sections 82 to 85 relate to living off the earnings of a prostitute, coercion, detaining of persons in order to engage in unlawful sexual conduct. Issues to do with engaging children in prostitution are dealt with in sections 86 and 87.

The Criminal Code of Zimbabwe (section 70) deals with sexual intercourse or performing indecent acts with young persons. A young person is defined in section 61 of the Criminal Code as any boy or girl under the age of sixteen years. Section 70(4) of the Code provides that any person who has sexual intercourse with a female person below the age of 12 years commits rape. Sexual intercourse with a young person over the age of twelve years but under the age of sixteen without their consent constitutes rape. The defence that the young person consented to the sexual act shall not be a valid defence (section 70(2)). Consequently even where the young person consented to the sexual act, the competent charge is having sexual intercourse with a young person.

The girls interviewed were between the ages of twelve and sixteen and the men seeking their services would be in breach of section 70 of the Code.

The Children's Act incorporates the provisions of the CRC and the ACRWC by providing for the prevention of ill treatment and exploitation of children. Section 7(1) states that any parent or guardian who ill treats, or exposes a child in a manner that could cause harm shall be guilty of an offence. Such harm is described as harm which could cause suffering or is detrimental to health or morals. In section 8 of the Children's Act, corruption of children is criminalised. The same provisions in the Criminal Code relating to allowing a child to live in a brothel and prostitution of children are provided for. The Act goes further to establish the

Child Welfare Council whose functions are to advise the Minister on matters to do with the welfare of children, to monitor and advance the situation of children in need of care and to promote the activities of organisations whose object is to protect the rights of children.

### **3.7 The National Action Plan (NAP) for Orphans and Vulnerable Children (OVC)**

As regards policy children in prostitution are protected in terms of the National Action Plan (NAP) for orphans and vulnerable children (OVC). In response to the high numbers of orphaned children due to HIV related deaths in the country the government came up with the policy to address the issues of the welfare of orphans and vulnerable children. The policy is now in its third phase.

The intention behind the setting up of the NAP for OVC was to ensure that legislation and policies which pertain to children were being fully implemented. In line with its mandate to provide full support and monitor and respond to the needs of children, the government, with the support of civil society put together this policy. The policy takes a multi sectoral approach incorporating the government ministries, United Nations agencies, national and international NGOs all working together to address the issues of vulnerable children. Vulnerable children are defined as children with one deceased parent, children living with disabilities, abused children, children living on the streets and children in conflict with the law. This definition therefore covers children in prostitution under abused children and as children in conflict with the law.

The policy covers provision of education under the Basic Education Assistance Module (BEAM) and includes a cash transfer system which targets households with orphans and vulnerable children.

### **3.8 Local verses international standards: The gaps**

From the above it is clear that there exists a comprehensive international and local legal framework for the protection of children from sexual exploitation. What is lacking is for Zimbabwe to align the law with international standards as regards the definition of a child and most importantly to ensure that the laws are implemented on the ground.

Article 1 of the CRC gives the definition a child as every human being under the age of eighteen years unless the law applicable to the child allows majority status to be attained earlier. Zimbabwe has domesticated this provision by defining a child as a person under the age of eighteen in the Constitution. However, the Children's Act defines a child as a person under the age of sixteen including an infant in terms of section 2 of the Act. The same age is given in the definition section in section 61 of the Criminal Code where a young person is defined as a person under the age of 16 years. During the field visit one of the respondents was a thirteen year old who had been infected with an STI. The lack of capacity to negotiate safe sex obviously led to this unfortunate situation. There is therefore a need to address the definition of age so as to match the provisions of international human rights instruments and the Constitution.

The Criminal Code gives the definition of soliciting in section 81. Soliciting is defined as soliciting in a public place or soliciting by publication in any printed or electronic form. Section 81(2) states that any person who publicly solicits another for the purposes of prostitution shall be guilty of soliciting. The definition of soliciting in this section is general, making reference to 'any person' who solicits the services of another for prostitution. The definition fails to take into account children in prostitution. It is important to specify that the section refers to adults in sex work and makes provisions for minors who are in conflict with the law.

While socio-economic rights are provided for in international law and are an important aspect in dealing with the root causes of child prostitution, their realisation in African countries is problematic. Lack of financial resources coupled with a lack of political will means that children remain vulnerable. The BEAM programme which was established to ensure that vulnerable children, such as children in prostitution, receive assistance in the form of school fees has failed to achieve its purpose. The implementation of the programme was hampered by a combination of lack of resources, mismanagement and abuse of funds. The programme is administered by the Department of Social Services through case care officers. In Epworth the intended recipients of the assistance were sidelined after the programme was hijacked and was being operated along political lines. A child welfare officer commented that in Epworth the fund was so mismanaged that it was discovered that the children of influential politicians in the area were discovered to be the beneficiaries while orphans continued to drop out of school.

Article 6 of CEDAW refers to the need to take legislative and other measures to suppress the exploitation of prostitution of women. In my view other measures include the implementation of the law by passing judgments which are deterrent enough to stop men from sexually abusing young girls generally and those involved in prostitution. In Zimbabwe cases involving the rape of minors contrary to section 70 of the Code have not been treated with the seriousness that one would expect. In the case of *S v Mhondiwa* (HB-112-2010) the High Court, on appeal, reduced the sentence previously imposed by the Magistrates court from fifteen to eight years' imprisonment. The case involved a 26 year old male having sex with a 13 year old girl. In *S v Dube* (HB-116-2010; 2010 (2) ZLR 400 (H)) the Bulawayo High Court scrutinised a sentence of 210 hours of community service imposed by the Magistrates Court where a girl aged 12 had been raped.

In *S v Banda; S v Chakamoga* (HH-47-2016) the court dealt with the criminal review of two similar but unrelated cases where both accused persons were charged with having sexual intercourse with a young person in terms of section 70 of the Criminal Code. The young girls were under the age of fifteen. The court *a quo* imposed a sentence of 12 months in both cases.

The court noted with concern that the quality of judgments being handed down by magistrates in cases involving the sexual abuse of young girls appeared to belittle the protective measures prescribed by the law.

The court also noted that the current framework for the protection of children's rights was being trivialised. Judicial officers were called upon to hand down appropriate sentences to deter men who prey on children. Charewa J noted:

'More particularly, the specific obligation placed on the courts, and the High Court in particular, by section 81(3) made me consider that it may be high time that the courts had a serious relook at the sentencing regime for sexual offences so that the message is clearly sent that the courts, in the discharge of their protective mandate for young persons, find that it is totally unacceptable to sexually exploit young persons. This is especially pertinent for offences committed against those young victims aged between 12 and 16 who were directly or impliedly assumed to have 'consented' to the sexual violations. The courts must be seen to apply the law in a manner that achieves the intended aim of the legislature in these cases: that is, to effectively protect children from predatory older persons and ensure the eradication, or seriously attempt to eradicate the problem.'

The same issues addressed in the above cases apply to children in prostitution as sexual intercourse with girls in prostitution also constitutes an offence in terms of section 70 of the Code. I interviewed a prosecutor in order to find out from him how the court handles matters where the offender has contravened section 70 of the Code in a situation where the girl is below the age of 16 but is a sex worker. They explained that in their experience offenders often mention to the court that the girl was a sex worker and that they met in a beer hall, as an argument in mitigation. In the prosecutor's experience such circumstances often led to an acquittal. These attitudes are influenced by the negative perceptions towards prostitution. The court needs to take a more protective role towards children in cases of child sexual abuse.

### **3.9 The best interests of the child**

Article 3 of the CRC states that the best interest of the child is of paramount importance in dealing with issues to do with children. While the Convention does not define what best interests of the child means the definition has been given as:

‘The basic interests, for example, to physical, emotional, and intellectual care, developmental interests to enter adulthood without disadvantage’ (Freeman, 2007).

In Zimbabwe the Constitution (section 81(2)) provides that the best interests of the child shall be paramount in all matters concerning children. The word paramount used in this provision implies that they are determinative. In other words they determine what has to be done and not only are they the first consideration but in fact the only consideration (Freeman, 2007). The decisions of government in relation to prioritising children's needs determine if they become the only consideration in reality. In dealing with child prostitution it can be argued that provision of adequate social services is in the best interests of the children to reduce their vulnerability. Factors such as available resources and budgetary considerations therefore become relevant. In reality the needs of children are rarely treated as paramount in budgeting and the Social Services Department is underfunded. Budgetary allocations prioritise other sectors such as the military and children's needs take a back seat.

Article 3 of the CRC limits the application of the best interests of the child principle to public or private welfare institutions, administrative authorities, legislative bodies and courts of law. Article 18(1) goes further to lay down that parents have the primary responsibility for the

upbringing of their children and that the best interests of the child shall be their basic concern. Yet it is common for parents or persons responsible for looking after children to facilitate prostitution of the children or to allow children to become prostitutes. In Zimbabwe this is criminalised but in reality it was discovered during the research that some parents encourage their daughters to engage in prostitution in order to earn an income for the family. This is not in the best interests of the child and in fact constitutes sexual exploitation of children. The law has not been fully utilised to stop this abuse of children and law enforcement agencies rarely follow up on cases involving children in prostitution enough to unearth the involvement of parents. It is important to identify children in such circumstances and treat them as children in need of care.

## CHAPTER FOUR

### 4.0 WHO? WHAT? WHY?

#### 4.1 Introduction

This chapter is a discussion of the main findings which highlight the need for urgent interventions by the government to fight child sexual abuse in sex work.

#### 4.2 Children in prostitution: The driving forces

During the study the most common form of prostitution I encountered was where the young girls stand outside nightclubs and bars soliciting for clients. There are numerous causes why girls engage in sex work. These causes have to do with push factors which are those factors which lead young girls into prostitution. Prostitution involves the selling and buying of sex and the fact that there is a demand for the services of youthful child prostitutes means that the practice is perpetuated.

##### 4.2.1 Basic needs

The major factor causing children to engage in sex work in Epworth is a lack of basic necessities such as food, shelter and clothing. At the Mukuvisi River bank young girls as young as 8 years old have been lured into prostitution because they had nowhere to live.

**Figure 3: Photograph of a plastic house at Mukivisi River**



I interviewed Mai Brendon who owns a shack built out of plastic and wooden poles. She had a week old baby and she was relying on the young girls to bring in some money which they used to buy food. She said that the girls bring in an average of \$4 a day depending on the time of the month, with the end of the month being the most productive. I asked her if she had specifically brought the girls from the street to engage in sex work to which she replied:

*‘Vanga vasina pekugara vachigara muroad ndikanzwa tsitsi ndikavatora asi izvi zvebasa vakazongotangawo tava pano nekuti ndiwo mararamiro edu pano.’*

(Translation: ‘She gave them shelter because they were living on the street after they ran away from home.’)

They only started sex work because that is what everyone else does at this place to earn a living. Mai Brendon and the young girls stated that during the rainy season, when the plastic structures are often destroyed by rain, the ground gets wet and they are left with nowhere to sleep as there is no flooring.

In Epworth, in the Magada area, I noted that although the houses were of a somewhat better quality than those at the Mukuvisi River they were still sub-standard. Children in sex work live in these houses preferring them due to the lower rentals charged. The rentals cost \$10 a month. In Epworth there is no running water and most houses do not have electricity.

**Figure 4: Photograph of a house in Magada, Epworth, Harare**





The District Child Welfare Officer for Harare Central at the Department of Child Welfare and Protection Services noted that although the Department was aware of the dire human need for shelter the Department only provides shelter for children deemed to be in need of care by the court. These children are referred to them by NGOs and community volunteers.

Of the 20 young girls I interviewed, 11 of them were orphans. They said that they were engaging in sex work to pay rent, buy clothes and food. Due to economic hardships surviving relatives are no longer willing to take in children left behind as it entails feeding extra mouths. Sibongile, aged 16, whom I interviewed said that she started sex work at the age of 15 after her mother died and she was left with the responsibility of looking after her younger sister. Sibongile's situation is aggravated by the fact that she is partially blind and this exposes her to abuse by male clients. When asked whether she had approached the Department of Child Welfare for assistance she said that attempts to contact the Child Welfare Officer in the area had been fruitless and that she started sex work out of desperation. She noted that she is unable to send her sister, aged 14, to school and was worried that she too might be forced into sex work.

At Solani Shopping Centre, cooking oil, mealy meal, sugar, salt, rice and meat is sold packed in small packages which cost between 20c and 50c. These are referred to as '*tsaona*' (meaning, emergency). The young sex workers charge between 50c and \$2 a session for their services, just enough to buy food for the day. All of the young girls interviewed condemned it saying that it was degrading work. They said that they were in sex work due to economic hardships but would leave sex work as soon as they find alternative work. One sex worker said:

'Sex work is not easy. In fact it is degrading to be a sex worker. I am only in it because I am not educated otherwise it is not the type of work that I would want my sister or my child to engage in.'

The need to survive therefore makes young girls, particularly orphans, vulnerable to exploitation. Possibly deprived of the property left to them by their parents, shunned by relatives and without an education or skills, orphans become socially isolated and rejected (Nkiwane and Muso, 2007).

### **4.3 Cashing in on the action! Living off children in sex work**

Children in sex work have become the preferred tenants in Epworth. In the Magada area I was seeking to get an overview of the situation in the area regarding children in prostitution. I approached a group of three women who were sitting outside. One of them mentioned that she was the owner of the house and that she rents out rooms at the house to tenants for \$20 a month. The women said that sex work was the most common source of income in the area and girls as young as twelve were involved because they are exposed to the practice from a young age. They mentioned that poverty was the major reason why young girls were dropping out of school. They also pointed out that the death rate from HIV was high in Epworth generally and as a result the number of orphans had increased.

The owner of the house where I was carrying out the interview then said that the landlords in the area now preferred sex workers as tenants as they make money every day and therefore payment of rentals was guaranteed. She had been letting out a room to a group of four girls but evicted them due to their rowdy behaviour. The girls were sex workers and although she was not sure of their ages she was certain they were between the ages of 15 and 19. She was aware that they were sex workers and did not have any problems with them bringing clients to the house. Her knowledge of the law was limited and was surprised to learn that knowingly letting out a room for the purposes of prostitution is a crime and noted that in Epworth they may as well prosecute all landlords because sex workers have become a major source of income. Just behind Solani Shopping Centre there is a house popularly known as Mother Bee's. The place was formally a nursery school and the building has a big sign marked Mother Bee's Nursery School. However the place is no longer a nursery school and instead houses sex workers between the ages of 15 to 24 years old. I was made aware of its existence by the police officers at Domboramwari Police Station. The owner, a former sex worker, said that the house was her source of income.

I found that the fight against child prostitution and ultimately child sexual abuse is a difficult one due to conceptions about women's bodies. Young sex workers are in demand in Epworth and house owners are taking this as an opportunity to make money. The children are forced into sex work by various reasons yet the abuse of their bodies is seen as a source of income. The economic disadvantage of women in Africa leads them to become dependent on their bodies and on sexual relations with men (Yusuf, 2011). The consequence is that young girls

continue to be abused both sexually and economically because of their youthful bodies. Indeed some home owners in Epworth have become gatekeepers, assisting the girls to get clients. Mother Bee, referred to above, noted that due to the proximity of her house to the shopping centre the property was in demand with young sex workers. She felt that it was important for her to protect the young girls as her livelihood depended on them and noted that on several occasions in the past she had been to the police station to bail out the girls who had been arrested for soliciting.

At the Solani Shopping Centre bar owners no longer bar girls under the age of eighteen years from entering bars as they attract customers. It is a criminal offence in terms of the Liquor Act (section 81) to allow a person under the age of eighteen years to enter any premises which is licensed to sell alcohol. One night club has become known as the hub for child prostitution. In another night club the only reason why young girls cannot enter is because the adult sex workers have declared the club their territory and child prostitutes are not allowed in as they are viewed as competition. One adult sex worker remarked:

‘We have declared the night club a no go area for these kids. We are here to earn a living because we have children and these girls take our clients and threaten our only source of income.’

While the law clearly makes it an offence to live off the earnings of a prostitute the practice is widespread in Epworth. What makes it more disturbing is that the community has become so obsessed with making a living at the expense of protecting children from abuse.

#### **4.4 Child prostitution and child marriage - The link**

The research revealed that girls who had been married early and had children from the unions turned to prostitution to earn a living for themselves and the children after leaving these marriages. One respondent, who is now seventeen years old, revealed that she had been married at the age of fourteen. She left her former husband because he was abusive. Due to the fact that she had dropped out of school in order to get married she has no educational qualifications. Prostitution was the only option.

Another respondent, Monica, started sex work at the age of 20. She had been married at the age of 15 but left her husband due to abuse. At that time she had two sons and was not

employed. She could not secure a job because she only went to school up to Form 2 and left school because she was pregnant.

Both respondents explained that after marriage it was difficult to continue with school as they had responsibilities in the home and looking after the children. Child prostitution and child marriages therefore deny children of school going age an opportunity to go to school. The low levels of schooling associated with early marriages leads to economic vulnerability after the disintegration of the marriage. Although child prostitution is often a result of poverty it only further contributes to the feminisation of poverty (UNICEF, 2005).

The link between child marriage and child prostitution lies in the transactional nature of these practices. Within the Zimbabwean context child marriages are exploitative from the standpoint that the child is given away in marriage in exchange for money in the form of *lobola*. The *lobola* does not benefit the child but is enjoyed by the male figures in the family. Economic difficulties force some families to give away children in marriage. Societies which objectify women and girls viewing them as commodities put girls at risk of sexual exploitation (Whittier, 2007). The payment of *lobola* poses numerous problems related to equality in marriage. *Lobola* is sometimes used to control the woman's movement, to control the number and spacing of children and upon the death of the husband a woman may be forced to take on another man within the family. This is the same exploitation which children face in prostitution. The transaction in prostitution is also based on the exchange of money between the supplier and the client and the client, upon payment, gains rights. Further, where a third party such as a parent is the one benefiting from the prostitution of the child, it is the adult who benefits. This therefore puts children at a heightened risk of sexual exploitation.

Vulnerabilities such as the exposure to sexually transmitted diseases, violence and oppression are also common features. Child marriage and child prostitution involve young girls partnering with older men without much power to negotiate safe sex. Young girls are considered docile and malleable (*Mudzuru and Another v Minister of Justice and Parliamentary Affairs and 2 Others*, above). This exposes them to rape and violence.

#### **4.5 Living on the edge: The risks of sex work for young sex workers**

Children in prostitution are exposed to sexually transmitted diseases as well as the risk of contracting HIV. Substance abuse such as sniffing glue is rampant among young girls at the Mukuvisi River bank. The effect of diseases and drug abuse is physical deterioration. Children in prostitution lack the capacity to negotiate safe sex. In Epworth statics show that in 2014 20% of the population was HIV positive, a number higher than the national figure of 15% (Doctors without Borders, 2014).

To investigate whether young girls are aware of the health risks in sex work, I asked, as part of the interviews, what measures they took to protect themselves from sexually transmitted diseases. Of the twenty girls, 50% said that they do not engage in sexual intercourse without protection. During one of the interviews two of these girls produced a large bag filled with condoms which they received from officials from UNFPA during the ICASA Conference which was held in Harare in 2015. Before receiving the condoms they used to buy them. The other girls also said that they buy condoms as the quality of condoms provided for free by the Ministry of Health is poor. The other 50% noted that they used condoms sometimes but were flexible enough to negotiate a higher price for unprotected sex. The 50% of girls interviewed who admitted not using protection at all times mostly consisted of girls aged 15 and below while those who said that they insisted on condom use were above the age of 15.

At Mukuvisi I interviewed Beauty who is thirteen years old. She was visibly sick. She said that she had been infected with an STI but had not received any professional medical care because at the council clinic they required a police report before treating girls under the age of sixteen for STIs. Beauty had no money to get treatment from a private health institution and only managed to get assistance from a private hospital with my intervention. At thirteen, Beauty could not have been expected to negotiate safe sex and consequently was infected with a disease. Council policy not to treat underage girls with STIs instead of dealing with the problem of child sexual abuse poses new problems as the girls could possibly die from the infections.

A nurse at Domboramwari Clinic, which is run by the Epworth Local Board, confirmed that girls under the age of 18 had come to the clinic seeking treatment for sexually transmitted diseases. She explained that as nurses they are required to make an enquiry where a girl under

16 years of age presents herself with a sexually transmitted disease. Where it is clear that the person is under the age of 16 years the nurses are not permitted to treat them for STIs unless they bring a police report. She said that the girls now prefer to get treatment from the MSF Clinic in Mbare where the services are free and they can receive treatment without any questions asked. This took me back to a lecture we had in Criminal Law from a guest lecturer who was a nurse at the MSF Clinic in Mbare. She explained that at the clinic, counselling and medical treatment were provided even where no criminal proceedings were contemplated.

The nurse at Domboramwari Clinic also noted that:

‘Due to the fact that we are not allowed to treat STIs in children without a police report, medicine to treat STIs was now finding its way into the communities illegally. Such treatments require prescription and should only be administered by a qualified person but in Epworth young girls are receiving such treatments from unqualified people. Of particular concern to us as health personnel is the illegal and unsupervised use of Post Exposure Prophylaxis which can be harmful to health if not administered properly.’

Substance abuse among children in sex work has been reported as a way to help them to endure the degradation and detrimental impact of prostitution as well as to dull the terrifying effect of childhood abuse (Flowers, 1998). Several studies have also found that prostituted children use substances as a way of self-medication to numb the trauma of prostitution and to block the pain and shame that result from prostitution, or to detach themselves from reality (Zigman, 1999).

At the Mukuvisi River I interviewed Tanaka aged sixteen years who admitted that she has become addicted to sniffing glue. According to her the substance ‘helps her to forget her problems and to make the work easier.’

**Figure 5: Photograph of a child prostitute sniffing glue**



#### **4.6 How old are you? Deficiencies in the implementation of the law**

Although the problem of child sex work is in the public domain, it appears no specific programmes are in place to bring it to an end. Finding children in sex work during the field visits was not difficult because the practice is rampant in Epworth. The law is in place to curb the practice yet it continues. The biggest hurdle therefore seems to be implementation of the law.

I interviewed the police officers in the Victim Friendly Unit at Domboramwari Police Station to discuss their strategies regarding curbing child prostitution. The officer who heads the department at the police station noted that the police were aware that young girls were involved in prostitution. They traditionally used to raid night clubs and particularly the area near Solani shopping centre commonly known as 'paBooster' and they would round up all the women for soliciting.

In cases involving girls under the age of 16 years it was mandatory for the police to make arrests of the men seeking the services of such young girls. The difficulty is that the girls, when they are rounded up claim that they do not know the names of the clients nor any

information about the client and arrests become impossible. Where the police used undercover agents to catch the perpetrators, ascertaining the ages of the girls became another hurdle.

In circumstances where the young girls cannot produce birth certificates they have to be examined by a dentist to determine their ages. This seems to be the biggest problem for police officers in prosecuting cases. A prosecutor who works at the Rotten Row court confirmed this saying that:

‘Prosecuting cases in terms of section 70 of the Code definitely requires proof of age in the form of a birth certificate or age estimates.’

She went further to confirm that the police were encountering financial problems in getting not only age estimates but also in bringing suspects to court.

In the past NGOs would assist with the funds to carry out the examination but the cost has gone up to \$80 from \$40 and NGOs have indicated that they are no longer able to pay such sums. He advised me that in the past, until 2011, they used to assist with funds to get the estimates done where a child had no birth certificate. However, of late they have not been able to help because the cost of getting the tests done has gone up while funding has decreased. According to him local NGOs are struggling to get funding and this affects their projects. They have come up with a programme to assist young girls without birth certificates to obtain the documents. Obtaining birth certificates costs much less and due to the funding situation they have had to adjust their programmes. The Social Services Officer also noted that birth registration was a problem not only in Epworth but countrywide. He cited challenges in tracing relatives of orphaned children as the major hurdle faced in trying to assist. He also noted that the number of children without birth certificates was significant although he did not have the exact statistics.



## **CHAPTER FIVE**

### **5.0 SOME UNEXPECTED OUTCOMES**

#### **5.1 Mothers who recruit their daughters into prostitution**

Section 87 of the Criminal Code makes it an offence for a parent or guardian to allow their child to associate with or to become a prostitute. Part 3 of the Children's Act goes further to define what ill treatment and exploitation of children means. Yet from the research I discovered that mothers and guardians are the ones who are introducing children into prostitution in clear violation of the law. Economic hardships were the most commonly cited reason why mothers leave their daughters to go into sex work so that they also bring money home. Cultural and social factors therefore hinder the application of the law or the ability of legal information to impact lives (Schuler, 1992: 22). So even where laws are comprehensive enough to match current situations, social and cultural constraints hinder their application. Factors such as relatives who are already working in prostitution play a big role in the decision to engage in prostitution. They also influence the young women's way of thinking towards prostitution, i.e., prostitution as a profession or as an easy way to earn a living.

One respondent, Synodia was fifteen at the time she started going to night clubs and engaging in sex work. Her mother who is also a sex worker introduced her to prostitution.

‘My mother has been a sex worker for a long time and that is her only source of income. Joining my mother was not a difficult decision. The only problem we had was that my mother wanted to take away my money.’

I asked her if her mother used to find clients for her and if she was expected to hand over the money she made. Her response was that they used to go out together but at the bar she would hang out with girls her own age while her mother had her permanent spot in the bar. Her mother expected her to surrender the money she made and she did so grudgingly. That is one of the reasons why she decided to move in with a group of other younger girls who were sex workers and used to frequent the same bars she went to. The issue of mothers introducing their daughters to prostitution also came up during a group discussion with a group of sex workers who highlighted that it had become common for mothers to recruit their daughters.

The concept of a 'pimp' is described in the Criminal Code in section 83 under the notion of procurement. The section states that any person who procures another for the purpose of becoming a prostitute, among others, shall be guilty of an offence. Pimping refers to the recruiting and persuading a woman or a girl to engage in sexual intercourse with men. The Criminal Code, for the purposes of sentencing, separates instances where the person procured is a young person from situations where an adult is procured. In Epworth mothers have assumed the role of pimp. However police officers when carrying out raids are not concerned with any of these surrounding circumstances except arresting the girls and payment of the fine.

## **5.2 The role of peers**

All of the 20 sex workers I interviewed who were under the age of 16 cited the need to survive as the primary reason for going into sex work, among other reasons. The fact that their peers had started sex work was a major driving force for the girls to also start sex work. Thirteen of the twenty respondents were introduced into sex work by their peers. One young commercial sex worker noted:

'I was being abused by my stepmother so I ran away from home. While living on the street in the city centre I met my two friends and started living with them at Mukuvisi River. I also started looking for clients so that I could buy food and clothes.'

Inadequate social welfare services worsen the situation. The Social Services Officer I interviewed noted that the Department of Child Welfare does not have a register for orphans or vulnerable children in Epworth. In terms of the National Action Plan for Orphans and Vulnerable Children (NAP for OVC) case care workers are responsible for drawing up the register. But they only work on a voluntary basis and only receive a bicycle for transport. There is therefore little incentive to do this work and as a result to date the register has not been compiled. Therefore children who qualify to benefit under the programme but who have not been identified and included in a register that should but does not exist end up succumbing to peer pressure to engage in sex work in order to survive. Moreover the criteria used to determine who qualifies for assistance is stringent. According to the Child Welfare Department only orphans without traceable relatives qualify for support. Where relatives are found, according to the officer:

‘They will be convinced to take the orphan into their care.’

My interpretation is that relatives are forced to take orphans even where they do not have capacity to look after them. The Department does not provide support in any form in such instances. The effect is that children will be ill treated because they are not welcome and they end up running away from home or being abandoned. Such children end up on the streets. In poverty and in desperate living conditions they are easily influenced by the stories their peers tell that they can earn a living through prostitution and so end up resorting to it.

### **5.3 Young, attractive and for only 50 cents!**

It was found that the youthfulness of the children in sex work is what attracts men to them. In support of this view a male respondent disclosed that young girls in sex work are considered HIV free and offer their services cheaply. The widespread beliefs relating to having sexual intercourse with young girls attracts men to young girls and this in turn perpetuates child sexual abuse. The fear of AIDS among men who regularly use prostitutes for sex may be the biggest reason for the concurrent growth in the demand for the services of young girls in prostitution.

The men who seek these services avoid sexual contact with adult prostitutes, but regularly seek sex with children in the belief that this practice will protect them from exposure to AIDS as the children are not infected or less likely to be infected than adult prostitutes. There is a widespread belief that if you are HIV positive and have sex with a young woman, especially virgins, you will be cured (Gudyana, 2015). It is because of this false belief, this lie, that such customers may select younger children in prostitution.

In Epworth the girls interviewed who were under the age of 16 stated that they charged as little as 50c per session depending on the length of the session. This is meagre compared to what adult sex workers charge. An adult sex worker, aged 27, stated that she charges \$5 for short time and \$20 for the whole night. According to her she cannot negotiate for anything less because she has three children to look after unlike the young sex workers who only work for their own food and rent.

It is important to note that child sexual abuse is at one end of a continuum of male violence against women and children which has to be understood in terms of inequality of power

(MacLeod, 1987). In many societies this power is expressed as men's sexual prowess which manifests itself in the number of female sexual partners they boast, the attractiveness of their sexual partners as well as their youthfulness (Kopano, 2011). Ultimately sexuality is therefore centred on power and the need to dominate and this leads men to preferring young girls in sex work over their adult counterparts. Feminist theory has evolved to define child sexual abuse in terms of power and exploitation. The presumption that sexual intercourse with a child is an abuse of power persists even in cases where apparent consent is present (Diduck, 2006).

The need to control by some men and the beliefs about having sexual intercourse with young girls make the fight against child abuse a difficult one. An official from a local NGO, Justice for Children Trust, noted that deeply entrenched beliefs such as these have rendered the awareness campaigns they carry out useless. He informed me that programmes in Epworth relating to issues of child sexual abuse and exploitation have been running for years but there is no change in statistics of child sexual abuse. In fact the numbers continue to rise. A programmes officer with another local NGO, Padare Men's Forum, which offers counselling to men on all issues to do with men, said that in Epworth they have a programme to deal with issues of HIV and sexual health matters, in collaboration with the National Aids Council. He said that their strategy as an organisation has been to carry out awareness campaigns but he commented:

‘Talking to men is a waste of time. Deeply entrenched beliefs and influences are difficult to get rid of and unfortunately children suffer abuse because of these beliefs.’

Here he was referring to beliefs such as that it is prestigious to have a young wife or that sex with young women keeps a man fit and looking young. He said that he has not noticed any changes in behaviour despite the talks they have with men. Some of the topics they cover in their talks include:

- The legal implications of having sex with young girls. Although they do not offer legal services the organisation attempts to explain the law and its implications. Their main thrust is to encourage men to become advocates for children's rights.

- Issues to do with patriarchy and domination. His opinion was that the need to control and dominate led men to have sexual intercourse with young girls who are easy to dominate and abuse.

He added that there is need for empowerment programmes for the youth in Epworth. According to him this would assist greatly in lowering the number of sex workers, especially the youth. In his opinion the lack of employment opportunities were causing the girls to look for the easy way out of selling their bodies.

#### **5.4 The Constitutional challenge: The (adverse) effects**

In 2015 Zimbabwe Lawyers for Human Rights represented 9 women in a landmark action under their legal awareness campaign programme which redefined section 81(2) of the Criminal Code which deals with soliciting for the purposes of prostitution. In the case of *Chipo Nyamanhindi and 8 Others v Minister of Home Affairs* (2015) the court dealt with issues concerning the arbitrary arrest of women at night on suspicion of loitering for the purposes of prostitution. The brief background of the case was that the police had commenced an operation named 'No to Robbery and Prostitution' in the avenues area of Harare. In terms of the operation women who were found walking outside after dusk were arrested indiscriminately on suspicion of being sex workers. The nine women were arrested and they challenged the arrests in terms of section 49 and 56 of the Constitution which relate to the right to personal liberty and protection of the law, respectively. The Constitutional Court upheld the arguments by the applicants and noted that the prosecution and placing applicants on remand was in contravention of the Constitution.

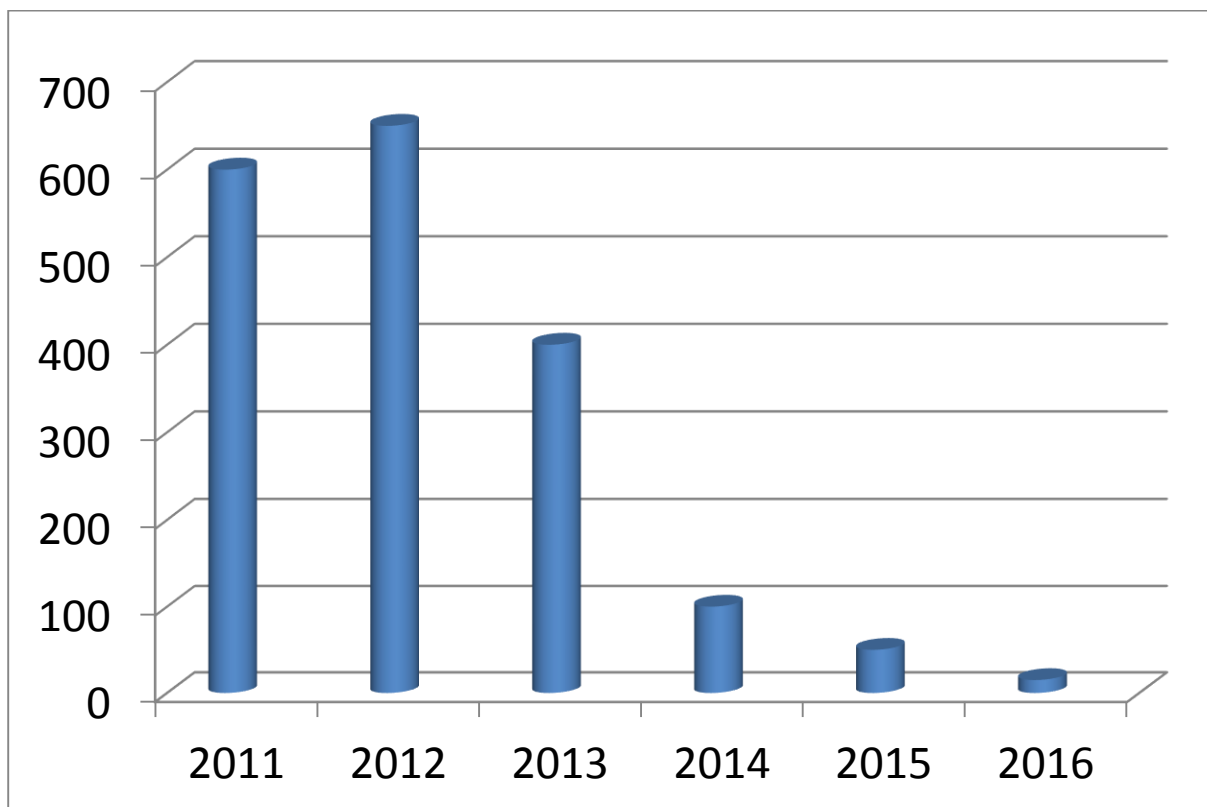
The Constitutional judgment of *Chipo Nyamanhindi and 8 Others v Minister of Home Affairs* (2015) was welcomed as a victory for women everywhere (Women in and beyond the global, 2015). However, despite the progress made in terms of ensuring safeguarding rights the judgment has had a negative impact when it comes to children in sex work due to misinterpretation.

The interpretation given by law enforcement agents is that they are no longer allowed to make any arrests in terms of section 81 of the Code. At Domboramwari Police Station the

officer in charge of the victim friendly unit noted that they no longer arrest women for soliciting.

He noted that up to 2013 the average number of arrests the police made of girls under the age of eighteen years was 500 per year. In 2014 the Zimbabwe Lawyers for Human Rights (ZLHR) filed the application challenging the arrests and in response to the application arrests were halted even before the judgment was granted.

**Figure 6: Bar chart showing the number of girls under 18 arrested in Epworth for soliciting for the purposes in prostitution**



From the above it is clear that the police have interpreted the case to mean that they are no longer authorised to arrest women for soliciting which has been interpreted to mean that prostitution is now legal in Zimbabwe. One police officer at Domboramwari Police Station confirmed:

‘Since the beginning of 2015 we are no longer allowed to arrest women at bars or on the streets. The few cases where girls were arrested in 2015 were not in

relation to prostitution only but the girls were arrested as part of a raid on a drug gang in this area.’

I interviewed a group of sex workers living at Mother Bee’s place, which place operates as a brothel for all intents and purposes, despite the owner’s refusal to acknowledge it. The sex workers confirmed that arrests have stopped. They noted that in the past police raids were the biggest hindrance to their work and they had resorted to using their houses as their bases for work instead of going into bars and other public places. The situation is now different. One sex worker said:

‘We work freely even during the day because the police no longer bother us.’

The points for discussion arising from the Constitutional judgment are:

- Whether the judgment legalised sex work in Zimbabwe.
- Whether the police can still arrest where evidence of soliciting is available.
- The negative impact the interpretation of the judgment has had on children in sex work.

There has been confusion as regards the meaning of the judgment and its effect. Among the sex workers I spoke to in Epworth the perception was that sex work is now legal in Zimbabwe. In my view this is a wrong interpretation. The practice by the police had been to round up and arrest any woman walking in the avenues area at night. This was the situation in the case of the nine applicants who were arrested simply for being in an area of the city dubbed ‘a commercial sex hub’ at night. The reasoning behind the judgment was therefore that the police should not simply arrest women for being in an area which sex workers frequent but that there should be a suspicion that an offence was being committed. In this case there should have been clear evidence of soliciting for the purposes of prostitution. Soliciting therefore remains a criminal offence in terms of our law and where evidence of soliciting is available a person can still be arrested and charged.

In a situation where a police officer has a reasonable suspicion that a person is soliciting for the purposes of prostitution the police officer is empowered to make an arrest. However, evidence of soliciting is not always clear. Even where police officers have previously arrested

a person for soliciting it does not follow that each time that person is in a bar or public place that she is there for that purpose. Police officers in Epworth admitted that they had knowledge of the young girls in sex work, some by name, but highlighted the difficulty of simply arresting on the basis of that knowledge. As a result their reaction to the judgment has been to simply back off completely in cases to do with sex workers in the area because that is their understanding of the judgment. In my discussion with the police officers I advanced arguments that their take on the judgment was incorrect and that where they could prove that soliciting had indeed taken place arrests could still take place. My argument was made with the realisation and appreciation of the continuing debates around decriminalisation of sex work. My concern in the present case was the effect the law enforcement agents' interpretation of the judgment was having on children in sex work.

The effect of the police non-intervention has been an increase in the number of girls under the age of sixteen in sex work. Generally the number of sex workers in Epworth has gone up including young sex workers. The judgment has had an adverse effect in that girls are now selling sex freely and the customers buy in contravention of the law. The absence of the police means that the sexual exploitation of girls continues unperturbed.

### **5.5 Did I open a can of worms? - The effect of my questioning**

The last raid on sex workers at the 'pabooster' area and at the Overspill shopping centre in Epworth had taken place in early 2015. After my visit to the police station and the interaction with police officers a decision was taken by the police to go undercover at the night clubs in the area and make arrests. This would have been a very useful exercise if it was targeted at the men having sexual intercourse with underage girls. Instead the raid targeted young sex workers who were arrested, taken to the police station and beaten up. They were released without charge. This is a reflection of the law enforcements' attitude in a situation where they are no longer sure how to handle cases of women suspected of soliciting. It is also an example of a blatant disregard for human rights.

Section 70(1)(b) of the Constitution of Zimbabwe refers to the right of an accused person to be informed promptly of the charge, in sufficient detail to enable the accused person to answer it. Yet women and girls in prostitution continue to be arrested and released without charge. Reports of police officers requesting sexual favours from the sex workers in police



cells, in return for freedom, are also common. While interviewing a group of sex workers it emerged that police officers fraternise with sex workers so that they can get services for free and the girls complied to ensure that they would not be arrested during raids. Sex workers are therefore treated as deviants without rights. I intervened by advising the girls to contact the Zimbabwe Lawyers for Human Rights for assistance in reporting their case relating to the abuse by the police.

## **CHAPTER SIX**

### **6.0 DISCUSSION AND CONCLUSION**

#### **6.1 Introduction**

This chapter discusses recommendations and interventions which need to be made in light of the deficiencies found in the law and its implementation. Due to the economic decline and rising levels of poverty child prostitution will continue to rise. There is limited literature in Zimbabwe regarding the problem of children in prostitution. However the increase in newspaper and internet reports points to the prevalence of the practice. Despite the rising numbers of young girls in prostitution no policies have been put in place to deal with this emerging phenomenon. The number of respondents who participated in this study maybe small but their victimization and sexual exploitation experience in prostitution should be fully given attention by authorities.

#### **6.2 Legal interventions**

Zimbabwe has legislation in place to deal with child sexual abuse. However amendments need to be done to the laws to deal effectively with child prostitution. The Constitution of Zimbabwe (section 81) defines a child as any person, male or female under the age of eighteen years. The Criminal Code however defines a young person as a person under the age of sixteen. While sexual intercourse with a child under the age of twelve years automatically qualifies as rape, there is a need to raise the age to sixteen so that legally any sexual contact with a girl under the age of sixteen constitutes rape and not statutory rape. Progress was made in *Mudzuru and Another v Minister of Justice and Parliamentary Affairs and 2 Others* (above) a case which outlawed child marriages. The Constitutional Court declared that no person may enter into marriage before the age of eighteen years. One of the underlying reasons behind this judgment was that child marriages increase the incidence of sexually transmitted diseases, pregnancy related death and girl child abuse. Reference was also made to young girls' underdeveloped physiology as well as their lack of power and knowledge about reproductive health services. These same concerns apply to children in prostitution hence the need to address the law to make the offence of rape automatically applicable in all situations involving sexual intercourse with girls under the age of sixteen. Children in prostitution remain still vulnerable.

Sections 81 to 86 of the Criminal Code criminalise prostitution and related activities. There is no reference to children in sex work in those sections. The effect as discussed above is that children in sex work end up being arrested along with adult sex workers thereby treating them as criminals. There is a need to recognise children in sex work as a special group and amend the law accordingly to deal with those situations where children are in conflict with the law.

In addition to these amendments, implementation of these laws needs to be addressed. Parents, home owners and bar owners continue to exploit children in sex work for their own financial benefit. Despite the existence of legislation which covers this exploitation, law enforcement has turned a blind eye focusing only on the sex workers without dealing with the whole chain of people who perpetuates it.

Judicial officers also have a role to play. The sentences which are being imposed are not deterrent enough to end child sexual abuse. As already emphasised, magistrates tend to look at children in sex work with a biased lens and are likely to acquit the perpetrator. The issue therefore is about attitudes. There is need to train judicial officers about child rights as well as the specialised skills required in handling cases involving children. Child prostitution should be treated differently from adult prostitution and recognised as a form of child sexual victimisation, not as child deviance.

### **6.3 Capacitating law enforcement agencies**

During the field research it was noted that the officers manning the victim friendly unit lacked the expertise required to handle cases involving children. At Domboramwari Police Station the victim friendly unit is located in a small room. The room easily becomes overcrowded as the three police officers attend to cases simultaneously. The atmosphere was not comfortable for me and I imagined that it was worse for the young girls who had to narrate their cases, which were mostly rape cases in front of more than eight strangers in the room. The starting point is therefore to provide conducive facilities for the victim friendly unit. Such facilities have been made available at the regional courts but the same needs to be done at the police station because the interviews at the police station are equally important.

The police officers noted that they were overwhelmed by the number of children being brought to the station to report cases of sexual abuse. There is need to invest in human resources and training. Of the three police officers only one had received training and the other two were handling cases without training. The effect was clear as it was obvious to me that they lacked the skills required to deal with traumatised children. Every police officer should receive training to deal with cases involving children and training should be on-going.

Investigating and prosecuting cases of children in sex work requires adequate resources in order to gather the evidence needed. Lack of resources has hampered efforts to deal with the cases and in fact the police officers and the prosecutors I spoke to lacked motivation as a result. Financial resources are needed to ensure that the medical reports are available as it was found that the inability to acquire them these have led to the abandonment of cases. The issue of transport came up as another major hurdle. The officers require transport to carry out investigations and to take both the accused persons and witnesses to court. Cases are taking a long time to complete due to lack of transport and interventions in terms of budgeting are needed in this area.

#### **6.4 Social interventions**

While the law is an important tool in the protection of children's rights there is also a need to address the root causes of child prostitution. This entails improving the children's economic standing to ensure that they do not see sex work as the easy way out of their situation. The first step is to come up with a register of the numbers of children in need of help. To date the National Action Plan has no estimates regarding the number of vulnerable children. Added to this is a lack of resources. There is a need to increase funding to the Department of Social Services so that it can fulfil its mandate.

None of the twenty girls interviewed was in school at the time of the interviews nor had they any educational or technical qualifications which they could use to earn a living. Government needs to strengthen the provision of social services to ensure that children are in school. This is the initial step to ensure that the supply side of child prostitution is dealt with. Currently assistance is being provided under the BEAM programme. However the programme has been mismanaged to the extent that it has not had any major impact. The Department of Child

Welfare needs to set up mechanisms for the proper administration of the programme to prevent corruption and misuse of funds.

The provision of shelter should be a priority. The Department of Child Welfare provides shelter in the form of homes. According to the child care officer for Harare Central their budget is limited and as a result the homes have not received attention in terms of infrastructure and basic necessities such as food. In this regard partnerships with NGOs would go a long way in ensuring that the children get the basic necessities as well as counselling and support after leaving the home. This would also reduce the number of children who run away from the homes and back into prostitution.

One of the driving forces behind child prostitution is the availability of a market for their services. Communities need to be continuously made aware of the negative effects of child sexual abuse and exploitation. Home owners, bar owners, parents, and the community at large need awareness on children's rights. While it was noted by the officials from the NGOs interviewed that awareness campaigns have been going on for a long time without impact, they still remain a valuable tool. What is needed is better co-operation between the police and NGOs to push for a change in attitudes. Children themselves should be involved in the process by introducing human rights, particularly, children's rights education into the curriculum at primary school level.

## **6.5 Political interventions**

Political interventions are targeted at politicians and parliamentarians with reference to their role as lawmakers and their influence in budgetary allocations. Parliamentarians need to ensure that the alignment process of the laws with the Constitution is speeded up. The recent debate in the parliament of Zimbabwe where parliamentarians discussed the *Mudzuru* case (above) raised some interesting points. One of the female parliamentarians then proposed that all male legislators sign a pledge that they will not engage in relationships with young girls (Parliament of Zimbabwe Hansard, 8 March 2016). Several members of parliament signed the pledge which promotes the protection of girls from abuse. If issues of child sexual abuse are discussed at such a high level and people with influence take up these issues to the communities we might indeed begin to see changes in attitudes.

Most importantly parliamentarians as policy makers can influence budgetary allocations. Eradicating child prostitution means dealing with the roots of the problem and that is provision of basic necessities to vulnerable children. The Department of Social Services needs to be capacitated. The Social Services Officer interviewed noted:

‘The government is not very keen on allocating money to non-profit making departments such as ours.’

This was an accurate yet disturbing observation. Protection of children’s rights requires allocation of the necessary resources to the programmes to be undertaken. Even where a child has been identified as being in need of care, resources are required to provide the necessary support such as shelter and counselling. In Zimbabwe budget allocations continue to favour the military while social services are not given priority.

## **6.6 Conclusion**

Commercial child sex work is a reality in Zimbabwe as the study has revealed. Children as young as eight years old have resorted to prostitution for different socio-economic reasons. The situation is made worse by adults who consider the demand for young girls’ services as a chance to make money. Attitudes about prostitution also seem to have a bearing on the way law enforcement agencies handle cases of children in prostitution. Addressing the causes of child prostitution such as limited educational opportunities, unemployment and a lack of basic necessities such as shelter and food would be the first step in ending sexual exploitation of children. Strengthening of social services would ensure that the root causes are addressed. The National Action Plan for Orphans and Vulnerable Children offers a framework for the provision of these social services. What remains to be done is to ensure that adequate provisions are made in terms of budgetary allocations.

A multi-agency approach which includes collaboration and partnerships between governments, communities, NGOs, families and the media is important to ensure that more children do not become victims of child prostitution and to eradicate the complex problem of child prostitution. By working together the government and organizations interested in eradicating child prostitution need to conduct awareness campaigns, do collaborative research, provide support for families and at-risk children, and educate communities and young people. In this way perhaps attitudes can begin to change and communities come

together to form a collective teamwork to protect children and to eliminate child prostitution (Mohamad, 2006).

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