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**PERCEPTIONS OF AND ATTITUDES TOWARDS THE REHABILITATION OF  
VICTIMS OF DEFILEMENT IN ZAMBIA: KATETE DISTRICT AS A CASE  
STUDY**

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**By**

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

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## Abstract

**This dissertation evaluates the quality of the Zambian government's provision of rehabilitation services to child victims of defilement since the enactment of the Anti-Gender Based Violence Act, 2011. As a career public prosecutor, the researcher critically analyses the extent to which the Department of Social Welfare (DSW), a member of the Criminal Justice System (CJS), has complied with its legislative duty to render these services. He also assesses the role of all other co-operating actors who should also support the DSW's efforts and discusses the weaknesses he finds in various administrative structures. Since the law on defilement has been amended to include both male and female child victims, meaning that they both need rehabilitation, this research is gender neutral. It utilises several complementary methodologies to bring into focus the lived realities of affected children and their parents/guardians which are optimally captured and expressed using the overarching grounded women's law approach which makes them the research's constant point of reference. Using the scientific principles of this unique approach to full effect allows the writer, himself an actor within the CJS, to allow the successive steps of search, interrogation and analysis of the research data to objectively determine the path and ultimate destination of the research. Using the actors and structures approach he sources evidence mainly from interviews with key respondents (social workers both in government departments and NGOs, journalists, police officers, prosecutors, magistrates, educationalists, administrators, and politicians) and relies also on his own observations as well as documentary evidence acquired from legal documents and literature. Apart from difficulties arising from the fact that the Act is a relatively new law, the writer finds that many gaps still exist between the legislative aspirations set by the state and what is obtaining on the ground. Reference to international instruments (to which Zambia ratified) is not the study's primary focus since the duty to rehabilitate victims is created by the local Act. Finally, he recommends bridging the gaps between the written legislative provisions and their implementation through several long and short term measures, including the building the shelters for child victims who often need to be removed from their abusive environments in order to derive the greatest benefit from rehabilitation programmes.**

## Table of contents

Table of contents.....	3
Declaration.....	6
Dedication.....	7
Acknowledgements.....	8
List of abbreviations and acronyms.....	9
List of legislation.....	11
List of international instruments.....	11
List of cases.....	11
List of figures.....	12
Executive summary.....	13
CHAPTER ONE.....	16
1.0 INTRODUCTION AND BACKGROUND TO THE RESEARCH.....	16
1.1 Introduction.....	16
1.2 Location of the research.....	17
1.3 Research objectives.....	18
1.4 Significance of the research.....	19
1.5 Research assumptions.....	20
1.6 Research questions.....	21
1.7 Conclusion.....	22
CHAPTER TWO.....	23
2.0 THE LAW ON DEFILEMENT AND MECHANISMS FOR THE REHABILITATION OF VICTIMS.....	23
2.1 Introduction.....	23
2.2 Background of defilement.....	23
2.3 The law on defilement in Zambia.....	25
2.3.1 <i>The victim's plight at the pre-trial stage</i> .....	27
2.3.2 <i>The victim's plight at the trial stage</i> .....	28
2.3.3 <i>The victim's plight at the sentencing stage</i> .....	29
2.3.4 <i>Defilement as opposed to rape</i> .....	31
2.4 Rehabilitation of child victims.....	33
2.4.1 <i>The legislative framework</i> .....	36
2.4.2 <i>Is the rehabilitation of victims a human right?</i> .....	37

2.4.3	<i>Monitoring mechanisms</i> .....	39
2.5	Conclusion.....	40
CHAPTER THREE .....		41
3.0	ON YOUR MARKS! GET SET.....	41
3.1	Introduction .....	41
3.2	First things first: Making a self-assessment.....	41
3.2.1	<i>Mapping the research areas</i> .....	2
3.2.2	<i>It touches them the most: Interviews with victims and their parents/guardians</i> .....	3
3.2.3	<i>What the community knows: Focus group discussions</i> .....	4
3.2.4	<i>They tell it as they see it: The actors and structures approach</i> .....	5
3.3	Who should be rehabilitated? .....	6
3.4	About co-operating partners .....	8
3.5	What it ought to be and what it is .....	9
3.6	Conclusion.....	10
CHAPTER FOUR.....		11
4.0	FROM PAPER INTO THE FIELD .....	11
4.1	Introduction .....	11
4.2	Getting access to actors concerned .....	11
4.3	Increasing my knowledge it as I roll on with the research (The grounded theory approach)	12
4.4	The outcome of my long journey .....	13
4.5	The administrative structure .....	15
4.5.1	<i>Observations on administrative committees</i> .....	16
4.6	About funds .....	17
4.7	Whose duty is it to build shelters?.....	19
4.8	Who needs rehabilitation in Katete?.....	19
4.9	Conclusion.....	21
CHAPTER FIVE .....		22
5.0	DOES ANYONE REALLY CARE? .....	22
5.1	Introduction .....	22
5.2	Another way to get it done .....	22
5.3	Responses from experts on the relevance and importance of rehabilitation.....	23
5.3.1	<i>The stance taken by sister concerns</i> .....	24

5.3.2	<i>Lessons to learn</i> .....	25
5.4	Who sees what is happening?.....	26
5.4.1	<i>The police and the victim</i> .....	27
5.5	Who blows the whistle?.....	28
5.6	Conclusion.....	31
CHAPTER SIX.....		32
6.0	CONCLUSIONS AND RECOMMENDATIONS .....	32
6.1	Introduction .....	32
6.2	Conclusions .....	32
6.3	Recommendations .....	34
6.3.1	<i>Long term measures</i> .....	34
6.3.2	<i>Short term measures</i> .....	36
Bibliography .....		39

**Declaration**

I, Alex Syulikwa, do hereby declare that this paper is an original work presented towards the Masters in Women’s Law, University of Zimbabwe, and that it was not previously presented for any degree or other award at any academic institution.

Signed..... Date.....

This work is approved for submission towards fulfilment of the degree of Masters in Women’s Law by the Supervisor.

Signed..... Date.....

Professor Julie Stewart  
SEARCWL,  
University of Zimbabwe

***Dedication***

*To all victims of defilement in Zambia.*

## **Acknowledgements**

My thanks go to Jehovah my God for allowing me to study whilst enjoying good health throughout the programme.

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I thank my family for the support they gave me during my stay in school. Dad, Mum, my brothers, sisters, nephews, nieces, grand-nieces and grand-nephews, you are great people.

To my wife, Caroline Muchindu Syulikwa, my sons Malundu Mate Syulikwa and Mpande Mate Syulikwa, I say we have done it again. Thank you.

To my employer, thank you for granting me leave at the time that National duty was calling. May the Good Lord reward you all dearly.



## **List of abbreviations and acronyms**

ACRWC	African Charter on the Rights and Welfare of the Child
AGBV Act	Anti-Gender Based Violence Act
AIDS	Acquired Immunodeficiency Syndrome
CDF	Constituency Development Fund
CJ	Chief Justice
CJS	criminal justice system
DDCC	District Development Co-ordinating Committee
DEBS	District Education Board Secretary
DSW	Department of Social Welfare
GBV	Gender-based violence
GIDD	Gender in Development Division
GRZ	Government of the Republic of Zambia
HC	High Court
HIV	Human Immunodeficiency Virus
JA	Juveniles Act, Chapter 53 of the Laws of Zambia (as amended)
MMD	Movement for Multi-Party Democracy
NGO	Non-governmental organisation
NGP	National Gender Policy
NRLR	Northern Rhodesia Law Reports
NWK	North-Western Cotton Company
NZP+	Network of Zambian People living with HIV
PC	Penal Code
PF	Patriotic Front
PWD	Public Works Department
SC	Supreme Court
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
UNICEF	United Nations International Children's Emergency Fund
UPND	United Party for National Development
UPR	Universal Periodic Review
VSU	Victim Support Unit
YWCA	Young Women Christians Association

ZANIS      Zambia National Information Services  
ZP          Zambia Police  
ZR          Zambia Law Reports

## **List of legislation**

The Anti-Gender Based Violence Act (Act No. 1 of 2011) of the Laws of Zambia

The Constitution of Zambia (Chapter 1) of the Laws of Zambia

The Juveniles Act (Chapter 53) of the Laws of Zambia

The Juveniles (Amendment) Act (Act No. 3 of 2011) of the Laws of Zambia

The Penal Code (Chapter 87) of the Laws of Zambia

## **List of international instruments**

Convention on the Rights of the Child (CRC)

African Charter on the Welfare and Rights of the Child (ACWRC)

## **List of cases**

*Hampande v The People* (1969) ZR 125 (CA)

*R v Yohani Mporokoso* (1939) 2 NRLR 152

## List of figures

Figure 1:	A map of Zambia showing the research area .....	18
Figure 2:	A bar chart showing the national statistics for reported cases of defilement (1998-2012) .....	25
Figure 3:	A bar chart showing the sentencing powers of magistrates according to their jurisdiction.....	30
Figure 4:	A bar chart showing the period that 5 defilement cases took from the date of commencement of trial proceedings in the subordinate court to the day that sentence was pronounced by the High Court .....	31
Figure 5:	A flow diagram showing the usual procedures followed in cases of defilement.....	1
Figure 6:	A diagram of the district and provincial administrative structures responsible for gender and gender based violence issues in Katete District, Eastern Province of Zambia .....	15
Figure 7:	A bar chart showing the defilement cases that were reported and taken to court in Katete Province (2012-part 2015).....	20
Figure 8:	Showing a seesaw to depict the gap between child victims of defilement and the rehabilitation they should receive.....	34
Figure 9:	A proposed model of GBV management .....	38

## **Executive summary**

This work is a brief summary on what this research is all about and the methodologies and methods that I used and the findings from the field. I carried out this study in the Katete District of the Eastern Province of Zambia. The research focuses on section 30 of the Anti-Gender Based Violence (AGBV) Act (Act No. 1 of 2011) of the laws of Zambia, which places a statutory duty on the Minister in charge of the Department of Social Welfare (DSW) to initiate programmes for the rehabilitation of victims of crime. It is further narrowed down to victims of defilement as a case study. The objectives of the research were to understand the psychosocial challenges that children go through as a result of defilement, to link international human rights instruments to relevant local legislation, to assess legislation that underpins defilement in Zambia and to assess administrative establishments that deal with children as victims of sexual abuse.

As I carried out this study, I used various methodologies for research but the women's law approach was cross-cutting. Group discussions, actors within structures, the human rights approach, observations, self interrogation, interviews and desk research, to mention just a few, were used in the study. I built up and moved the field research from point to point using the grounded theory approach collecting and sifting and analysing the most relevant data.

The research revealed that Zambia has made strides in putting forward legislation and Government policies that adhere to international instruments which the State has committed itself to based on the principle of the best interests of the child. Legislation provides for the rehabilitation of child victims of crime, e.g., defilement victims. There is also a National Policy that aims at enforcing legislation through administrative engagements. It also emerged that despite much paper work, promised services have not yet come to fruition.

The lack of a strategic plan by the Department of Social Welfare to rehabilitate victims of crime has brought government efforts to a halt. District committees vested with a duty to administer concerns for victims of crime lack co-ordination on statistics and information sharing which does not help higher levels of governance in planning. Shelters for victims have not been built and a blame game between political parties has contributed to the lack of progress. Although the media is a platform for the delivery of information on shelter and accountability for the use of allocated resources, little on the ground has changed.

The Department of Social Welfare has personnel with the expertise who understand the need for the rehabilitation of victims of defilement but they are focused on the urgent need to provide shelters in which to commence rehabilitation programmes and are not prepared to commit to any programme that is not supported by adequate operational shelters.

Further, the research revealed that social and cultural factors contribute greatly to the increasing numbers of victims of defilement. Such factors include observance of the tradition of initiating boys, the lack of control of children's attendance at boys' *Nyau* initiation ceremonies and the general link of hegemony in masculinity to sexual experience. The situation is exacerbated by the conflict over the determination of marriageable age: tradition considers puberty as adulthood, while the law considers 16 to be the age of sexual consent.

Communication between victims and actors in the criminal justice system (CJS) should be improved in order to minimise the trauma arising from the anxiety surrounding the experience of court process. The court environment is not child friendly and increases the need for children to be prepared for the process through rehabilitation. The research shows that child victims of defilement are in great need of rehabilitation at every stage of their entire journey through the CJS.

A victim support system should be seriously looked at and incorporated in the CJS so that in every investigation made by the police in a defilement case, a social worker is present to manage a child's trauma. Social workers must be present in court when a child is testifying.

On education, social workers must visit schools to create a link with guidance and counselling teachers and identify cases of trauma that may require placing a child in a safe house and school authorities should also share statistics with the Department of Social Welfare (DSW) on counselling offered to pupils.

In health, social workers are required to work with health institutions in order to help a child understand and come to terms with the consequences of sexual abuse. The advent of the HIV/AIDS pandemic increases the need for counselling victims of defilement so that they can cope with and manage their treatment as well as their demands of trials they may have to attend at the same time.

The Government of the Republic of Zambia (GRZ) should work towards implementing legislation in order to reach the targeted growing number of children who are being defiled. The task should be shared with the business corporate world which could include the building of rehabilitation centres in its portfolio of social corporate responsibility.

## CHAPTER ONE

### 1.0 INTRODUCTION AND BACKGROUND TO THE RESEARCH

#### 1.1 Introduction

*'According to the case records for now and in the past, sexual offences are topping the criminal case records. There is increasing defilement cases in the province than any other criminal offence despite court minimum mandatory sentence of 15 years given to perpetrators. 15 years minimum mandatory punishment has not deterred men from sexually abusing minors as defilement has continued rising, and we ask ourselves, why?'*  
(The Post, 2016)

This was a statement made by Lusaka High Court Judge Mungeni Mulenga during the official opening of the High Court session in Chipata in February, 2016. Over the past ten years, the Zambian Government has made remarkable changes to its legislation in order to put in place provisions aimed at fighting sexual offences. In 2005, the Penal Code (PC) was amended to include a mandatory minimum sentence for the offence of defilement to fifteen years imprisonment with hard labour. This is aimed at punishing offenders and deterring potential offenders.

The amendment to the crime of defilement in the PC was clearly motivated by a gender balanced approach. Previously only girls could be defiled as the law specified that the act was the unlawful carnal knowledge of a girl child. Now, defilement can also be committed against a boy child. The gender balance is aimed at satisfying the principle of equality before the law so that boys and girls may benefit equally from the law's protection.

The enactment of the Anti-Gender Based Violence Act (AGBV Act) in 2011 brought in new methods of addressing the many challenges that arise from the crime of defilement in Zambia. The Act now provides for programmes aimed at rehabilitating victims of defilement. Previously, although the state imposed severe penalties against perpetrators through mandatory jail terms, victims and their plight were largely ignored and they were reduced to becoming simply pawns in the state's singular quest for the punishment of offenders. The AGBV Act breaks from this biased approach as it gives the Department of Social Welfare (DSW) a clear legislative mandate to initiate rehabilitation programmes for victims of crime



and to establish and operate shelters for victims funded from money specially allocated to it by Parliament for that purpose. The idea is that shelters should be spread throughout the country in order to serve victims no matter where they live.

The government has also released the National Gender Policy, a document aimed at outlining objectives for the government to fight gender-based violence (GBV) and implement programmes for the rehabilitation of victims. The policy was motivated by the development of national, regional and international best gender practices arising from research findings, the unrelenting increase in gender based violence and health challenges including HIV and AIDS which often affect victims of defilement.

The Government of the Republic of Zambia (GRZ) has also made administrative progress in addressing GBV in the country. On March 8, 2012, the GRZ created the Ministry of Gender and Child Development which is now the Ministry of Gender after the Department of Child Development was transferred to the Ministry of Youth and Sport. This action elevated the Gender and Child Development Division which was the result of a merger of the Gender in Development Division (GIDD) and the Child Development Department and Social Welfare. Currently, government policy and laws on GBV and other gender issues are addressed through committees at all levels of governance. All government departments have Gender Focal Point Persons whose aim it is to take everyone on board in the fight against GBV as well as other gender related issues.

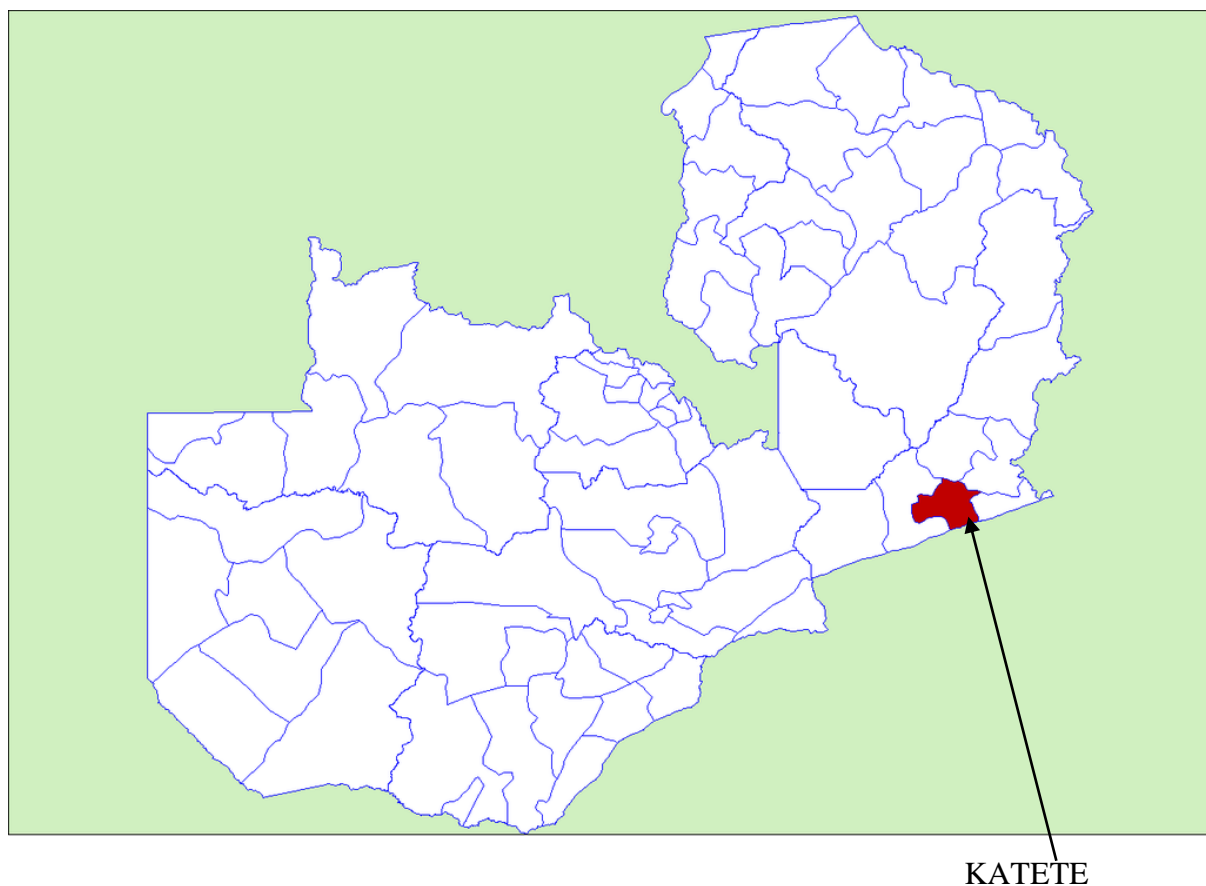
## **1.2 Location of the research**

This research was conducted from October, 2015 to March, 2016. The location included the Katete and Chipata Districts of the Eastern Province of the Republic of Zambia. I focused my research on rehabilitation programmes for victims of defilement in Katete District and used the district as a case study. Respondents based in Katete were selected to evaluate the quality of service delivery as an end use location whilst those based in Chipata were for the purposes of the coverage of Katete at Provincial level.

Katete District is located in the Eastern Province of Zambia and its southern border also forms Zambia's border with Mozambique. It also shares borders with Petauke, Mambwe, Chipata, Chadiza and the newly created Sinda District. It is located 85 kilometres from

Chipata and 488 kilometres from Lusaka along the Great East Road. The district has a population of 243,849 people representing 1.9% of the country's population according to the 2010 census of population and housing. The shaded area at which the arrow is pointing in Figure 1 shows the location of Katete District on a map of Zambia. The shaded area includes the newly created District of Sinda whose boundaries have still not been published.

**Figure 1: A map of Zambia showing the research area**



### **1.3 Research objectives**

My overall objective was to examine how the state provides rehabilitation services to victims of defilement through the DSW. I conducted this research with four objectives in mind. Firstly, I intended to highlight the dysfunctional conduct of children who are sexually abused. It is the manifestation of such conduct (including that arising from psychological trauma) that justifies the need for victims of defilement to be rehabilitated. Secondly, I intended to understand the link between international human rights instruments and local legislation and policies in order to identify whether rehabilitation is a human rights issue. Thirdly, I intended to evaluate legislation that addresses defilement in Zambia. Lastly, my objective was to

evaluate the quality of administrative establishments that have been put in place to implement service delivery mechanisms to victims of defilement at district level.

#### **1.4 Significance of the research**

I developed an interest in conducting this research during lessons I attended in the Women and the Criminal Justice System course<sup>1</sup> at the Southern and Eastern African Regional Centre for Women's Law (SEARCWL) at the University of Zimbabwe. I attended a lecture on the victims of crimes of sexual violence in the 1994 Rwandan Genocide by Refina Madenga<sup>2</sup> which gave me insight into an area of law which I found to be sadly neglected by our criminal justice system (CJS). From my work as a Public Prosecutor in the Zambia Police (ZP) Service, I am aware that, as a crime, defilement statistics are generally high and that they rank the highest of all sexual offences. I am also aware of the robust efforts that the government has made in putting in place legislation and policies to combat gender-based violence (GBV). I also realise that defilement has a grave and huge impact on the health and human rights of its young victims.

My research was necessitated by the need to explore ways of evaluating our legal system which I intend to be of help to the way in which the government reviews and seeks to improve the quality of its justice delivery system. Although we have laws on the rehabilitation of victims of crime, its victims do not benefit from them as much as they should. On the one hand, the Anti-Gender Based Violence Act (AGBV Act) is a relatively new and progressive piece of law, but, on the other hand, its implementation has been very slow. This means that despite the existence of this welcome piece of legislation, the growing number of defilement cases means that a growing number of victims continue to be left traumatised. Evaluating the state's performance involves measuring the public statements its representatives make when they issue progress reports to the international community, against what is actually occurring on the ground. What usually turns out to be the case is that government officials (i.e., the duty bearers) make hollow statements claiming that human rights principles are being adhered to, but, upon testing such claims, research reveals that the intended beneficiaries of acclaimed

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<sup>1</sup> One of the optional courses offered at the Southern and Eastern African Regional Centre for Women's Law (SEARCWL), University of Zimbabwe, in the second semester of the Masters in Women's Law programme.

<sup>2</sup> A Zimbabwean lawyer who, after growing up during the liberation struggle in Southern Rhodesia, has keenly observed the human rights paradigm at different stages in Zimbabwe which sort of explains the career path she is pursuing in the area of international humanitarian law.

government rehabilitation services and programmes (i.e., the rights holders) have in fact never heard of them.

I also intended child victims of defilement to benefit from this research in that I aimed at creating a voice for them in matters of rehabilitation. I came into this research knowing that the CJS has dealt with the following aspects of the GBV challenge, namely, raising awareness of the crime, investigating defilement cases and bringing to justice their guilty perpetrators. The research revealed, however, that throughout this process we have sidelined and therefore unfortunately ignored the lives, welfare and interests of the child victims of defilement.

Lastly, this research should appeal to law students and actors in the CJS and encourage them to adopt an open-minded approach towards tackling defilement and its wider issues. We all need to carefully examine not only the legal issues surrounding the criminal law and its procedures which manage the crime but also to identify and discover what influences impact upon people's attitudes and incline them towards certain behaviour. This line of inquiry became increasingly important for me to pursue as I carried out this research because I kept having to grapple with the strange reality that the crime of defilement continues to rise even though its punishment is harsher than ever before. So I kept asking myself questions such as, Why do people still feel compelled to commit the crime of defilement despite its extremely severe penalty? Don't the perpetrators fear the punishment they will suffer if they get convicted? Why are victims not protected by the harsh penalty for defilement? It is only when lawyers start genuinely seeking answers to hard questions such as these that we will stand a better chance of finding innovative ways to effectively implement and put life into the well-intended but so far, powerless, legislation that is calculated to combat this terrible crime.

## **1.5 Research assumptions**

The research is based on the following assumptions.

1. The Department of Social Welfare has a clear legislative mandate to initiate programmes for the rehabilitation of victims of defilement.

2. Despite the enactment of the Anti-Gender Based Violence Act in Zambia the Department of Social Welfare does not provide programmes for the rehabilitation of victims of defilement.
3. There is no strategic plan to initiate programmes for the rehabilitation of victims of defilement.
4. There is no infrastructural development or allocation of resources to the Department of Social Welfare to enable that department to function according to international standards.
5. The relevance and importance of making provision for programmes for the rehabilitation of victims of defilement is not clear to some social workers in the Department of Social Welfare.
6. There are no monitoring or evaluation mechanisms by the Ministry of Gender, the Human Rights Commission, and the Victim Support Unit of Police aimed at ensuring the efficient delivery of services by the Department of Social Welfare.

## **1.6 Research questions**

The following are the research questions based on the above assumptions.

1. Does the Department of Social Welfare have a clear legislative mandate to initiate programmes for the rehabilitation of victims of defilement?
2. Does the Department of Social Welfare provide programmes for the rehabilitation of victims of defilement in accordance with the Anti-Gender Based Violence Act?
3. Is there a strategic plan to initiate programmes for the rehabilitation of victims of defilement?
4. Are there infrastructural development and/or the allocation of resources to the Department of Social Welfare to enable it to function according to international standards?
5. Is the relevance and importance of making provision for programmes for the rehabilitation of victims of defilement clear to some social workers in the Department of Social Welfare?
6. Are there any monitoring or evaluation mechanisms by the Ministry of Gender, the Human Rights Commission, and the Victim Support Unit of Police aimed at ensuring the efficient delivery of services by the Department of Social Welfare.

## **1.7 Conclusion**

This Chapter deals with some general introductory remarks about the research including my reasons for choosing this topic. It also covers the objectives of the research, the research location as well as the research assumptions and questions. All these serve as a general introduction and point to further discussions which are canvassed in the following five chapters which specifically focus on the government's failure to comply with its statutory duty to provide rehabilitation programmes for victims of defilement.

## **CHAPTER TWO**

### **2.0 THE LAW ON DEFILEMENT AND MECHANISMS FOR THE REHABILITATION OF VICTIMS**

#### **2.1 Introduction**

In this chapter, I link defilement to the social factors that trigger its occurrence in Zambia. Statistics indicate there are more cases of defilement than rape or any other offence against morality. As I examine the subject of the rehabilitation of victims of defilement, I find it imperative to examine the probable causes of defilement. This is because some crimes follow geographical patterns in occurrence and prevalence. Actors within the CJS structures are asking themselves why defilement cases are increasing when sentences against the crime have become heavier? The successful co-operation of a victim of defilement with the police is vital to bring about a successful investigation of the crime and then with court actors to bring to secure the final conviction and punishment of the guilty perpetrator. Defilement is closely related to the offence of rape on the legal element of penetration but they differ on the legal elements of age and consent. A proper appreciation of the difference between the two offences is vital for police officers who are required to frame the correct charge against a suspect, for prosecutors who need to draft a correct indictment against an accused and magistrates who must deliver a correct judgment in court. Therefore, this chapter analyses the two offences under Zambian law. I end the chapter by discussing the literature on rehabilitation and the legal provision for initiating rehabilitation programmes in Zambia. The Anti-Gender Based Violence Act (AGBV Act) created duties for different persons to compliment efforts aimed at helping victims of gender based violence (GBV). The purpose behind the AGBV Act creating rights for victims is to make it easier for them to claim and obtain help from the state. In other words, a victim has the right to receive shelter, medical treatment, legal services, counselling or any other service that may be required as the result of their being a victim of defilement.

#### **2.2 Background of defilement**

*'...in sub-Saharan Africa, it is believed that social views of masculinity shape sexual practice.'*

*(Barker and Ricardo: 2005, V)*

The above quote supports the contention that the law does not stand in isolation from other factors which influence the social behaviour of individuals which may also be influenced by geographical location. Law protects society against the social deviant. But it does not explain why they break the law. Therefore unless we study social and other factors, an understanding of the law alone is inadequate to appreciate and explain social behaviour that crosses the line and becomes criminal conduct. In order to fully understand the crime of defilement, it is important to understand social constructs around sexuality in *Zambian* societies and patterns of social behaviour of men towards women's sexuality and their response to that behaviour. Sexual practice for men and boys is viewed as an attainment of a new hegemonic level of masculinity in *Zambia*. In other words it is through sexual practice that boys come to receive recognition from their peers and assert their masculinity.

During the research I found that there exists in *Katete* a belief that links the hegemony of masculinity to sexual experience. I interviewed the Magistrate for *Katete* who said that the *Nyau*<sup>3</sup> tradition contributes to defilement because when men and boys dance at *gule*,<sup>4</sup> which takes place at night, the girls who are required to come and sing for them become vulnerable to sexual abuse. This resonates exactly with what a *Chewa*<sup>5</sup> man said when he spoke to me on condition that I withheld his name, as their culture does not permit traditional matters to be disclosed to outsiders. He said:

‘During *gule* we sound drums in the night, girls and women come to sing for us. Parents who don't allow their children to join *Nyau* or sing for us in the case of girls are rebellious from tradition. Many things happen there including sex. You are a man enough if you have sex as it means growing.’

This *Nyau* traditional practice explains why cases of defilement have kept rising over the years despite sensitisation campaigns and harsh sentences imposed by the courts. This is because such social beliefs are not only confined to the *Chewa* people but also extends to other parts of the country. By punishing defilers the CJS is correcting a mischief of sexual practice that the culture of some *Zambians* has embraced for a long time. The bar chart in Figure 2 shows some defilement statistics in *Zambia* since 1998.

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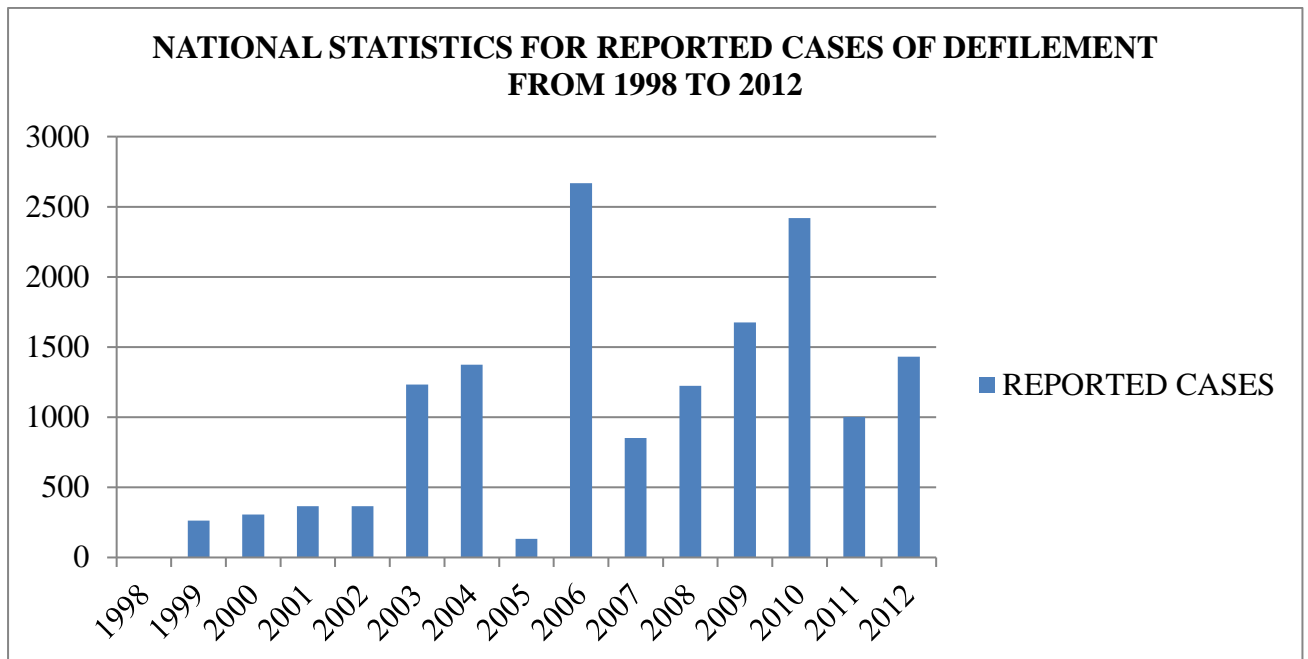
<sup>3</sup> A tradition of the *Chewa* speaking people where men and boys dress in masks for entertainment and cultural practices.

<sup>4</sup> An initiation ceremony for *Chewa* people.

<sup>5</sup> A tribe found in *Zambia*, *Mozambique* and *Malawi* which practices the *Nyau* tradition.



**Figure 2: A bar chart showing the national statistics for reported cases of defilement (1998-2012)**



These statistics show a general increase in defilement cases. Despite legislative interventions, cases of defilement continue to increase. Therefore making provision for rehabilitation in the AGBV Act is a progressive step because there is an increase in the number of children who are being traumatised as a result of falling victim to this crime. The advantage of providing rehabilitation will be that each defiled child will benefit from the state's duty to rehabilitate regardless of whether or not the perpetrator is finally convicted and sentenced.

### **2.3 The law on defilement in Zambia**

According to section 138(1) of the Penal Code (PC) (Chapter 87) of the Laws of Zambia, any person who unlawfully and carnally knows any child commits the felony of defilement. The punishment upon conviction is a mandatory sentence of not less than fifteen years and anything up to a life sentence. Section 138 of the PC is gender neutral as the offence can be committed against any child regardless of sex. Carnal knowledge in this case means having penile penetration of the vagina; inserting other objects or a finger into the vagina does not constitute defilement.

Section 138(2) of the PC provides that any person who attempts to have carnal knowledge of any child commits the felony of attempted defilement and is liable upon conviction to

imprisonment for a term of not less than fourteen years but not exceeding twenty years. During my work as a prosecutor, I have learnt that even though this provision (of attempted defilement) exists, prosecutors prefer not to use it and where the victim is a female, to charge the accused with indecent assault in terms of section 137 of the PC rather than charge him with attempted defilement. This is because, firstly, all the elements of attempted defilement are included in indecent assault. In order to prove the former, however, the state also has to prove that the accused intended to have carnal knowledge which does not require to be proved in the case of indecent assault. The *actus reus* in indecent assault is an assault occasioned by an act of indecency and it is easier to meet the legal burden of proving indecent assault than it is for attempted defilement. Secondly, the offence of attempted defilement is punishable by a minimum mandatory sentence of 14 years imprisonment with hard labour whereas indecent assault is punishable with the harsher minimum sentence of 15 years imprisonment with hard labour. Acting in accordance with the principle in *Hampande v The People* (1969) ZR 125 (CA) where the court ruled the state has a duty to bring the most serious charge warranted by the facts, the charge of indecent assault is preferred because its minimum sentence (of 15 years) is higher than that of attempted defilement (i.e., 14 years).

Section 138 (3) of the PC provides that:

‘any person who prescribes the defilement of a child as a cure for an ailment commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.’

During the research, I conducted a focus group discussion with members of the Network of Zambian People living with HIV (NZP+) in Katete. They informed me that one of the reasons why adults defiled children, especially virgins, was the belief that such sexual intercourse cures the Human Immunodeficiency Virus (HIV) which causes the Acquired Immunodeficiency Syndrome (AIDS). They also said however that people had recently stopped using this as a reason for defiling children. This belief was prevalent in the country and was taken into consideration by Parliament when it amended the PC in 2005 by passing the PC Amendment Act No. 15 of 2005. The NZP+ informed me that two of their members had become HIV positive as a result of having been defiled. Whilst this is a case of medical investigation, it is possible that if not these two members then at least some children become HIV positive because of defilement.

The law also punishes a person who prescribes defilement as it is believed that traditional healers are responsible for this belief and prescription for the cure of HIV.

Section 138(4) of the PC provides that a child above the age of twelve years who commits an offence of defilement or attempted defilement is liable to such community service or counselling as the court may determine in the best interests of both children. The law lays down that the best interests of the child principle is paramount in matters that concern a child. This is where rehabilitation is paramount for children who come into conflict with the law. Counselling, as social workers told me, is best carried out when a child is treated at a rehabilitation centre. Whilst I did not find any police statistics on defilement based on age, I know from my experience working as a public prosecutor that there are a high number of juvenile offenders charged with defilement not only in Katete but at all the stations to which I have been assigned. In order for section 138(4) of the PC to be effective, rehabilitation centres have to be established as the two legal provisions complement each other. With respect, counselling on its own is insufficient, it should form part of a comprehensive rehabilitation process.

### ***2.3.1 The victim's plight at the pre-trial stage***

According to section 5 of the AGBV Act, every police officer, labour inspector, counsellor, medical practitioner, legal practitioner, nurse, religious leader, traditional leader, and teacher has a duty to inform a victim of his or her rights and advise her on how to obtain shelter, legal support, medical treatment, counselling or other relevant support. This provision brings several valuable expert participants together to help victims through the CJS's intervention mechanisms. The duty to help a victim should not be the responsibility of actors in government structures alone but should also include religious and traditional leaders. This is aimed at creating a robust approach towards helping a victim. Regardless of who reports the crime, whether it is the victim or any other person, the police officer is required to respond promptly to the report because a victim maybe in urgent need of protection. The inclusion of a duty to assist a victim on how to obtain shelter indicates that it is of paramount importance that shelter for the victim be obtained as soon as possible after defilement occurs.

Communication is needed between the different actors who are under the statutory duty to help a child in term of section 5 of the AGBV Act. They should be in a position to quickly co-ordinate and protect the child. For instance, if defilement is reported to a traditional leader

during the night, the police should be informed immediately in order to gather and preserve crucial evidence of the crime. The DSW should also be available to provide shelter for the child and a medical doctor for treatment. Since the talents and work of each specialised actor complement each other, the actors all need to co-ordinate well with each other and be able to perform their various tasks quickly in order to help the child victims. Therefore, in order to meet this need, the GRZ has created administrative committees; unfortunately, however, they are not yet operational. I discuss my findings on these administrative committees in chapter four of this paper.

### **2.3.2 *The victim's plight at the trial stage***

*'Recall is the most complex form of memory requiring that previously observed event is retrieved from storage with few or no prompts. This is the form of retrieval most often required of witnesses, and is strongly age-related.'*

*(Perry and Wrightsman, 1991: 111-2)*

Available literature on child witnesses hinges on the quality of their recall of the offence as Perry and Wrightsman observe. Memory involves the need to acquire, store, retain and retrieve information. In order to go through the trial process, a child has to recall what they acquired during the act of being defiled; it includes the identification of the perpetrator and the sequence of events. If that is successfully done, a child has to retrieve stored and retained information through testimony. As correctly observed by Perry and Wrightsman, this process is related to age and how children respond to this differs from case to case. The law on corroboration should therefore take these observations into account when dealing with child witnesses.

Section 121 of the Juveniles Act (JA) Chapter 53 of the Laws of Zambia supports the need to create an environment that is favourable to the victim of a crime in order for them to testify as comfortably or painlessly as possible in court. Section 121 of the JA states:

*'Where, in any proceedings in relation to any offence against, or any conduct contrary to, decency or morality, a person who, in the opinion of the court, is a juvenile is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the juvenile.'*

This provision is applicable to trials of defilement since the crime offends against the morality and decency of their child victims. In practice, trial magistrates use their discretion and normally ask a child victim which people she/he is comfortable having present in court.

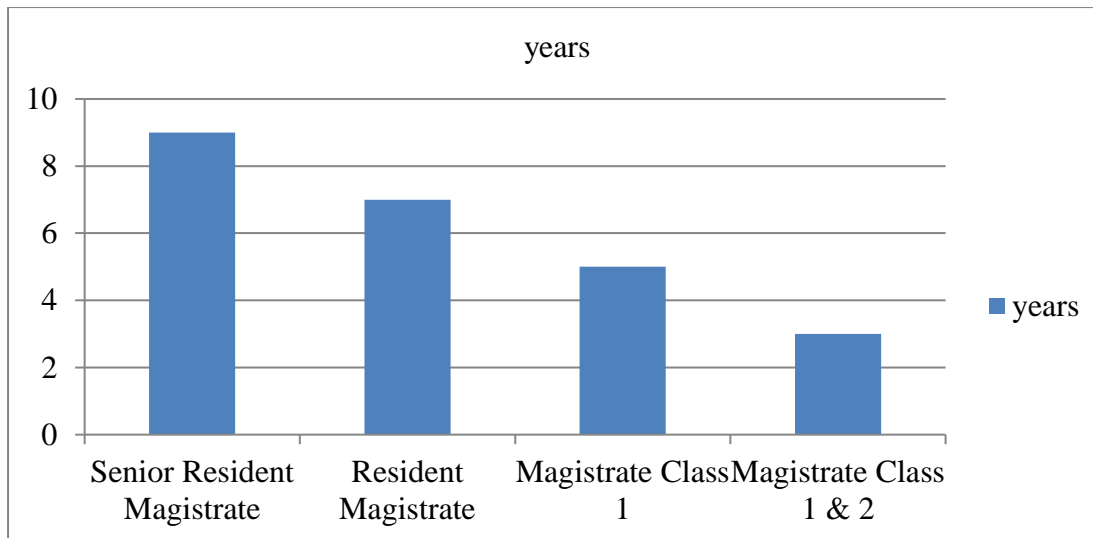
From my experience as a public prosecutor, I am aware that much training has been done with relevant actors in the CJS in Zambia on how best to implement this provision. For instance, one-way mirrors are used in court so that a child cannot see their alleged assailant against whom they must testify, while the accused person can see them. However, this facility is not available in many court rooms, including Katete. This provision calls upon magistrates to be as creative as possible to create a victim friendly environment while ensuring at the same time that the victims do in fact testify in the presence of their alleged attackers. In order to achieve a successful prosecution, the magistrate and all the actors involved need to secure the understanding and willing co-operation of the victim with the trial process. Rehabilitation programmes for child victims are absolutely crucial to achieving this task. For example, the presence of a social worker during the trial is also important to help child victims cope with the trauma they experience with the trial process.

### ***2.3.3 The victim's plight at the sentencing stage***

Since cases of defilement are referred to the High Court for sentence, the unavoidable lapse of time between conviction (in the subordinate courts, i.e., magistrates courts) and final sentence (in the High Court) delays closure for victims of defilement and creates uncertainty for them, thus further justifying the need for them to be rehabilitated. During the Ministry of Gender and Child Development's National Symposium on Gender-Based Violence in 2013, Mrs Chali Hambayi from the National Prosecutions Authority, correctly observed:

‘Gender based violence cases that are tried in the Subordinate Courts are assaults and sexual offences such as defilement, rape, indecent assault and incest.’

Section 7 of the Criminal Procedure Code (Chapter 88) of the Laws of Zambia limits the sentencing powers of the various types of subordinate courts as indicated in Figure 3.

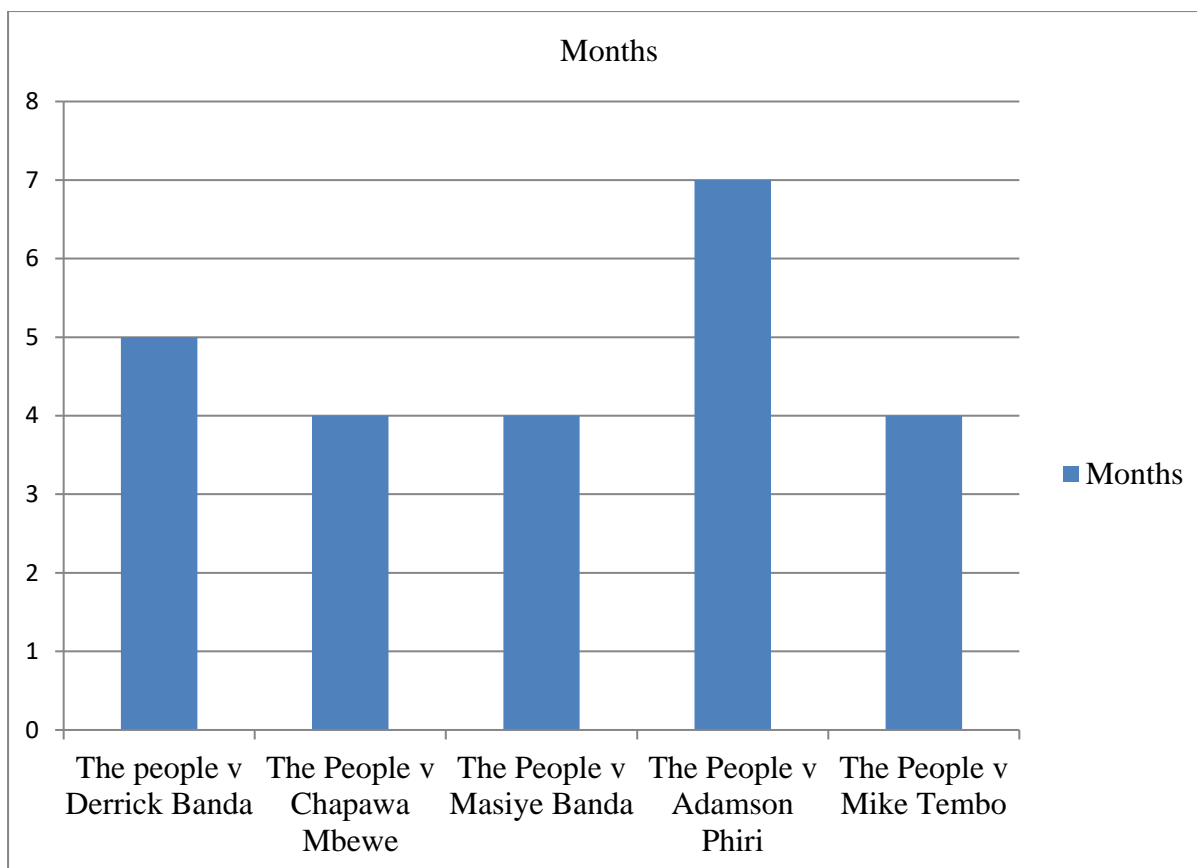


**Figure 3: A bar chart showing the sentencing powers of magistrates according to their jurisdiction**

Since no subordinate court has the jurisdiction to impose the minimum mandatory sentence of fifteen years against convicted defilers (meaning that they have to be referred to the High Court for sentencing), the victims are further traumatised by the stigmatisation they suffer at the hands of their community during this waiting period.

‘Stigmatisation refers to the negative connotation associated with the sexual abuse which was communicated to the child during the abuse experiences. These negative connotations become incorporated into the child’s self image and include badness, shame and guilt’ (Finkelhor and Browne, 1985: 66).

The experience of stigmatisation raises the child victim’s fear and anxiety and the situation is worsened by the lack of rehabilitation programmes. I examined five case records from the High Court and found that on average a case takes four months and eight days to be concluded in court as indicated in Figure 4.



**Figure 4: A bar chart showing the period that 5 defilement cases took from the date of commencement of trial proceedings in the subordinate court to the day that sentence was pronounced by the High Court**

### 2.3.4 *Defilement as opposed to rape*

Section 132 of the PC states:

‘Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed “rape”.’

The sentence for rape as is created by the PC (Amendment) Act (Act No. 2 of 2011) of the Laws of Zambia is imprisonment for a period of between fifteen years and life.

The PC gives a definition of rape under section 132 as opposed to defilement which is not defined in the Act. One clear difference between the two is the sex of a victim. In the case of defilement a male or female perpetrator can defile a male or female child. In rape, the offence can only be committed against a woman or girl; but a man cannot be raped.

There is also a difference between the two crimes on the issue of consent. In the case of rape, 'the *actus reus* is that sexual intercourse took place without the consent of the victim' (Kulusika, 2006: 512). In defilement cases, the statute does not require proof of consent as it is immaterial, meaning the perpetrator cannot plead innocence on account of the victim's consent.

The age of the victim also creates a difference. In the case of defilement, the victim is younger than 16 years old; if both children are between 12 and 16 years of age, the crime is still one of defilement but the remedy is either counselling or community service. This creates a duty on the prosecution to prove the age of a child as an element of the crime of defilement. In rape, the victim is not a child but a woman or girl. The PC does not define a woman or girl, but in practice a female is considered to be a girl until she reaches the age of 16 upon which she is deemed to become a woman. It is easier to prosecute the crime of defilement than rape since, in the former case, the accused cannot use the defence of consent. And this defence in a rape trial can be very difficult to rebut. Therefore when prosecutors opt to pursue a charge of defilement they need to prove that the age of the child qualifies for the crime to be treated as one of defilement,

Sexual intercourse for both offences is established by the fact of penetration of the penis into the victim's vagina in accordance with *R v Yohani Mporokoso* (1939)2NRLR152, in which Robinson Acting Chief Justice as he was then, said:

'To prove a rape it is necessary to prove penetration or partial penetration.'

Failure to prove that penetration occurred results in the accused person's acquittal. To establish this fact, medical evidence is required and a medical practitioner is called as a witness to explain the examination done on the victim.

The sentences for both offences attract a minimum sentence of 15 years imprisonment with hard labour and a maximum of life imprisonment. The nature of the sentence lies in the discretion of the court based on the facts of the case and any mitigating factors raised by the defence. It is common for adult perpetrators of the same age to receive the same punishment for defilement of victims of different ages. It is also possible for a perpetrator who defiles a 1



year old child to receive a sentence of 15 years imprisonment with hard labour and the defiler of a 15 year old child to receive life imprisonment.

## **2.4 Rehabilitation of child victims**

A common but limited definition of rehabilitation is provided by the Oxford English Dictionary which states that rehabilitation is ‘a course of treatment, largely physical therapy, designed to reverse the debilitating effects of injury.’<sup>6</sup> The definition narrows rehabilitation to physical care which is a common way of looking at it. The second definition looks at helping someone to reintegrate into society after time spent prison or after recovering from the use of drugs. My focus of research is on the former rather than the latter. The injury looked at in this case is defilement whose debilitating effects may be reversed through physical therapy provided by rehabilitation programmes.

The United Nations International Children’s Emergency Fund (UNICEF) lists possible characteristics of sexually abused children as:

### **(a) Abused children are often suspicious of other people’s motives**

People manage their affairs in both the public and private spheres of life. In the course of everyday life, children, as members of our communities, participate in various activities in, e.g., schools, churches, hospitals and market places. When a person becomes suspicious of other people’s motives, a sense of security is lost. The impact of becoming suspicious of other people’s motives deprives a child of trust of other people. For a child attending school their interaction with teachers becomes a problem and if they seek personal attention from their teachers, they may not want it in private (in the absence of other children) as their memories of abuse are vivid. In church, a child may lose their trust in their friends and pastor on account of fear of their motives and this pattern of behaviour may be repeated toward a medical doctor if the child falls ill. In other words, defilement causes a child to feel estranged from everybody and this affects their conduct in public life.

This phenomenon is well summed up as follows by Lewis:

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<sup>6</sup> Oxford pocket dictionary, available at <http://www.encyclopedia.com/topic/Rehabilitation.aspx#5-10999:rehab-full>

‘As a result of the betrayal the victim has suffered at the hands an abusive person, and because she has been made to feel helpless by that person, the victim is severely limited in her ability to trust’ (Lewis, 1999: 100).

The failure to trust may impair a child’s future intimate relationships. They may not trust a spouse in adulthood. In this situation rehabilitation is ideal to heal the wounds of an experience that may destroy a child’s future relationships.

**(b) Abused children usually feel a sense of resentment or hostility towards the opposite sex**

In my experience this characteristic manifests itself in two ways: firstly, a victim may develop resentment towards persons of the opposite sex; and, secondly, they may become hostile towards the opposite sex and this may involve a sense of need for revenge.

On the issue of resentment, I interviewed one social worker from the Department of Community Development in Katete who disclosed to me that in college she had a friend who developed feelings of resentment towards men because of a history of sexual abuse she had suffered. She rejected proposals from men and made negative comments about them during conversations, withdrew from them socially and even refused to have them as study partners at school. I thought it entirely possible that this woman may well have been suffering the effects of defilement. While she may have originally been expected to grow up and one day choose a partner and marry, negative experiences at the hands of men in her youth caused her to resent men. The rehabilitation services provided for in the AGBV Act would be well placed to help minimise the trauma young vulnerable people suffer after they have been defiled.

**(c) Abused children think that sex is dirty and not open to discussion**

Sex is a legitimate activity within our society and people engage in it for purposes of both pleasure and procreation. With the advent of HIV/AIDS and other sexually transmitted infections, there is growing and urgent need for children and adults to have and exchange helpful information about sex. Parents, guardians, and friends of children need to discuss sex as it is vital to help a child understand who they are and what their bodies are all about. Discussing sex is and should not be viewed as foreign to Africa in general or Zambia in particular.

Studies indicate that there is a need for sexual education:

‘Sexual initiation traditions across the continent that are espoused by erotic cultures, such as the *Ssenga* among the Banganda of Uganda, the *tete* among the Shona of Zimbabwe, the *alangizi* among the *yao* of Malawi, and the Chewa/Nyanja of Zambia,...all carry empowering messages for young girls...’ (Tamale, 2011: 618).

Professor Tamale lists these different traditions to illustrate the importance of information about sex and empowerment. Our modern society is constantly turning away from old beneficial traditions on sex education for many different reasons. They are considered to be old-fashioned practices and of no use in this modern age. Against this backdrop of the erosion of the idea that Africans already possess the solutions to their own problems, including traditional sex education, sexual abuse in the form of defilement worsens the already urgent need for young girls to have access to sex information, especially when they also consider that the topic of sex should not be discussed.

**(d) Abused children blame and reject themselves and cut themselves off from others to avoid telling them their secret because of the shame they feel for themselves and will bring on the family**

La Fontaine refers to the difficulty of reaching and researching child victims of sexual abuse:

‘Many victims of sexual abuse are unwilling or unable to talk because of fear, shame, guilt and the quite justifiable feeling that they may not be believed or that, if believed, they will be seen as somehow tainted by the experience’ (La Fontaine, 1990: 45).

This was a problem identified through research, though I do not discuss it to explain any difficulty that I faced in research, it can bring barriers to many issues that are in the best interests of the child. Shame and guilt are linked closely to self blame and this prevents a victim from disclosing what happened to them for fear of stigmatisation. The fact remains that it is in the best interests of the child to seek treatment. If this help is not provided because of a lack of information on the part of parents or guardians, a child may fall ill and even possibly die. Self blame is also influenced by society’s culture that expects a girl to be sexually pure.

According to Black’s Law Dictionary, to defile means:

‘To make dirty’ (Law Dictionary, 1990: 487).

The term defilement contributes to the feeling of being tainted by the experience. A child may fear their community’s stigmatisation and lose the ‘purity’ that its members expects of them.

#### ***2.4.1 The legislative framework***

Section 30 of the Anti-Gender Based Violence Act (Act No. 1 of 2011) of the Laws of Zambia deals with rehabilitation of a child victim and it states:

- ‘(1) The Minister responsible for social welfare shall provide mechanisms and programs for the rehabilitation of victims.
- (2) Victims may receive financial assistance from the Fund under this Act.
- (3) The best interest of the child shall be paramount in any assistance given to rescue, rehabilitate or reintegrate the child.’

The law on rehabilitation is aimed at restoring a child to a position that they were in before becoming a victim by minimising the trauma they suffered as a result of being defiled. It is a duty placed on the state to protect its citizens. The Ministry of Gender is responsible for gender matters in the country but the section gives the mandate to rehabilitate victims to the Ministry of Social Welfare and Community Development. This is realistic because the Social Welfare Department has offices at almost every district administrative post. In my research location of Katete, this office operates through social workers. The Ministry of Gender on the other hand has no district office but only a provincial office.

Section 27 of the AGBV Act creates the requirement to provide shelter for child victims of defilement and it states:

‘A shelter for child victims –

- (a) shall secure the physical safety of a child victim;
- (b) shall provide temporary basic material support for the care of a child victim;
- (c) shall offer a programme for –

- (i) the provision of counselling to child victims; and
- (ii) the provision of rehabilitation services to child victims;

and

- (d) shall, in co-operation with the Ministry responsible for education, offer a programme aimed at the provision of education to child victims.'

It is the desired goal of the law that rehabilitation programmes for child victims should be conducted in safe houses. A safe house must secure the physical safety of a child and the public should not be aware of its location. When I interviewed a journalist at the Daily Mail office in Chipata, he told me that he was not allowed to visit the safe house under the Young Women Christians Association (YWCA) shelter in Chipata for security reasons. I visited the YWCA offices and was told the same thing.

Safe houses must also provided basic material for the support of a child and this includes bedding, clothes and food. The section establishes a link with the Ministry of Education. Since most victims are of school going-age, there should be co-ordination between a safe house and the school authorities to ensure that a child victim's education is not disturbed. It is the duty for the Minister to establish rules, practices and norms for the running of safe houses in accordance with section 25 of AGBV Act.

#### ***2.4.2 Is the rehabilitation of victims a human right?***

International and human rights instruments that Zambia has signed require that the state protects victims from gender-based violence (GBV). Article 4(1) of the African Charter on the Rights and Welfare of the Child (ACRWC) provides that in all actions concerning the child which are undertaken by any person or authority, the best interests of the child should be the primary consideration. The 'best interests of the child' is a human rights principle which the Zambian state incorporated into article 30(3) of the AGBV Act governing the rehabilitation of child victims of defilement. This includes actively involving the child in the rehabilitation process. In other words, they must be informed and come to understand what is happening to them and why they have been removed from their parents'/guardian's home and relocated to a safe house. If the child is in school, it is in their best interests to continue their schooling and so the state must arrange for the attendance of the child in the same or different school. If the child contracted a sexually transmitted infection as a result of the attack, the

state should provide medication to treat their condition. The gist of article 4 of the ACRWC is for the child to have their best interests protected by all the state's administrative actions that affect them.

Under Article 16 of the ACRWC, Zambia as a state party to the Charter, should take specific legislative and administrative measures to protect children from, among other things, sexual abuse. The protective measures include setting in place effective procedures for the establishment of reporting referral investigations, treatment and taking steps to follow up instances of child abuse. All procedures involved in dealing with a child victim of defilement are covered by this article. Therefore, Zambia should have a system that follows up on all child abuse cases. Also administrative measures should be put in place to protect children from sexual abuse. Zambia has included human rights principles in its AGBV Act by embracing a dualistic approach towards international treaties and conventions and the inclusion of ACRWC principles into the Act proves that Zambia treats the rehabilitation of child victims as a human rights issue. Being a human rights issue means that child sexual abuse should be closely monitored and reported on to appropriate national and international organisations.

Under section 9(e) of the Human Rights Commission Act (Chapter 48) of the Laws of Zambia, the Human Rights Commission has a mandate to investigate human rights violations. As a human rights issue, the rehabilitation of victims of defilement is to be monitored by the Human Rights Commission to ensure that Zambia complies with the law. Under section 13(1) of the Human Rights Commission Act, the commission makes a recommendation of the findings of human rights abuses to the parties concerned. Its effect is that in the case of the rehabilitation of victims of defilement, a report has to be made to the Department of Social Welfare who in turn makes recommendations to the Ministry of Gender.

Article 18 of the Constitution of Zambia (Chapter 1) of the Laws of Zambia guarantees the right to the protection of the law to a person charged with an offence in a court of law, and they should be afforded a fair and impartial hearing. Although this article aims at protecting the right of an accused person to a fair hearing, a trial involves a victim as well as an accused and it is an implied requirement of Article 18 for the victim to be protected by the law as well. In other words, fairness can only be attained if a trial is balanced and fair to both the accused and the victim. Therefore, when it comes to the crime of defilement, a trial cannot be

considered to be fair if a victim is traumatised. The defilement of a child can be life threatening and as such all administrative measures should aim at implementing the AGBV Act in order to protect and preserve the life of a child which is a constitutional issue.

### ***2.4.3 Monitoring mechanisms***

Zambia participated in its second human rights review under the Universal Periodic Review (UPR) process on 30 October, 2012. The UPR is a process which involves a periodic review of the human rights records of the 193 UN Member states. In this process, a country under review prepares a report on the state of affairs of its human rights. Secondly, the country under review appears before the UPR working group, then the working group prepares a report, then the Human Rights Council's report is adopted and lastly a follow-up or report back (a progress report) is made.

Zambia received 125 recommendations from 63 States during the 2nd UPR in 2012 and accepted 70 of them, including those intended to further improve women's rights and to bring about the full implementation of the AGBV Act.

The full implementation of AGBV Act includes providing programmes and mechanisms for the rehabilitation of victims of defilement as required by section 30 of the AGBV Act. In the 2014 recommendations and implementation framework publication which highlights recommendations on Zambia during the 2nd UPR, Zambia received a recommendation from Hungary which states:

‘Take necessary steps to ensure effective implementation of the Anti-Gender Based Violence Act.’

In response to this recommendation Zambia indicated in its report, measures to ensure that this recommendation is fulfilled. The response states:

‘Multi-stakeholder committee established to spearhead the implementation of Anti-GBV by Ministry of Gender.’

The effect of this is that Zambia made a commitment to a recommendation made by another United Nations member state. The responsibility to implement the AGBV Act was placed in the hands of the Ministry of Gender through the creation of committees which should look at

the implementation of the Act. On the ground, these committees at district level include the Gender Sub-Committee and Gender-Based Violence Committee which I discuss in chapter four of this paper.

## **2.5 Conclusion**

The rehabilitation of victims as provided under section 30 of the AGBV Act is not confined to defilement victims but to any victims of crime. I focused this study on victims of defilement because of the high incidence of defilement which occurs in Katete, Eastern Province and Zambia. Legislation on defilement has been amended in the recent past through the PC Amendment Act which increased the minimum mandatory sentence for defilers to 15 years imprisonment with hard labour. A further amendment was to make it an offence of defilement for a female to have carnal knowledge of a boy under the age of sixteen years. These measures are aimed at deterring those who have been convicted of defilement as well as would-be offenders. The AGBV Act also passed new provisions creating an obligation on the CJS to rehabilitate victims and to provide shelters for them. The aim of these new legislative provisions is to minimise the trauma of victims and to ensure as far as possible that they are integrated back into society as quickly as possible. The incorporation of these provisions require Zambia's CJS to align itself with the latest international human rights standards by adopting the best practices in relation to rehabilitation of child victims of defilement.



## **CHAPTER THREE**

### **3.0 ON YOUR MARKS! GET SET...**

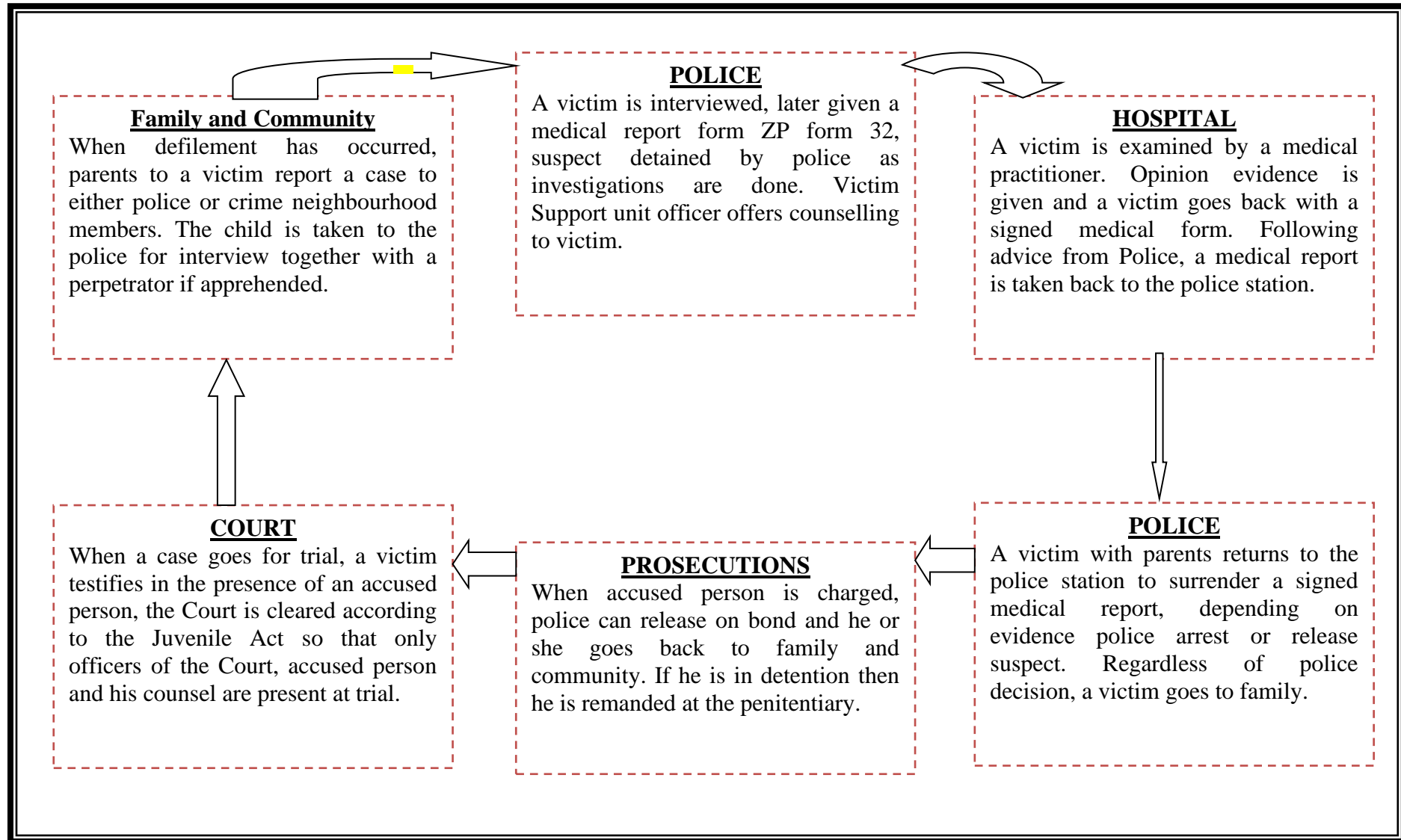
#### **3.1 Introduction**

In this chapter, I discuss the methods which I used to conduct research in relation to assumptions 1 and 2 and discuss the findings and their impact on the first two assumptions. I discuss how I started my research from the time I identified the topic to the first steps taken in the data collection process. I entered the programme for the Masters in Women's Law with preconceived ideas on the topic of my dissertation. Because I understood that the programme promotes the attainment of equality between the sexes, I originally wanted to write about the imbalance between the roles of men and women in the raising of their children. After I was introduced to teachings about human rights, I changed my focus to women commercial sex work. After more time I settled on the rehabilitation of victims of defilement, a subject I had not initially considered. I later realised that a study of victims of sexual violence was a good choice because of the rising number of defilement cases in Zambia. This chapter looks at the steps that I took to identify the research topic and the methods used in planning and preparing to undertake the research. It also outlines the role and function of the Department of Social Welfare in relation to the rehabilitation of victims of defilement. Although these new legislative provisions on rehabilitation are progressive and offer hope to victims of defilement, they so far unfortunately have not been implemented.

#### **3.2 First things first: Making a self-assessment**

This research is deeply informed by my work and experience as a police public prosecutor. Working in three different stations of Katete, Petauke and Chipata placed me in the privileged position of being able to observe how the CJS is managed from the perspective of investigating and prosecuting crimes. The provisions of the AGBV Act are relatively new to the administration of criminal justice in Zambia. My study of women's law has been a serious awake-up call to me to evaluate our legal system and its compliance with the legislation upon which it is founded and managed. I focused on victims of crime and identified them as key players in my work as a prosecutor. As I conducted the research I began to see more and more clearly the gap between what the state of the CJS should be and the reality of what it is on the ground. Figure 5 demonstrates how victims are usually treated in the routine followed when the CJS investigates crimes of defilement.

**Figure 5: A flow diagram showing the usual procedures followed in cases of defilement**



As Figure 5 shows, the procedure begins when a child in the community is defiled and a report is made to the police who carry out investigations. The child's parents or guardians make a report on behalf of the child victim and members of the neighbourhood watch may assist in this process. At the police station, a medical report form, ZP Form 32, is given to the victim's parents/guardians. The victim is then taken to the hospital whose medical personnel have a duty to examine the child and give a medical report of the child's condition for later use in court. For children between the ages of twelve and fifteen years of age, the child's school is asked to provide documentary evidence to prove the child's age if it appears that, based on the child's appearance, their age may be later disputed by the accused. When investigations are concluded, the matter is then taken to the prosecutor who finally takes the case to court for the trial process to commence against the accused. During this entire process, the child victim undergoes no rehabilitation at all.

When I first examined section 30 of the AGBV Act, I thought that efforts to rehabilitate the child should be done after the trial (although that is not what section 30 states) as I had never come across any procedure or practice of rehabilitating a child at the pre-trial or trial stage in a case of defilement. As a prosecutor, I examined what role legislation or indeed any administrative procedures required me to play in the rehabilitation of victims but at this stage my view was that it was the function of the Department of Social Welfare and that as a prosecutor it had nothing to do with me. I then made my first assumption that: The Department of Social Welfare has a clear legislative mandate to initiate programmes for rehabilitation of victims of defilement and my second assumption was that despite the enactment of the Anti-Gender Based Violence Act in Zambia, the Department of Social Welfare does not provide programmes for the rehabilitation of victims of defilement.

### ***3.2.1 Mapping the research areas***

My first two assumptions were a guiding tool in coming up with the other four assumptions which I will discuss in chapters four and five of this paper. After framing my first two assumptions, my next task was to choose a research site. I chose Katete district because during the time I worked as a public prosecutor in this district, statistics on defilement cases were high and highest among all other offences against morality. In order to collect a list of possible respondents, I identified the High Court registry in Chipata as a source of names and addresses for victims of defilement. I collected five records from the High Court registry in

cases which were no longer before the court. I then identified the location of the five victims, their mothers and guardians who were all in Katete.

I also included on my map for collecting data, the Department of Social Welfare, the Ministry of Gender, public prosecutors, the Victim Support Unit and the Magistrate's Court, in order to find out whether rehabilitation programmes for victims of defilement are conducted. I also needed to seek out and collect voices or interviews from the various actors within Government structures who deal with gender based violence issues.

### ***3.2.2 It touches them the most: Interviews with victims and their parents/guardians***

These victims and parents were targeted as possible respondents for my second assumption using the women's law approach because this approach helps in critically analysing legal concepts and theories through the medium of women and men and from that point of reference, interrogates and investigates the law (Bentzon *et al.*, 1998). By interrogating section 30 of the SGBV Act through the eyes and experiences of victims, their parents/guardians and members of society generally, I wanted to know whether rehabilitation programmes are provided. Out of the five case records which I collected from the High Court registry, I located four victims, whom I will name A, B, C and D. Victim A was defiled by her sister's husband when she was fifteen years old. Narrating what happened when different actors within government structures dealt with her issue, she said:

‘At the hospital I was given drugs. I was admitted to hospital for two days. I met the police; they asked me whether I had sex. I told them that it started in February, 2014. I don't know the Social Welfare. No one helped me from Social Welfare. I went to St. Francis Hospital because of abortion, if it was not for abortion, I would not have gone there.’

The effect of this account is that according to victim A's experience when she was defiled, she never met a social worker. She did not go through any programme for rehabilitation as a victim. Section 5 of the AGBVA which imposes a duty on a medical practitioner, police officer and nurse to inform a victim of the right to obtain shelter was not followed. If it had been followed, victim A would have known she had the right to seek shelter from the DSW or the Young Women Christians Association (YWCA).

Victim B was a girl who was mentally ill and as such she was unable to talk with me about the duties of the different actors. Victim A's response was similar to the other two victims, C and D. They all talked about the role of the police who simply concentrated on gathering evidence about the crime in order to present it in court. Concerning the hospital, they all said that they were examined by a doctor but when it came to the DSW, they all said that they did not meet any social worker and that they did not know anything about any rehabilitation programmes for their benefit.

I interviewed the victims' parents and guardians since this approach involves women and men and also considering that these are children may not have understood all procedures they went through. One respondent who is victim B's mother said:

'We went to St. Francis Hospital where they found that the child was defiled. At the hospital she was given treatment to avoid pregnancy. The police came here with Masiye Banda for him to be identified by the child and she identified him. My uncle and Brenda went to court to give evidence. She is an epileptic patient for twelve years now. She does not go to school because of her illness. Since this case happened, she does not talk much she usually stays alone and keeps quiet. She is twelve years old and she has menstrual cycles. The social welfare department has never come in her case.'

The response is similar to those of victims C, D and A when I interviewed their mother, grandmother and mother, respectively. The gist of what they told me confirms that the rehabilitation of these victims was not done.

### ***3.2.3 What the community knows: Focus group discussions***

Another form of data collection which I used was focus group discussions and sampling individuals and they helped me to gather different views from a wide spectrum of residents. I met them at market places where they traded their wares. I interviewed a group of women and men at Kapata market to find out whether rehabilitation programmes are carried out for victims of defilement by government agents. The group comprised charcoal sellers from different locations within the township and they said:

'When defilement occurs you have to take the child to the Police first then to the hospital.'

Three people in the group agreed with this opinion; two of them said that you have to start at the hospital then go to the police station and four of them were not sure.

They also said:

‘The other office concerned with these cases is the Victim Support Unit at the police and the YWCA. For Social Welfare Department, all that we know is that they help orphans. We don’t know about other duties that they have to do for children who are victims of defilement.’

This response was similar to the views of small scale women stone miners at Gundula village in Katete. The general picture of their responses was that defilement cases have to be reported to either the police or hospital and they did not know the role of the Social Welfare Department in defilement cases. This helped me to examine my second assumption and I discovered that rehabilitation programmes are not implemented to help child victims of defilement.

#### **3.2.4 *They tell it as they see it: The actors and structures approach***

The actors and structures approach interrogates the possibility of any strategic plan of action which is directed towards maintaining, changing structures or to find ways to make use of opportunities within social administrative or legal structures. The focus of this approach is on different actors and the structurally imposed possibilities that influence how they can pursue their set goals or resolve their problem (Bentzon *et al.*, 1998).

Using the actors and structures method, I interviewed officers in Chipata from the provincial office of the Ministry of Gender and at the Department of Social Welfare (DSW), the Young Women Christians Association (YWCA) in Chipata and the World Vision in Katete. I targeted the Ministry of Gender because it is the Government Ministry that has the mandate to oversee all gender related matters on behalf of the government. The DSW was targeted to test my first two assumptions on whether they have a clear mandate to conduct rehabilitation programmes and also whether they actually do conduct rehabilitation programmes for victims of defilement. On the first assumption as to whether legislation clearly imposes on the DSW the duty to provide rehabilitation programmes for victims of defilement, a senior officer at the Ministry of Gender’s provincial office said:

‘The Social Welfare Department has a duty to provide for finances, they are the government department empowered with funds for empowerment and rehabilitation programmes. Rehabilitation programmes include farming, metal work, but for defilement victims, it is counselling.’

This response informed me that DSW has a clear mandate to carry out rehabilitation programmes for victims of defilement. The Ministry of Gender performs a supervisory role in all gender related matters but specific tasks are left in the hands of individual departments.

### **3.3 Who should be rehabilitated?**

*‘Sexual violence has a profound impact on physical and mental health. As well as causing physical injury, it is associated with a wide range of sexual and reproductive health problems, with both immediate, long term consequences and even fatal consequences, including HIV/AIDS’*  
*(Population Council 2008).*

In order to take seriously the need to identify who should be rehabilitated, we need to reflect on the impact of sexual violence, including defilement. As observed by the Population Council, above, problems are associated with health challenges which can lead to death. The need to help a child rebuild their lives after suffering sexual violence becomes very important. Any child who misses out on the chance to be rehabilitated might become go on to become another fatality statistic arising from psychological challenges that could have been avoided.

During the research, it was important to learn who a victim is when the Department of Social Welfare considers initiating rehabilitation programmes and also for actors in the CJS to know when to engage the DSW. A senior officer in the DSW said:

‘A victim is a victim regardless of the court outcome. For us, we consider that a child cannot just make an allegation without substantial facts and the court may acquit on any technicality, so we should rehabilitate all children who are victimised. We consider a child to be telling the truth even when there is no evidence.’

This resonates well with research done on whether children lie about being sexually abused. Kinnear (1995: 5) discusses Cantwell’s research based on approximately 290 cases of alleged

sexual abuse in Denver, Colorado, where only 9% of the cases were found not to be substantiated.

More often than not a child tells the truth about sexual abuse. While judicial procedures consider the perpetrator innocent until proven guilty, the decision whether to provide a victim with rehabilitation does not depend on the law of evidence. A victim is entitled to be rehabilitated immediately after they make the allegation. It is not a case of interference with police investigations for a social worker to be involved in rehabilitating the victim while the police are conducting their investigations. Rather, the police and the SWD should see themselves as partners co-operating throughout the process to ensure that the rights of both the alleged perpetrator and the victim are protected. So, while the police gather and preserve evidence of the crime, the DSW should take all necessary steps to ensure that the child is in a good environment to minimise their trauma. Whilst this would be the ideal situation, it is not done in Katete district. Rehabilitation programmes should run smoothly and effectively alongside the operations of the CJS. Most importantly, through effective rehabilitation programmes, the DSW should help heal child victims and build up their trust and confidence. Then not only would the DSW help heal and reduce the child's trauma, they would also accompany the child to court and make them feel comfortable and able to give good quality evidence to help secure the conviction of the accused.

The law of evidence concerning a child's testimony raises the need for rehabilitation and for the presence of a social worker with the child victim during the trial of the accused. It is a requirement under section 122 of the Juveniles (Amendment) Act (Act No. 3 of 2011) of the Laws of Zambia that if a child under the age of 14 years gives evidence on behalf of the state, the accused person cannot be convicted unless that evidence is corroborated by some other material evidence. Since the corroboration of a child's evidence has been created by the Juveniles Act, it is a requirement of law. The effect of this is that if no other evidence capable of corroborating a child's testimony exists, no conviction or judgement can be based on it and if a conviction or judgement is obtained without corroboration of the child's testimony, it must be set aside on appeal.

Corroboration is defined as follows:



‘Support or confirmation in evidence is any rule of law or practice which requires that certain kinds of evidence be confirmed or supported by other, independent evidence in order to be sufficient to sustain a given result, such as conviction in a criminal offence’ (Murphy, 2000: 495).

This requirement means that a child who has already been traumatised by their assailant can be even further traumatised if a case is lost for lack of evidence that confirms or supports the child’s evidence. Therefore, this legal requirement must be explained to the victim in order for them to understand that the loss of a case is not their fault and in order to prevent them from blaming themselves for the perpetrator’s acquittal if that should happen. While social workers should perform this task during their rehabilitation of the victim, it does not happen in Katete.

### **3.4 About co-operating partners**

Some government programmes in Zambia are supported by non-governmental organisations (NGOs). For instance the YWCA runs a safe house for victims of defilement. It is situated in Chipata, 85 kilometres from Katete, and services the entire Eastern Province of Zambia, including Katete. I interviewed a paralegal officer at the YWCA who said:

‘We have a safe house and I operate from there. It is located in Chipata. We receive victims from other districts. We had two cases from Katete; one victim was 12 years old and the other was 14 years old. We retrieved them after having information from the traditional chief and these were cases of early marriage.’

This shows how the YWCA complements government efforts to rehabilitate defilement victims. The report was made by the traditional leader but no mention was made of the involvement of either the police or the DSW. The action of the traditional leader accorded with his duty in terms of section 5 of the AGBV Act. Although it is to be welcomed that the YWCA is rehabilitating two girls from Katete, this is being done without the knowledge of the government departments which are mandated to run rehabilitation programmes in the district. I confirmed this with the Victim Support Unit in Katete who are not aware of the chief’s report. Although the YWCA is to be congratulated and encouraged in its work, its single shelter is not adequate to rehabilitate all victims of defilement in the province.

Katete is also host to World Vision who are currently running a One-Stop Centre at St. Francis hospital. I interviewed Mr. George Siame, the sponsorship facilitator at the One-Stop Centre in Katete. He said:

‘For defilement cases, the people under One-Stop Centre we have one personnel from the police so that if the case relates to crime, the perpetrator is arrested. We have our staff trained in social work and a hospital staff for health related issues but we don’t board victims but keep them for a short period of time on the day that the case is reported.’

The operation of the One-Stop Centre is aimed at placing all players in the Anti-GBV crusade together in order to ease the burden of accessing services. They do not however have a rehabilitation programme for victims. Notably the DSW has no staff at the Centre. Social workers at the Centre are employed by World Vision. This means that government social workers have to depend on information given to them by World Vision rather than being stationed at the Centre themselves and having direct access to the victims.

### **3.5 What it ought to be and what it is**

A victim of defilement has a human right to receive rehabilitation. Right holders should know what their rights are. Victims, parents and guardians that I interviewed, however, are unaware that a victim’s right to receive rehabilitation is enshrined in the country’s legislation. This means that because of their ignorance they cannot claim the enjoyment of this right from the state. When citizens are unaware of their rights their leaders are tempted to relax their efforts to implement them. While the government has made some effort to combat defilement it should also follow through on its duty to provide for effective rehabilitation which is so valuable to victims. The DSW is waiting for a shelter to be built for them to start offering rehabilitation services. Whilst defilement statistics are on the increase, its victims are not benefiting from the hard-won legal provisions that protect them.

Considering my assumptions, I found that section 30 of the Anti-Gender Based Violence Act gives a clear mandate to the DSW to initiate rehabilitation programmes for victims of defilement. The law clearly puts this duty within the department’s jurisdiction. The department is run by social workers who are experts in counselling and are best placed to run rehabilitation programmes. I found on the ground, however, that despite the law that requires these programmes to be run, no victim has been rehabilitated.

### **3.6 Conclusion**

A victim of defilement should benefit from the law even when the perpetrator is not convicted of defilement by the courts. Rehabilitation should be carried as soon as possible after a case is reported. It should not depend upon the successful prosecution of the perpetrator. The government has complied with international standards by enacting the AGBV Act. The Act clearly provides that the DSW should conduct rehabilitation programmes for victims of defilement. The DSW is not conducting any rehabilitation programmes as it does not have access to a safe house or the staff needed to do this work. The YWCA in Chipata has a shelter for victims of defilement but it caters for the entire province. This single shelter is unable to accommodate the high numbers of defilement cases of the entire province and that is why Katete has only two children who were rehabilitated there. World Vision is responsible for the operations of the One-Stop Centre at St. Francis hospital in Katete. The Centre receives cases of defilement from the community and was established to centralise services which combat GBV. It lacks services for rehabilitation because there is no safe house in which to accommodate victims. Not all departments that deal with defilement cases are represented at the Centre and the DSW has no officer there. So, while the police have an officer on hand to deal with the criminal aspects of a case, and World Vision provides counselling to victims and the hospital provides them with medical help, there is no facility for their rehabilitation because at this time victims cannot stay there for more than one day.

## **CHAPTER FOUR**

### **4.0 FROM PAPER INTO THE FIELD**

#### **4.1 Introduction**

This chapter looks at my methodology and findings relating to assumptions 3 and 4. These assumptions developed out of my first assumption. After discussing the methodologies used, I discuss my findings and the further impact they had on the research. I got access to the DSW, politicians, the local authority and the district administration in different ways. In some cases, I found it easy to secure access to and interview certain officers whilst in others the process was more complicated. In chapter three I explained *what* government social workers discussed with me and in this chapter I explain *how* I secured access to them. Considering the depth of work in chapter four, new methods were introduced to triangulate data with issues that were emerging and not anticipated during the earlier planning stage of my research. I also step forward to find out why rehabilitation programmes are not carried out.

#### **4.2 Getting access to actors concerned**

My third assumption was that the DSW has no strategic plan to initiate programmes for rehabilitation of victims of defilement. I discovered that this is an internal issue within the DSW. The department requires that clearance from the Departmental Director be obtained before any research can be conducted. Since the cost of travelling to Lusaka is high, I got assistance from the Provincial Administration office which gave authority for the DSW to allow my interview. My position as a Government Public Prosecutor was very helpful in that other government agencies shared information with me on the understanding that I use my discretion concerning the sharing of that information with non-members of the Zambian Government.

The bureaucratic procedure followed by the DSW is not the same as that of other government departments and corporations. For instance, I involved the local authority to find out how they plan to establish a shelter for the rehabilitation of children in the district using the Constituency Development Fund. The local authority did not require clearance from the Ministry of Local Government and Housing or any other authority as was the case with the DSW. However, I did not endeavour to find out why there was a difference between the

procedures, as some departments make their own guidelines in certain matters that are specific to them which might not apply to others.

Because of the need to assess political will in relation to developmental issues, it became important for me to engage politicians to find out how they intended to implement the law. This was necessary in order for me to make a finding on the fourth assumption. I managed to interview four representatives of different political parties, namely, the ruling Patriotic Front (PF), the former ruling party, the Movement for Multi-Party Democracy (MMD), the United Party for National Development (UPND) and the Rainbow Party (RP). Access to these political leaders was easier because I know the geographical location of the research site well having been previously stationed in this district when I worked there as a public prosecutor. Some of them were people whom I have known for some time and so they were willing to be interviewed. They knew me and this made it easier for them to discuss matters that concerned their parties. 2016 being an election year placed me in a privileged position with politicians because they were eager to share the aspirations that their organisations have for the electorate.

#### **4.3 Increasing my knowledge it as I roll on with the research (The grounded theory approach)**

My data collection method from one actor to another and from one respondent to another was informed by grounded theory. This process involves connecting testimonies of women's lived realities and perceptions about norms to constantly engage with each other for the purposes of helping the researcher to decide which data to collect and how to interpret it (Stewart *et al.*, 2001).

When I started collecting data, I had not anticipated that I would need to interview anyone in local authority. After recognising that the District receives funds from the Constituency Development Fund through the two parliamentary constituencies of Mkaika and Milanzi, I decided to interview the Council Secretary because funds from the Constituency Development Fund are received by the local authority. After interviewing the Council Secretary, I found I needed to interview people in the District Administration, the Gender Committee Chairperson and politicians. At every stage of the research, I found a new area of inquiry that needed further investigation or follow-up. I had planned only to interview social

workers and officers at the National Assembly Office but had not planned on interviewing anyone in the district administration or politicians because I did not anticipate that I would need data from these actors on infrastructural development issues. The focus was aimed at a small number of respondents but as I started moving on the ground in an attempt to discover the reality on the ground through following up on different lines of inquiry, the research load was building up like a dung ball rolled about from place to place by a dung beetle.

#### **4.4 The outcome of my long journey**

The DSW was central to my third assumption that the department has no strategic plan to initiate rehabilitation programmes for victims of defilement. Rehabilitation programmes involve huge amounts of money for the establishment of shelters, human resource engagement and day to day logistical support for the maintenance of rehabilitation centres. Such work needs a systematic and consistent method of implementation based on a well coordinated plan. A senior officer in the Department of Social Welfare told me that there is no strategic plan for the rehabilitation of defilement victims as a department but that individual officers initiate strategic plans on how to implement this statutory duty. It is in this vein that programmes for the rehabilitation of victims of defilement are not conducted because the department has not planned for their implementation in Katete in the first place.

On infrastructure development, the Provincial Social Welfare officer said:

‘When it comes to engaging politicians to build a safe house for rehabilitation, in Katete we have not involved them on Constituency Development Funds but in Nyimba which is another district in Eastern Province we have done that.’

This response led me to find out from politicians what their plans are on the issue of building shelters for victims of GBV. The ruling party (Patriotic Front) representative Mr. Mustafa Banda who is the Eastern Province Publicity and Information Chairperson said that his Party had not done anything about the establishment of shelter in the district because the Council Chamber’s seats are held by the former ruling party the Movement for Multi-Party Democracy (MMD). He said that if his party had a majority of the seats in the Council Chamber they would build shelters for victims of defilement; but at the moment they only have one counsellor who cannot sway the Chamber with the will of his political party. The MMD representative, Mrs Esnart Siadaala Phiri informed me that her party has the passion

and determination to build shelter for victims of defilement adding that it is her party which initiated the AGBV Act while it was in power but that it is not possible to implement it now because the ruling party does not want to implement developmental programmes which are viewed as benefiting an opposition stronghold. The United Party for National Development and Rainbow Party had a similar explanation stating that they were unable to implement section 30 of the AGBV Act because they have no representation in the Council and were not in power. They said that when they get into power children will be at the centre of their developmental policies and shelters will be built in the district.

As far as assumption four is concerned, I realised that for my research to be focused on the respondents, I needed to have a separate approach towards infrastructural development and separate data collection points for Funds Allocation. I therefore split the fourth assumption into two new assumptions. My new fourth assumption now read: There is no infrastructural development to enable the Social Welfare Department to function according to international standards. And my new fifth assumption read: There is no allocation of resources to the DSW to enable it to initiate rehabilitation programmes.

On infrastructural development, I interviewed the District Administrative Officer for Katete who informed me that a sponsor had come forward to build a shelter. The Council Secretary informed me that no Government department had made a request of the Constituency Development Fund (CDF) in the District Development Co-ordinating Committee (DDCC) and that if such request were to be made consideration would equally be made towards building of shelter.

I decided to interview the Chairperson of the Gender Subcommittee, who said:

‘We do not have safe houses for rehabilitation of victims of defilement at the moment. We managed to identify a house under community development with the Social Welfare Department but we have a challenge with sources of food, water, wall fence, workers and counsellors.’

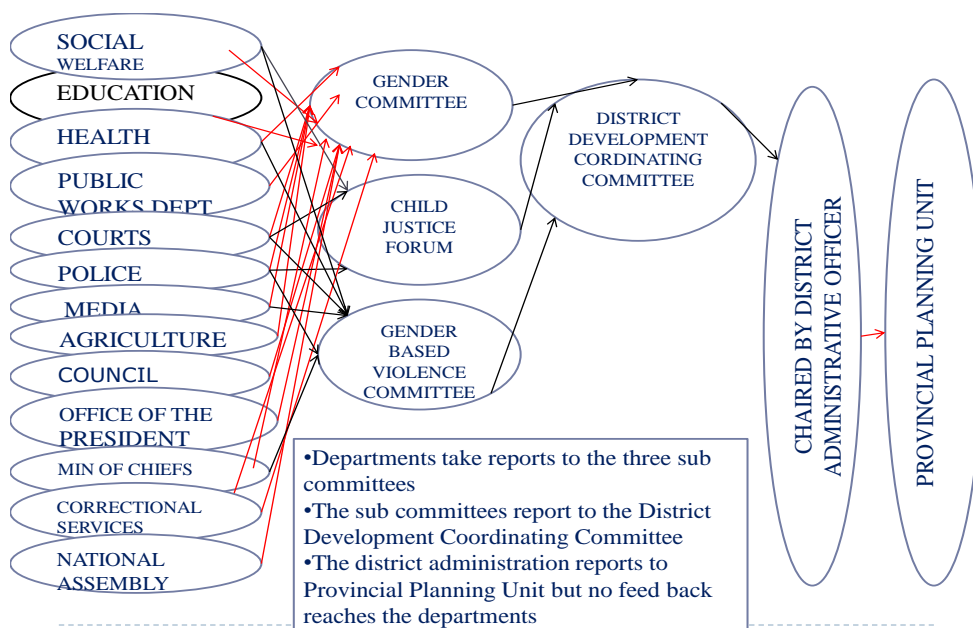
The house identified belongs to the Department of Community Development which is under the same Ministry as the Department of Social Welfare. I visited the Department of Community Development and a social worker there informed me that they have many houses which are available for government to use as shelters for victims of defilement. The district

has an advantage of having the infrastructure already in place but the implementation of rehabilitation programmes is not carried out owing to the lack of human resources, the lack of safety at the houses identified and lack of funds for incidental expenditure needed for operating the centre.

#### 4.5 The administrative structure

Decisions on infrastructural development and other matters incidental to or connected with gender are discussed under various committees at district level. During the 30 October, 2012 UPR, Zambia received a recommendation from Hungary to take the necessary steps to ensure the effective implementation of the AGBV Act. In response, Zambia took steps to implement the Act by establishing multi-stakeholder committees to spearhead the implementation of AGBV Act. These multi-stakeholder committees are placed under the authority of the Ministry of Gender for implementation. It is through the Gender-Based Violence Committee that a safe house can be initiated for building, and strategies found for maintaining activities at the rehabilitation centre. In Katete, the structure of these committees is represented in the diagram shown in Figure 6.

**Figure 6: A diagram of the district and provincial administrative structures responsible for gender and gender based violence issues in Katete District, Eastern Province of Zambia**





He stated that each government department has a Gender Focal Point Person. All Gender Focal Point Persons form the Gender Committee and choose a chairperson from among themselves. Currently the chairmanship is held by the Public Works Department (PWD). The Gender Committee has a wider mandate to deal with all issues that are gender related. The other committee is the Child Justice Forum. It is a forum for departments which deal with juvenile offenders for instance the Judiciary, the Department of Social Welfare, Zambia Police Service, and Correctional Services Department. The role of the Child Justice Forum chaired by the judiciary is to deal with matters that concern the welfare of juvenile offenders. The third committee is the Gender Based Violence Committee. Its membership consists of government departments that deal with matters concerning victims of GBV for instance assault, rape, and defilement. This is the committee that is involved with matters concerning the rehabilitation of victims of defilement.

These three committees at the district level report to the District Development Co-ordinating Committee (DDCC) where the District Administrative Officer is the Gender Focal Point Person. It is the responsibility of the District Gender Focal Point Person to report to the Provincial Planning Unit. This structure is important for appealing to the government to initiate programmes for the development of shelters. The Council Secretary, the Gender Committee Chairperson and the social worker at Department Of Community Development all testified that discussions on shelters have been discussed in the DDCC but shelters have not yet been built.

#### **4.5.1 Observations on administrative committees**

*'Under the observation method, the information is sought by way of investigator's own direct observation without asking from the respondent. For instance, in a study relating to consumer behaviour, the investigator instead of asking the brand of wrist watch used by the respondent, may himself look at the watch'*

*(Kothari, 2004: 96).*

During my time working in the CJS, I have attended meetings of the Child Justice Forum and the Gender Based Violence Committee. I have never attended meetings of the Gender Subcommittee because I have never been the Gender Focal Point Person of my department. The strengths of these three committees differ. The Gender Based Violence Committee comprises members who represent departments but they are not permanent members. I found

a weakness with the supervision of this committee because their meetings are not taken with the seriousness they deserve. At their meetings specific assignments are given to individual departments to perform but those who attend the next meeting are usually different and so new resolutions are discussed and made. Departmental representatives who attend the meetings do not brief all the members of their department about its assignment and as a result of this failure to properly share information, the departmental representative who attends the next meeting is not prepared for it. The same situation obtains in the Child Justice Forum.

The Child Justice Forum is concerned with juveniles in conflict with the law and it is an Administrative Committee. Section 138(4) of the Penal Code deals with a child above the age of 12 years who commits defilement. The Child Justice Forum is central to matters of counselling and rehabilitation in juvenile cases. 'The Handbook on Juvenile Law in Zambia' identifies a juvenile in need of care as one who is the victim of a crime.

If properly managed, the Gender Based Violence Committee could propose that the Department of Social Welfare produce a strategic plan for the establishment of shelters or propose that the committee propose a strategic plan for the implementation of the AGBV Act. Zambia is in the process of fully decentralising its government's functions. Currently, Districts submit their plans and expected expenditure to be considered in the National Planning and National Budget allocation. In other words, the input from Districts is important for the Committees to consider.

Representation is different on the Gender Committee. This committee has members who are the Gender Focal Point Persons of all government departments. Since representation is based on the Gender Focal Point Person, there is consistency of member attendance at meetings. This Committee does not only discuss matters that concern the victims of gender based violence but all matters that involve gender. The Gender Based Violence Committee is better placed to deal with issues of victims than the Gender Committee.

#### **4.6 About funds**

My assumption was that there is inadequate funding for the DSW to initiate rehabilitation programmes for victims of defilement. The Gender Committee Chairperson for Katete District told me that the Social Welfare Department complains of a lack of funding to initiate

rehabilitation programmes for victims of defilement. I learnt through this research that CDF is meant for developmental projects but the running and maintaining of a rehabilitation centre should have a separate source of financial support. This task involves tracking the national budget in order to understand whether or not Parliament allocated money towards shelter construction and rehabilitation.

The media personnel at BREEZE FM, a community radio station based in Chipata but covering about 99% of Eastern Province was helpful to me in the follow-up on budget tracking. The media house representative said:

‘We have a program of budget tracking; we go round in the community to check on programmes which government is initiating. We check government allocation on the national budget and see whether that is implemented then we follow the government officer and ask how the allocation was used.’

The budget tracking programme is a tool of accountability of government departments. It is aimed at the public to make further follow-ups with political leaders, so that Government does not misappropriate budgetary allocations. The programme is live on radio every Tuesday at 7:30 a.m. When I interviewed Katete residents who mine stones at Gundula village, they informed me that because of a lack of signal they are no longer able to tune into the BREEZE FM radio, although they used to be able to do so. A group of charcoal traders in Chipata informed me that they are unable to listen to the radio at 7:30 a.m. because they are too busy preparing for the day’s work at that time. The effect of this is that the intended purpose of the budget tracking programme is not fully achieved. A repeat of the programme could have been helpful for other listeners but this is not done.

The allocation of funds for the maintenance of shelter was not an immediate concern for most actors whom I interviewed on funding. Their concern was about shelter. Social workers linked rehabilitation to the establishment of a safe house and so would not discuss funds for initiating rehabilitation programmes without infrastructure. There is a lack of funding for the DSW to initiate rehabilitation programmes. There is need to keep the safe house clean, the workers who maintain the house must be paid and all basic needs required by child victim should be supplied by the state.

#### **4.7 Whose duty is it to build shelters?**

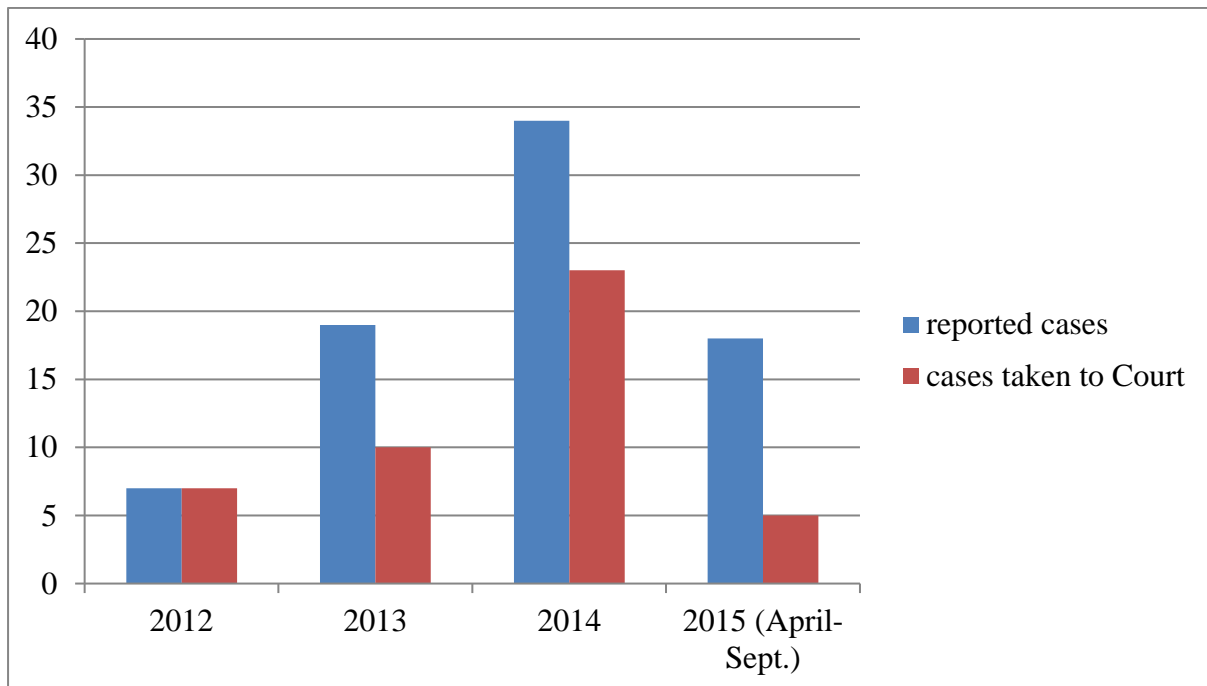
The government has a duty to initiate developmental projects which benefit all citizens. It is primarily the duty of the government to build rehabilitation centres. Government however works with other co-operating partners in developmental issues. The District Administrative Officer at Katete said that ‘somebody’ (without mentioning names) has come forward and has offered to build a shelter for victims of GBV in Katete. It is possible for a donor to give a donation to the government via a Non-Governmental Organisation (NGO) as is the case with Chipata district where the YWCA owns and maintains a shelter for child victims of GBV. Another source of funding comes from the corporate social responsibility programmes of private business. For example, Katete has a cotton ginnery for North Western Cotton Company (NWK). It also has many other business concerns which operate lodges and shops. In other words, if the business community enters into partnership with government, shelters could be built.

Developmental programmes are initiated by the District Development Coordinating Committee and influenced by politicians. Political will is the driving force behind programmes that are initiated by actors in government structures. It would be refreshing and encouraging if politicians stopped blaming each other about the lack of public services and set an example to the community by putting aside their own differences and worked together in the public interest, e.g., in the building of shelters for victims of defilement.

#### **4.8 Who needs rehabilitation in Katete?**

My fifth assumption looks at the lack of infrastructure and funding as the reason why rehabilitation of victims is not done. In the light of the failure to initiate rehabilitation programmes for victims of defilement, it is imperative to consider the statistical data for victims of defilement in Katete. I found statistics from the Victim Support Unit as shown in Figure 7.

**Figure 7: A bar chart showing the defilement cases that were reported and taken to court in Katete Province (2012-part 2015)**



The figure compares the number of cases reported to the police which those which were taken to court in the years 2012 to 2015. It shows that defilement is on the increase which means that the need for the rehabilitation of its victims is also on the increase. This means that the need to establish shelters is greater now than ever before. Obviously not all cases are reported to the police.

I interviewed guidance and counselling teacher at Omelo Mumba at the Basic School in Katete and she informed me that she deals with 200 cases of sexual violence per month at her school which has a population of 2,000 pupils. This represents 10 percent of the school's population. Some of those children are represented in the police statistics because victim D is a pupil at this school but the fact that 200 pupils are subject to sexual violence proves that there are many children whom the CJS is not helping and who need to be assessed for rehabilitation.

Police statistics are informative of what positive administrative action can do in the fight against GBV because crime patterns can be monitored against efforts to solve the problem. The numbers of reported cases increased in 2014 owing to the establishment of a One-Stop

Centre at St. Francis hospital. I take it from this that if people see that they can be helped, they will seek out services that are available. The establishment of a rehabilitation centre might be another weapon in this fight against GBV and those who seek out its services help confirm just how serious and widespread GBV is throughout the district.

#### **4.9 Conclusion**

Drafting a strategic plan is the first step in the establishment of rehabilitation programmes for victims of defilement. The lack of a strategic plan by the DSW is detrimental to the process of implementing the AGBV Act. The building and running of a shelter for victims of defilement would be a landmark in the state's efforts to breathe life into the legislative provisions of the AGBV Act. This would be entirely possible through the co-operative efforts of public and private enterprise. Round the clock staff, which the department does not have, is needed to run the rehabilitation centre. While a house has been identified as being a possible candidate for a rehabilitation centre, no further progress has been made because of a lack of logistics. Also efforts are under way to establish a shelter in the hope that logistical support will be in place by the time the shelter has been built. We should not forget that while countless excuses explain away the state's failure to implement section 30 of the AGBV Act, the number of reported cases of defilement is increasing on a daily basis, and so are the numbers of traumatised children. For now, the DSW is doing nothing until all necessary arrangements for the establishment of a shelter are put in place. This means that victims will continue to suffer detrimental psychological and other effects associated with defilement until the DSW is equipped to treat them.

## **CHAPTER FIVE**

### **5.0 DOES ANYONE REALLY CARE?**

#### **5.1 Introduction**

This chapter focuses on the methods which I used to work on my fifth and sixth assumptions and my findings. My main respondents are actors in various sister concerns on rehabilitation who offered explanations why rehabilitation programmes are not done in Katete. In Chapter four, I dealt with how actors have utilised the function of planning to draft a strategic plan for rehabilitation and the establishment of shelters. My personal observation of the situation on the ground is one of the methods I used. Basically I obtained the reasons given by social workers as to why they believe there is a need for rehabilitation and compared them with those put forward by available literature on the subject. I also explored the usefulness of the media in promoting developmental programmes focusing on the establishment of shelters.

#### **5.2 Another way to get it done**

I made observations during my research in order to relate my assumptions to the law and what actors in the Department of Social Welfare and other social workers said. I was testing my fifth assumption which is that: the relevance and importance of making rehabilitation programmes for victims of defilement is not clear to some social workers. To substantiate this research, I created a new dimension of research from journalists who share a similar training in their field of expertise on psychology. I wanted to weigh both sides and confirm whether the relevance and importance for rehabilitation was clear to some social workers in the DSW. In order for me to examine my fifth assumption before interviewing journalists, I made a new assumption that the media understands their role to influence politicians to build shelters for victims of defilement. This assumption is linked to the need for shelters which social workers told me are a prerequisite to have in place before rehabilitation can take place and be effective. To understand the role of the media I used the actors and structures approach.

My sixth assumption was that there is no monitoring or evaluation mechanism aimed at ensuring efficient service delivery of the DSW by the Ministry of Gender, the Human Rights Commission, and Victim Support Unit of Police. For this assumption, I relied on my observations of the interaction between the Ministry of Gender, the Human Rights Commission, and Victim Support Unit and the DSW. I mainly examined whether these

organisations had a platform through which to share data and make joint follow-ups of victims.

In this task I made use of interviews. I interviewed three social workers, four journalists, six police officers, two court officials, the District Education Board Secretary at Katete (DEBS) and one guidance and counselling teacher at Omelo Mumba Basic School. These interviews allowed me to get views from other actors on the observations which they had on the relevance and importance of rehabilitation programmes for victims of defilement.

### **5.3 Responses from experts on the relevance and importance of rehabilitation**

I interviewed a social worker at the YWCA on the relevance and importance of rehabilitation and he said:

‘If trauma is not dealt with, it can lead to death and such a situation has no answers. Some survivors begin to isolate themselves from others. It brings bitterness and anger.’

This response is closely related to what the social workers at the Department of Community Development and Department of Social Welfare said. The consequences of trauma can lead to a broken society or fatality according to these experts. They also said that other methods of counselling can be employed away from shelter. For example, they said that home visits can be done but placing a child in a shelter is paramount and if a child is not removed from their home and into a shelter, counselling them in their home was not effective. This was common response from all social workers whom I interviewed.

I interviewed a journalist from the Zambia National Information Services in Katete district to understand the relevance and importance of rehabilitation and she said:

‘When one is a victim, there is need for an environment which offers care and counsel but victims are left to stay with the perpetrators. This is why at Court these cases are withdrawn prematurely. Children grow humiliated, demonising every man they see in adulthood. They keep referring to the torture and if not checked in future we may see a generation of law breakers who seek revenge for their past experience. Going by psychology, if an act is done once and not corrected chances of re-occurring are 50%. Children of a perpetrator may become of what they witnessed. This is why incest occurs in families and



perpetuates because children of the perpetrator and other family members witness the crime.’

This response was similar to the feedback I received when I interviewed respondents from other media houses at Mpangwe FM, Breeze FM and the Daily Mail and they all basically agreed that defiled child victims share the same characteristics as sexually abused children listed by UNICEF (and discussed in chapter two). I then examined my fifth assumption as to whether the relevance and importance of rehabilitation is not clear to some social workers. I found this assumption challenged because social workers know the relevance and importance of rehabilitation for victims of defilement.

### ***5.3.1 The stance taken by sister concerns***

This research taught me that rehabilitation is not a preserve of the DSW alone but that other departments and organisations also have a part to play. I examined whether individual departments and organisations coordinate with the DSW. I had a focus group discussion with three members of the Network of Zambian People living with HIV (NZP+) at their office in Katete. These respondents testified in reference to their work that:

‘We have support groups which are co-ordinated by zone leaders in the communities. When defilement occurs, these refer the case to authorities.’

The NZP+ focus on the impact of HIV in the community. According to them they have some members who acquired the HIV because of defilement while some children who are already members of the network have also been defiled. The approach used for them is to zone the district and appoint zone leaders. They monitor sexual abuse occurrences through these community leadership initiatives and report cases to the authorities (which include health personnel) to prevent HIV infection, and the police to arrest the perpetrator. The DSW is however not part of this network. They do not use it to identify and follow up on children who are exposed to HIV for rehabilitation.

I could not interview the medical Superintendent at St. Francis as he could not allow it because the procedure requires clearance from the University of Zambia. He said:

‘The University of Zambia should first issue an ethical approval through the University of Zambia Ethical Committee and then get permission from the Permanent Secretary at the Ministry of Health.’

The bureaucracy faced at St. Francis hospital hindered my investigation on the hospital's co-ordination with the DSW. I relied, however, on NZP+ on HIV. My concern with HIV and the health institutions' response was to assess the co-ordination and monitoring of social welfare programmes by other institutions. I found however that the DSW does not exchange information with NZP+.

On education, the District Education Board Secretary (DEBS) said:

‘In schools, we have guidance and counselling teachers to help children who have psychological problems; we assess their condition and help to process transfer for them to join other schools. This depends on request from parents and not imposed on them. If a sexually abused child is not transferred, it is the guidance and counselling teacher who takes charge of reintegrating the child.’

Their primary concern is the welfare of the child in school. They work to ensure that the child receives her education in a good environment and co-ordinate with parents or guardians as to whether the child needs to be transferred or not. Although transferring a child must be in their best interests of the child, if it is imposed on them, it turns into a punishment. One concern of the DEBS is that there are only a few guidance and counselling teachers. Some schools use unqualified teachers in this field to serve as guidance and counselling teachers. She did not talk about the involvement of the DSW to rehabilitate victims because this service is not provided in Katete.

### **5.3.2 Lessons to learn**

The impact of defilement on a victim involves many issues. The health of a child might be affected. The advent of HIV and AIDS might complicate health issues. The idea to come up with a One-Stop Centre draws heavily on the lessons learnt on the need to centralise all efforts that involve a defiled child. It is aimed at creating an environment where a child can receive treatment from health personnel, be interviewed by the police and receive expert psychosocial counselling all under the same roof. What the One-Stop Centre in Katete cannot do however is refer defiled children to a rehabilitation centre since there are none in the district. In addition, there are no social workers from the DSW who work at the One-Stop Centre and the DSW is not in any way involved with it.

The Ministry of Education has only a few guidance and counselling teachers. The expertise to identify and help defiled children might not be effective if this department is understaffed or non-existent. The child might trust a teacher as opposed to any other person who professionally and sensitively shares information about sexual abuse and so the guidance and counselling department creates a good environment for capturing information on abused children who need rehabilitation.

#### **5.4 Who sees what is happening?**

*'The Ministry of Gender and Child Development as the Government Agency responsible for coordinating all Ministries, their statutory bodies and other government agencies on gender matters shall put mechanisms and operational instruments in place to ensure effective co-ordination and successful implementation of the Policy aimed at attaining gender equity and equality'*

*(National Gender Policy, 2014).*

My sixth assumption examines monitoring mechanisms of departments concerned with rehabilitation. Whilst the relevance and importance of rehabilitation is appreciated by social workers, and whilst it is noted that no shelter for the rehabilitation of child victims of defilement has yet been built in Katete, I examine how other organisations relate to the DSW. The Ministry of Gender is responsible for gender matters as provided by the National Gender Policy. The National Gender Policy is a guiding document for the Ministry Of Gender which oversees measures aimed at reducing GBV through increasing institutional facilities which provide services to GBV survivors. Such institutions include: one-stop centres, safe houses, and shelters.

As an overseer of gender issues, the Ministry of Gender should communicate with the DSW concerning the rehabilitation of victims of defilement. When I interviewed the Chairperson of the Gender Subcommittee in Katete he told me that the Ministry of Gender visited Katete district to establish Gender Committees which at the time of visit were already established. These committees do not report to the Ministry of Gender from the district but to the Provincial Planning Unit. The Ministry of Gender therefore has few mechanisms to monitor rehabilitation programmes for victims of defilement.

The Human Rights Commission has a mandate to monitor human rights abuses and issues in the country. Since the rehabilitation of victims of defilement is a human rights issue, it is therefore a concern for the Human Rights Commission. I visited the Commission's regional office in Chipata and a senior officer said:

‘Our role for child victims is to do an oversight role. We don't have shelter; we work with the YWCA and visit and inspect buildings to see conditions. We don't have the YWCA in Katete. We cover the whole province and to my knowledge Katete has no shelter for victims of sexual violence. Usually the commission does not prioritise this area but concentrate more on prison visit. The YWCA has sister organisations and they can help to locate victims of defilement.’

The officer at the Human Rights Commission stated that the commission does not prioritise this area but concentrates instead on prisoners. It means that their approach lacks balance in that the rights of perpetrators are protected over those of victims. This has a negative impact of the human rights environment because if the Human Rights Commission as a watchdog does not monitor a human rights issue (such as shelters for victims of defilement), the issue will be ignored and if an issue is not reported on then there is no incentive for government (the duty bearer) to implement legislation which protects the human rights of victims (rights holders).

The Victim Support Unit of the Zambia Police Service Department is mandated to investigate defilement and make arrests of alleged perpetrators. The section has a presence at the One-Stop Centre at St. Francis hospital. It receives information through these platforms on defilement. I wanted to know how it monitors rehabilitation programmes for victims of defilement. One officer in the Victim Support Unit (VSU) said that she could not remember when her section last informed the DSW about a victim of defilement. This simply means that the DSW does not get involved with victims and therefore the police and the DSW do not interact over victims to help them recover from their trauma, a function which they should perform.

#### ***5.4.1 The police and the victim***

The police have a mandate to deal with a victim for the purposes of collecting evidence and preserving it for court process and they do this through the VSU. The function of rehabilitation lies solely in the hands of the DSW. I interviewed the head of prosecutions in

Chipata to understand if, in the absence of any rehabilitation programmes, the VSU takes upon itself the role of the DSW to adequately prepare a victim for testifying in court. He said:

‘The Victim Support Unit also lack infrastructure. Victims are usually interviewed in crowded offices where other officers are present. Not each officer has a separate office. Social welfare do counselling of victims, they also represent victims when need arises, this is when the prosecutor alerts them of the need to counsel a victim depending on how a victim comes out towards the case whether she is ready to testify or appears frightened.’

What this means is that currently the VSU has no capacity to complement the work of rehabilitating victims. The failure of the VSU lies in the areas of infrastructure and expertise. Usually office space does not offer a victim a friendly environment. Officers are not social workers with the expertise to determine trauma and offer the required rehabilitation. He stated that a prosecutor alerts the social worker for purposes of rehabilitation. I inquired from him whether how prosecutors are equipped with the necessary expertise to ascertain and help with any trauma a child may be suffering and he said:

‘I benefited in the programme of training magistrates and public prosecutors in victim management when I was on the copper belt province but unfortunately, this did not benefit all prosecutors in Eastern Province.’

In other words, not all prosecutors received the basic knowledge or are equipped to perceive and assist a victim who needs rehabilitation. Whilst I did not assess the failure rate of defilement cases, he described the court environment as a challenge. I share his view because in my assignment as public prosecutor, I know that the court set-up is not conducive for child victims. To counter this negative environment, there is a need for co-ordination between government departments. Every defiled child has to be assessed by a social worker to determine their need for rehabilitation. So long as no social worker is present at every defilement case reported at a police station, nothing can be done to adequately assess the child’s trauma.

## **5.5 Who blows the whistle?**

My last assumption is that the media understands their role in influencing politicians to build shelters for the rehabilitation of victims of defilement. This is a measure of expertise which I relate to relevant literature that is available. I do not set a determining factor for expertise in

this research but compare the responses given with literature on the subject. In a democratic society like Zambia, the media is an important tool which can be used to give authorities a wake-up call to implement legislative provisions. I was motivated by the budget tracking programme at BREEZE FM<sup>7</sup> in Chipata and wanted to understand the kind of impact that the media could have in encouraging the state to overcome its deficiencies in developmental projects. Zambia has a good environment for the private and public media to work together. Katete is covered by six local radio stations, several print media houses though all these are national media houses, one local television station and two national television stations.

I interviewed the District Information Officer from the Zambia National Information Service (ZANIS) in Katete to find out the relevance and importance of rehabilitation for victims of defilement. She said:

‘When one is a victim, there is need for an environment which offers care and counsel but victims are left to stay with the perpetrators. Children grow humiliated, demonising every man they see in adulthood. They keep referring to the torture and if not checked in future we may see a generation of law breakers who seek revenge for their past experience. Going by psychology, if an act is done once and not corrected chances of re-occurring are 50%. Children of a perpetrator may become of what they witnessed.’

Available literature on the subject of is stated as follows:

‘...many young men may view violence against women as a socially accepted extension of their male authority. Such internalisation of violence against women and children has led to violent sexual behaviours being defined as normal...’ (Muller *et al.*, 2009: 63).

Available literature discusses societal context and sexual violence. A practice that is wrong may gradually be accepted as normal by a particular society because of its repeated practice. Rehabilitation is established and promoted to correct the wrong that has been experienced by a child and to halt the unconscionable and unacceptable trend that defilement is the new normal. The above respondent’s testimony refers to some of the consequences of sexual abuse and she was referring to the situation in Katete where victims do not go through rehabilitation programmes owing to the lack of shelter in the district. She notes that a good

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<sup>7</sup> This is a community radio station that broadcasts to the population in Eastern Province with programmes in English and Nyanja.

environment for healing, caring for and counselling victims away from their perpetrators is cardinal for a smooth running of the court process.

The journalist at ZANIS also talked about victims making a reference point to the torture suffered by victims of defilement as well as those who are forced to witness it and linked this trauma to the danger of victims turning into defilers themselves and essentially giving birth to a violent generation. She refers to the psychology behind the phenomenon that such acts seed themselves in victims and are repeated in the future conduct of the victims. Rehabilitation counters and breaks this vicious cycle and brings a victim back to the attack in such a way that they can find it in themselves to accept it, overcome it, rise above it and live beyond it in a positive manner.

This is similar to what the station Manager at MPANGWE FM<sup>8</sup> in Katete said. He also agreed with the negative effects of the lack of rehabilitation and added that the *Chewa*<sup>9</sup> culture was not beneficial to a traumatised child. He linked this to early marriages which are entered into by children as young as 13 years old because according to culture this is the age of puberty and therefore marriage. In other words, marriageable age is determined by what is prescribed by culture and not the higher age prescribed by the government in statute. He testified that to the lack of rehabilitation programmes exposing children (especially those between the ages of 12 and 16) to an environment that condones and approves the act.

As I interviewed various members of the media, I observed them to be actors who, even though they were not directly responsible for initiating, organising and supervising programmes for rehabilitation of victims of defilement, knew enough about them and had the means to promote them as a matter of urgency. A well informed media is central to the implementation of legislative provisions because it understands who and what is responsible for their failure. The Social Welfare Department needs help as it is waiting for the establishment of a shelter before it can launch any rehabilitation programmes. The media understands that it is largely a matter of political will which will ultimately get such a shelter built; and so by bringing the whole issue to the forefront of the public mind it knows that it can help create the necessary public opinion to galvanise the necessary political will that will hopefully get the job done.

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<sup>8</sup> This is a community radio station in Katete.

<sup>9</sup> A dominating tribe in the three chiefdoms of Katete.

## **5.6 Conclusion**

A well informed civil service is necessary for the implementation of statutory provisions such as the need to provide rehabilitation for defiled children. The DSW is able to identify and care for sexually abused children. Having the expertise however is but one step towards the state's desire to actually rehabilitate child victims of defilement. There are other factors associated with the problem. It is not only the DSW that deals with victims of defilement. Other government departments and non-government organisations also deal with them. Because of these overlapping interests in these children an overarching and common management plan needs to be created to care for and oversee their rehabilitation and general welfare. For effectively initiating rehabilitation programmes, there is a need to have monitoring mechanisms with sister concerns. There are no such links in Katete. The lack of shelter is a major obstacle to providing rehabilitation and social workers explain their failure to provide rehabilitation to the lack of such shelter. This calls for politicians to propose and promote a development agenda to establish rehabilitation shelters. The media is well placed to get this ball rolling by helping to turn political will towards this goal. This can only be done when the media is actively lobbied and taken on board and educated on the necessary and urgent need for rehabilitation.



## **CHAPTER SIX**

### **6.0 CONCLUSIONS AND RECOMMENDATIONS**

#### **6.1 Introduction**

*'We hold our dreams and ideals close to our hearts, where the promises are made to the future generations'*  
(Rachel: 2011).

This is what the novelist John Rachel writes on the subject of Asian girls who are trafficked into the USA despite domestic and international laws prohibiting such acts in a modern society. I use this quote in the context of my vision for a rehabilitated victim of defilement in Zambia, guided by the country's ideals expressed through the AGBV Act. We have all the undertakings given in the Act and the countless political promises made to safeguard the lives of defiled children but, sadly, no action. This chapter outlines my conclusions and recommendations. My recommendations are based on the position taken by the Zambian Government in its fight against GBV. The liberal feminism approach is evidenced by the fact that the government has specifically dealt with defilement by amending the legislation to make it gender neutral, although research shows that girls are more victimised by the offence than boys. My recommendations are both for the long term and short term aimed at suggesting workable ways that can help to implement rehabilitation of victims as created in the Anti-Gender Based Violence Act.

#### **6.2 Conclusions**

The study aimed at carrying out an assessment of the perceptions and efficacy of section 30 of the Anti-Gender Based Violence Act of the Laws of Zambia. It provides that the minister responsible for the Department of Social Welfare shall provide mechanisms and programmes for the rehabilitation of victims.

Victims of defilement are children below the age of 16 years because of the legal definition in the Penal Code chapter 87 of the Laws of Zambia. Some victims are not known by the state because their cases might not have been reported anywhere. However, some cases might have been reported but the concerned office might have trivialised the report. It is a source of

concern for the authorities when cases are not reported or withdrawn because they are handled privately within or between families.

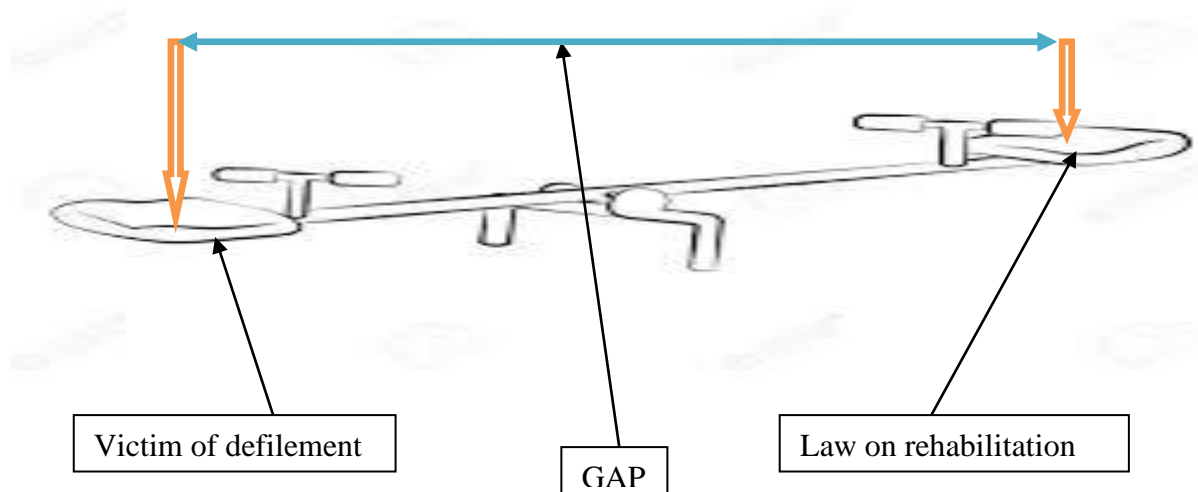
Some victims are known by the institutions dealing with defilement cases and this research focussed on this category. Without a doubt, defilement cases have increased in Zambia despite the state's interventions through policy papers and the enactment of stiff legislative penalties. I focused on rehabilitation because it must be provided to every victim and the provision of this service is not in any way dependent upon or related to the state's position or attitude toward the perpetrator. So even if the state takes no action against a defiler, it is accepted that the defiled child must still receive urgent rehabilitation.

The research examines the role of the DSW. It is the DSW's duty to rehabilitate defiled children and to protect their interests when they are affected by the work of other government departments. In other words, the staff of the DSW are required to co-ordinate effectively with other departments to ensure that government business is carried out without compromising the best interests of defiled children under their care. At the pre-trial stage, defilement cases are reported either to the police or the hospital. One-stop centres bring all relevant organisations together under one roof. The police are concerned with investigations and the preservation of evidence in order to prepare for court trials against perpetrators. Health personnel are concerned with any harm suffered to the child's health as a result of defilement. In other words, the DSW is ideally placed by legislation to help a child with the management of the trauma occasioned by defilement, although this does not happen in Katete.

After it is determined that a defiler is to be tried before a court, the prosecutor's office then takes over the case and prepares the evidence for the case. The Social Welfare Department then prepares the child for this process by creating a friendly environment that assures them that their safety is guaranteed regardless of the outcome of the court trial. It is for this purpose that rehabilitation is provided for in legislation but such preparation is not done in Katete owing to an institutional excuse of the lack of shelter for rehabilitation programmes. As court rooms are not conducive to child victims of defilement, they are exposed to further trauma when they are required to appear for the prosecution and give evidence. This is because they testify in the presence of the perpetrator and court officials whom the child does not know. The need for rehabilitation is required throughout the criminal justice process.

At the end of a trial the court may convict the offender but no one informs the victim of the outcome. Likewise, when a perpetrator is acquitted, a victim's family has to take the initiative of finding out why he was released as state agents have no duty to inform the victim of the court's outcome. Rehabilitation which should be but is not carried out is aimed at explaining and preparing victims for all the possible outcomes of court trials in order to reduce their trauma.

Figure 8 is an attempt to depict, using the symbol of a seesaw, the purpose of this research which is to determine the reasons for the gap between the unrealised provision of rehabilitation services for child victims of defilement (at one end of the seesaw) and the vulnerable victim (at the other).



**Figure 8: Showing a seesaw to depict the gap between child victims of defilement and the rehabilitation they should receive**

### 6.3 Recommendations

Recommended measures are both long and short term. The long term measures require much larger amounts of money to implement than the short term.

#### 6.3.1 Long term measures

The Government of the Republic of Zambia must establish shelters for the rehabilitation of victims. As girls are victimised the most, shelters for them should be established first. The government should reflect the seriousness of its commitment to this goal by allocating a meaningful amount of funds for this project in the national budget. We need adequate office

space for all government actors who deal with children when defilement is reported. This includes: VSU, guidance and counselling teachers, and Department of Social Welfare. Government can negotiate with businesses in the private sector to build shelters for victims as part of their corporate social responsibility towards civil society.

Zambia must develop sexual education in school curriculum from nursery schools to grade 12. This will help children to understand the importance of respecting their bodies and the danger posed by defilement. Communicating the cause of a problem is sometimes a challenge with children after they have been sexually abused. This is because a child does not understand what has been done to them. Communicating clearly can help to initiate rehabilitation programmes promptly. Currently, sexual education is done by NGOs which focus on the dangers of early marriages and pregnancies.

There must be training of more guidance and counselling teachers in schools. The need for expertise in handling a victim does not rest only with the DSW but with all institutions that deal with children. Schools are a good source of information from children who are defiled, since children may be more likely to trust their teachers more than family members.

Police officers of the Victim Support Unit must be trained in counselling. In other words, the ambit of modern policing must be broadened so that the police are always prepared to deal with all types of challenging situations. Since the duties of the VSU include counselling victims, there must be a common understanding between social workers and the police. This understanding is easily achieved when officers share the same expertise.

Prosecutors must be trained in child management. This will help them to identify trauma in young victims and make recommendation for rehabilitation to the Department of Social Welfare. Some cases of defilement do not succeed in court on account of a traumatised child witness. Therefore every effort should be made to minimise a child's trauma not only for their own welfare but also to improve the chances of convicting their attacker.

Magistrates play a pivotal role in delivering justice. Expertise in understanding a child is required for ensuring a fair trial in a defilement case. The attitude of a magistrate towards the perpetrator and a victim should be informed by the understanding of trauma in victims of defilement. This also calls for the establishment of specialised courts in cases where children

are victims. Presiding over such courts allows magistrates to develop the experience and expertise they need to obtain the best possible evidence from child victims with the minimum of trauma.

Some of the challenges to the implementation of rehabilitation programmes include the lack of monitoring of human rights issues by the Human Rights Commission. Decentralisation of the commission to district level can improve the commission's mandate to monitor human rights abuses. When these abuses are exposed, the state can make improvements in implementation of rehabilitation programmes for child victims.

The Ministry of Gender as the ministry responsible for coordinating gender matters is best placed to negotiate the sorts of amounts of funds it requires from the national budget for infrastructural development and the administration of gender issues. Since defilement is a gender issue, the Ministry of Gender should closely monitor the implementation of the AGBV Act. Its absence at district level makes it difficult for them to adequately supervise committees that deal with children's affairs. Decentralising this ministry could improve the operations of committees that are currently established to deal with gender issues including defilement.

Human resources should be increased in the DSW. Currently the department does not conduct rehabilitation programmes on account of a lack of staff, among other things. Also the training of more social workers can improve the current situation.

### **6.3.2 *Short term measures***

The Ministry of Gender should carry out a robust programme to monitor the functions of committees at district level by receiving and evaluating minutes of the meetings held. They should ensure that consistency is upheld and that members of the Child Justice Forum and Gender Based Violence Committee should be permanent as is the case for the Gender Sub-Committee. The appointment of permanent members will bring about the consistency necessary for the implementation of resolutions of meetings. It will also improve the flow of shared challenges and achievements from individual departments.

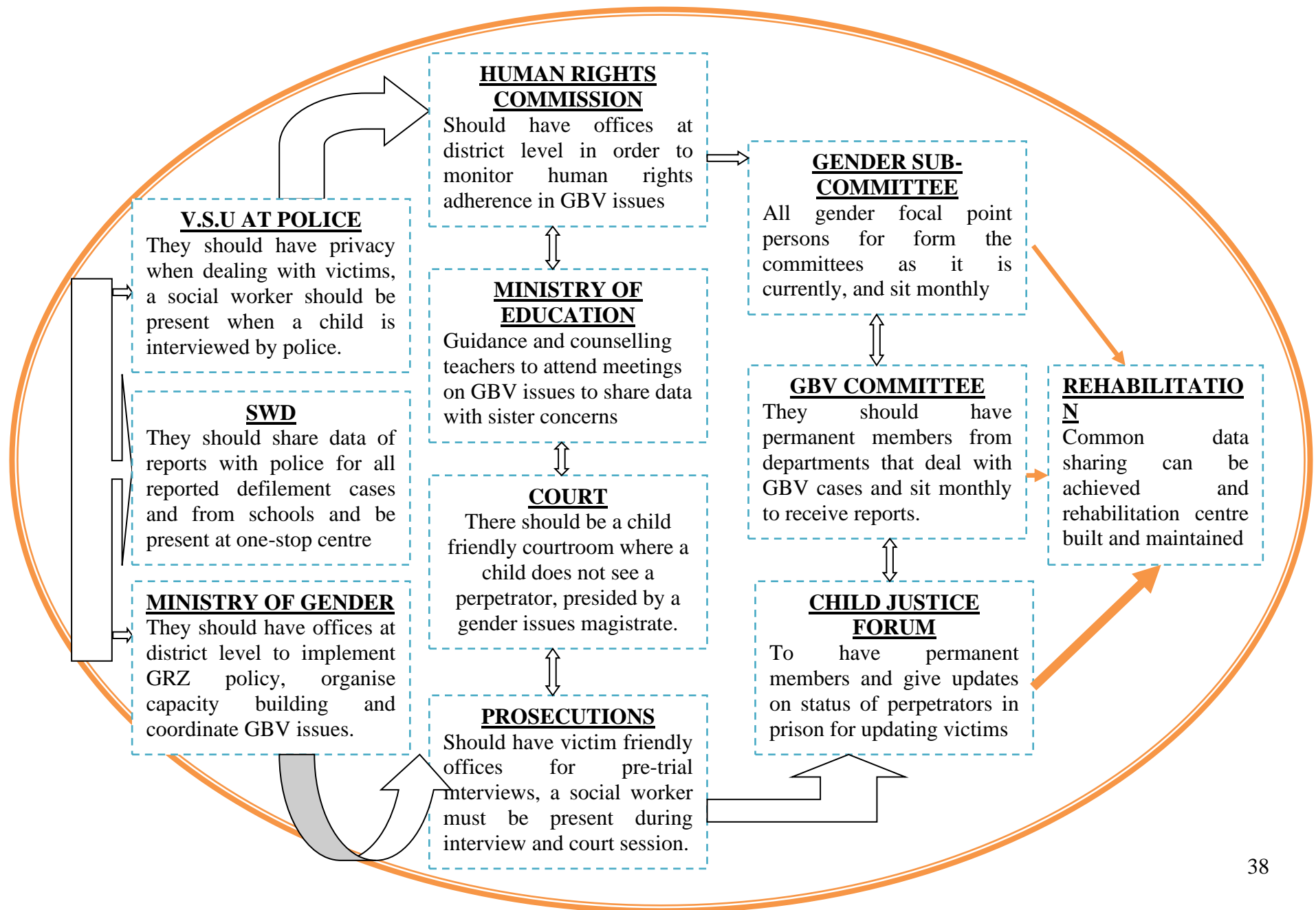
The Department of Social Welfare needs to invoke innovative ways of staying in touch with victims of defilement and/or their parents/guardians. The government needs to recognise that

cellular phones are an acceptable form of official communication. Cellular phones can be used to reach and keep victims and their families informed on the progress of cases and the welfare of the child; to reach the DSW in emergencies; to improve communication between the Police and the DSW.

The government should create a database for use by the Police, Judiciary, Prisons, Human Rights Commission, Ministry of Gender and the Social Welfare Department. It should indicate the status of perpetrators of defilement in correctional facilities so that victims can discover the whereabouts of their perpetrators at any time. It will bring to an end the current problem of victims not knowing the sentence given to a perpetrator. At the present time, they are not told of the outcome of trials or eventual sentences. Shared data can also make it easier for the on-going evaluation of the justice delivery system.

Figure 9 shows how the rehabilitation of victims can be attained through a robust administrative effort at district level. The implementation of rehabilitation programmes can be achieved through ensuring that each government department strictly adhere to their statutory duties concerning their involvement with gender based violence issues. The figure below suggests a robust way of dealing with gender based violence including minimising trauma to victims. The task involves not only the Department of Social Welfare but the police section of victim support, the Human Rights Commission, the Ministry of Gender, the Ministry of Education, the courts, and the prosecuting authorities. Together, these government establishments can share data on challenges and achievements that are faced by individual departments in matters that concern victims of defilement. These issues on GBV can be dealt with in the Child Justice Forum and the Gender Based Violence Committee. These committees at district level can then effectively communicate back to individual departments and report to the Provincial Planning Unit for action from the government.

**Figure 9: A proposed model of GBV management**



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