THE EFFICACY OF THE FAMILY SUPPORT TRUST ('FST') POST RAPE COUNSELLING FOR GIRL-CHILDREN AGED 3 TO 12 YEARS IN HARARE, ZIMBABWE

Abstract

Zimbabwe's recent economic meltdown has given rise to an increasing number of sexual attacks against minors who, as part of the healing process, require long term counselling, especially if they are forced to relive the horror of their experience when testifying against their alleged assailants in court. The writer of this dissertation, a member of the Board of Trustees of the FST, Family Support Trust (whose Clinic is the sole NGO provider of free counselling services to rape victims), reveals the torment suffered by young female sexual assault victims who receive insufficient psychological counselling before, during, but particularly, after the trial of their attackers. Operating as part of the Victim Friendly System ('VFS') with other resource-stressed institutions (such as the Police, Courts, Social Welfare Department and NGOs) within and around a disintegrating and poorly co-ordinated justice delivery system, the Clinic still manages to play an important part in the trial process. It prepares the child to give evidence against her alleged attacker, after which, sadly and mainly because of a lack of co-ordination, the entire system, including the Clinic, as well-intentioned as it may be, abandons her. Moved by the plight of these unfortunate children, the writer, also a former nurse and Regional Magistrate, depicts *their* experience of the system by collecting, analysing and presenting a range of relevant written and verbal evidence about it utilising the Women's Law Approach. She finds that having bound itself to a number of HR documents which seek to promote 'the best interests of its children', Zimbabwe's originally successful VFS is now crumbling as a result of a serious lack of resources and co-ordination, thereby tragically inflicting more harm than good on its young complainants. The writer's honest and objective criticism of her own well-meaning institution, as well as the justice system as a whole, opens her eyes to recommended courses of action aimed at improving them. These include affording these child victims as much protection under the Constitution as is given to their alleged assailants so that the Courts are obliged to order sustained long-term counselling to victims during and after trials. She also suggests that the Clinic appoint a proactive co-ordinator whose duty it will be to ensure that victims who pass through her hands are shepherded throughout the trial and beyond by the same well-informed expert counsellor who will be duty bound to track the progress of a prosecution in order to allay any fears that the child or family may have in relation to it.

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DEDICATION

This research is dedicated to:

My Parents –thank you for allowing me to dream and for encouraging me in whatever I set out to do. R.I.P. Mr. & Mrs. 'T'.

My siblings thank you for being there for me.

My children and grandchildren-the sky is the limit!

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ACRONYMS

UDHR	Universal Declaration on Human Rights
CRC	Convention on The Rights of The Child
The African Charter	African Charter on the Rights and Welfare of the Child
ZRP	Zimbabwe Republic Police
NPA for OVC	National Plan of Action for Orphans' and Vulnerable Children
FST	Family Support Trust
FS	Family Support
FSC	Family Support Clinic
CCTV	Closed Circuit Television
MoPSLSW	Ministry of Public Service Labour and Social Welfare
SW	Social Welfare
The Wynberg Report	Report on Sexual Offences Court System-Wynberg, South Africa
Minimum Standards	Minimum Standards For OVC Programming In Zimbabwe An Implementer's Guide.
NGO	Non- Governmental Organization

Human Rights Instruments

1. Convention on the Rights of the Child
2. United Nations Declaration on the Elimination of Violence against Women
3. Addendum to SADC Declaration on Violence Against Women.
4. Protocol to the African Charter on Human and Peoples Rights on the Rights Of Women in Africa.
5. African Charter on the Rights and Welfare of the Child.

National Legislation

1. The Constitution of Zimbabwe.
2. Criminal Law (Codification And Reform) Act Chapter 9:23
3. Children's Act, Chapter 5:06
4. Criminal Procedure and Evidence Act, Chapter 9:07

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CHAPTER ONE
INTRODUCTION

Sometimes we see change but are not part of it. At other times we participate in the process of change. One of the reasons why I chose to write on this topic is my genuine interest in the welfare of the girl child. I am the first born girl child in a family of eight children –two boys –of the two one died in infancy – and six girls. My only brother is the 6th child born after me.

Being one of many girls has its ups and downs, but it can be and it is fun to me. I say so because we are always there for each other – to console and counsel each other in times of need. Girls understand girls better than boys. Thank God for sisters. (We are also there for our brother). I cannot say that my brother got a privileged position in the family simply because he was a boy. No! My parents tried as much as possible to treat us equally. Of course relatives wondered what would happen to so many girls. This did not seem to bother my parents much. What I know is that they highlighted our strengths and accepted our weaknesses without dwelling much on the weaknesses. I am sure that if my parents had shown a negative attitude towards us girls, none of us would have been where we all are now.

Another reason is my professional experience. I trained and worked as a nursing sister and midwife before studying law. I worked in a government hospital where the facilities were minimal. This meant that, among other things, people's privacy was usually compromised. For example, taking the history of a patient was sometimes done in the presence of other patients. This usually made it very difficult for patients to disclose the nature of their illnesses.

My nursing and midwifery training were done in the United Kingdom. At the time that I trained, the privacy and dignity of the patient were non-negotiable. I was therefore quite shattered when I realized that at the hospital that I worked, the privacy of the patients was

not given the priority that I had known. After studying law I worked as a Magistrate and subsequently as Regional Magistrate.

I have watched with horror children failing to express themselves following traumatic experiences. Invariably mothers shoulder the blame. Sometimes she is so confused herself that in her frustration she 'beats' some sense into the child because she has to cope with a situation that is incomprehensible to her. My point is that once a girl child has been abused she has suddenly acquired a weakness. Unfortunately for her, it is public knowledge. She needs someone to console and counsel her. As a Regional Magistrate I patiently listened to testimonies of very young children. Sometimes I left the 'high' chair and removed that awesome gown and took a seat by the bar in an effort to instil some confidence into the child. Hopefully this would enable her to talk. I believe that many of my colleagues did the same for similar reasons. I accepted those pieces of evidence called medical affidavits. Reading them was an unpleasant experience. This is because I knew that an examination by a gynaecologist is not a pleasant experience, even for adults. I wondered how the child would have felt during the examination.

Having worked in government hospitals myself I could only empathize with the children. I hoped that the outcome of the trial was - apart from it being in accordance with real and substantial justice- the best that could be done for the child under the circumstances. I continued to nurse a fervent hope that one day the girl child would be able to get the necessary support. Such support would ensure that both the hospital and Court experiences would not constitute subsequent acts of rape. So when I became the first regional Magistrate to preside in the victim friendly Court after the necessary training I felt a sense of achievement. I both saw and participated in the process of change. I looked forward to less stressful listening in cases of child abuse. I knew that during the whole process leading up to the trial, the child and her family had a professional counsellor to support them.

The dream

A lot has been said about dreams. This particular dream relates to the uproar raised by the press, NGOs and civil society as a result of the prevalence of child sexual abuse. Of course this menace could not be left unchecked. ‘Something must be done about this!’ everyone seemed to be saying. Indeed something was done. With sufficient interest from people in the right places at the right time, an inquiry called the Malaba Inquiry was set up. The Inquiry would investigate and recommend how best child sexual abuse could be dealt with. Hopefully it would be reduced or even eradicated.

Following that Inquiry recommendations were made for a holistic approach towards the management of child sexual abuse. Lessons were learnt from the South African model called the Sexual Offences Court. Personnel from Zimbabwe were sent to see how the South African model worked. Following that, the government with donor support, trained officials from all ministries which are relevant to the welfare of the child once the abuse has taken place. These included police, doctors, nurses, Magistrates, psychologists, prosecutors and social workers, to name some of them. They were trained to handle the child in a friendly manner in order to avoid further trauma or ‘a second or subsequent rape`. Everybody was enthusiastic about this. Finally, after all these years of traumatizing an already traumatized child, the system was going to be victim-friendly or child-friendly.

The police would set up victim friendly units. This is where they would interview the terrified child. The interview would be done in a private room and away from the hustle and bustle and intimidation usually associated with police stations.

Equally, the Courts would take the evidence of the child via CCTV. It was expected that if a child testified without seeing the perpetrator, further trauma could be avoided. The other departments would do the same. The hospital would set itself up to ensure that when the child got to the hospital she would not go through the accident and emergency/casualty department. Instead she would be directed straight to a ward where

she would be treated by child friendly staff. The staff included receptionists, nurses, doctors counsellors/social workers and psychologists. The enthusiasm after the training was so great all participants felt like shouting 'Finally we have arrived!' The dream had actually come true and something was really going to be done about the management of child sexual abuse and the hope to stop it.

1.1 Setting up the Clinic

It became necessary for the hospital to create the necessary space with the appropriate staff for a special Clinic to cater for sexually abused children. A team of doctors, social workers and psychologists initiated the formation of a trust. The trust would run the Clinic. The name of the trust was to reflect hope rather than stigma. The name was Family Support Trust. Donors supported the initiative. Subsequently the Clinic was officially commissioned by the then Deputy Minister of Health Dr Parirenyatwa. The Clinic was housed and continues to be housed at Harare Central Hospital. It is from here that child survivors of sexual abuse get psychosocial support.This enhance their healing process. As aptly expressed by Thandeka Umlilo:

> "I truly feel saddened when I hear people voice their negative attitude towards therapy. This is especially true in Southern Africa. Some reckon that therapy is for the weak, the unstable and yes for the 'mad', whatever 'mad' means. My experience has proved what a wonderful gift therapy is. To face an inner journey of chaos and turmoil takes courage and such a journey, as I said before, should not be travelled alone. A therapist/psychologist is one who not only specializes in the knowledge of how the psyche functions, but will also be present to the client as one who understands, empathizes and accepts our broken and fragile worlds with compassion and gentleness. However, a therapist true to his/ her vocation will not just affirm and leave us bandaged, forever wrapped in our misery. No! When the time is ripe they will challenge us simply because they believe in us. They know that we have the power to remove the bandages from our wounds so that the fresh air of love and acceptance can touch the wounds with healing. Of course we need to take time to choose someone we can trust,

> relate well to, one with whom one can be totally honest."(Umlilo p.167)

Thus as the system recognized, a survivor of child sexual abuse requires counselling in order to heal emotionally in addition to physical healing. This is what Family Support Trust is mandated to do.In fulfilling its mandate it wants to be able to follow up and continue to counsel, to its satisfaction, all children who have been treated there.

1.2 The best interests of the Child

The best interests of the child are paramount – this is what national legislation, regional and international human rights instruments say. Whether this is true or not depends on how much of this law or human rights instruments is practised. Parents or adults choose not to listen to children. Children are people, they are human beings. They have rights. We must therefore see and hear them.

The Universal Declaration of Rights (the Declaration) says that all persons are born equal. The Declaration does not distinguish between adults and children. What this means is that children have a right to be heard. If adults fail to listen to the children they are violating the children's fundamental rights. The reason for the violation is simple: The children committed the "crime" of being young.

Being "young" means that the children have to be represented by others in many ways. Somebody must speak on their behalf as they are not able to articulate themselves at times. Most of all, children need to be supported. This makes them feel appreciated. There are certain things adults do in good faith but by so doing they unwittingly suppress the voices of children and in the process violate the children's rights.

Take for example a child who has been sexually abused. A parent may feel so shocked that they try to silence the child. This may be done in the hope that the child will accept

the effects of the abuse and forget about it. The adult has seen the child but not heard that child. This is not to say that the adult does not care about their child. They do but they may not know how best to deal with the situation.

Indeed parents are not trained counsellors much less psychologists. That is why it is necessary for both the parent and child to be counselled once a child has been abused. The bottom line is that both are human beings with rights. Neither knows how to handle the situation and therefore both need counselling as well as other forms of managing the situation. This is where institutions like the Family Support Clinic ('the Clinic') come in. The Clinic has been in place for over ten years now. Child sexual abuse is a menace which has plagued the Zimbabwean society to the extent referred to earlier.

Government recognized that it is a national problem. I am sure a lot has changed over the period during which the system has been in place. It is therefore important to assess how the system is fairing in the support of children at the Clinic. I think we can take it for granted that child sexual abuse is still the menace that it was over a decade ago. This is said based on the regular reports by the local press on child abuse. That being the case, it means that the services of the Clinic continue to be relevant to the management of child abuse. The same can be said about the sustainability of the multi-sectoral approach of this management. The efficacy of the Clinic in offering counselling to child survivors of sexual abuse will be considered under the following assumptions and research questions.

1.3 Research Assumptions

1. Child survivors of sexual abuse need counselling and preparation for Court in a friendly environment.
2. The services of Family Support Clinic are not easily accessible to those who need them.
3. Counselling offered by the Clinic is essential for the healing process.
4. The success rate of follow-up depends on the ability of the clients to return to the Clinic for further counselling.

5. The Clinic does not have the capacity to adequately follow up clients after the criminal justice system has finished with the child.

1.4 Research Questions

1. Do child survivors of sexual abuse need counselling and preparation for Court?
2. Are the services of Family Support Clinic easily accessed by those who need them?
3. Is counselling offered by the Clinic essential for the healing process?
4. Does the success rate in following up clients depend on the clients' ability to return to the Clinic?
5. Does the Clinic have the capacity to adequately follow up clients after the criminal justice system has finished with them?

1.5 Area of Study

I confined myself to the Clinic at Harare Hospital. Its catchment area includes both urban and peri-urban areas.It was therefore convenient for me to do so. Most heads of offices are in Harare. This made it easy for me because it reduced bureaucracy. Where some offices needed authority to talk to me it was within reach.

CHAPTER TWO
LITERATURE REVIEW

2.1 Local Law and Publications

In Zimbabwe there is the Children's Act Chapter, 5.06 (the Act). Part of the purpose of the Act is to

> make provision for the protection, welfare and supervision of children…

The Act is administered by the Minister of Public Service, Labour and Social Welfare (or by any other Minister to whom the President may, from time to time assign its administration).The Act focuses broadly on the welfare of a child. That welfare is supervised by social workers. It is the same Ministry which mandates its social workers to counsel and support abused children at the Clinic. It is the Ministry which coordinates all non –governmental organizations including those focusing on child related issues like the Family Support Trust. One of the functions of the Act is to ensure the presence of a social worker where they are needed. The reality however is that the Department of Social Welfare (SW) is extremely understaffed. It is because of its poor staffing situation that it is not, at the moment, able to offer the much needed support or counselling to the children who attend the Clinic. Before the Victim Friendly System ('VFS') was set up the Department of Social Welfare sent a delegation of social workers on a study tour of the Wynberg Sexual Offences Court and Support Services, South Africa. After that tour the department compiled a report called the Report on Sexual Offences Court System-Wynberg, South Africa (The Wynberg Report). In the Wynberg Report, the Department of Social Welfare outlined its role in the victim friendly system as follows:

> The Department of Social Welfare has the statutory responsibility to safeguard the welfare of children in Zimbabwe in accordance with the provisions of the Children's Protection and Adoption Act, (now the Children's Act), Chapter 5:06 It is against this background that the Social Workers employed in the department are employed as Probation Officers and are legally empowered to remove children in need of care to places of safety.In the case of rape victims in respect of minors, the

> Social Workers in the Department carry out investigations and can remove victims to places of safety when necessary…On the whole, however, the Social Workers in the department are called upon to provide counselling services not only to the victim and the perpetrator but also to the families and community in which such a crime will have occurred.

In conclusion the report says;

> The inauguration of the Victim Friendly Court System in Zimbabwe with effect from 1st October, 1997 has brought about a new era of positive developments in the Judicial System in the country. The key Ministries and Non –governmental Organisations which have a part to play in the Victim Friendly Initiatives need to provide a **coordinated** front in an endeavour to provide credible evidence during Court appearance. Indeed, as the South African experience shows, the Department Of Social Welfare will be called upon to **coordinate** the vital support services in The Victim Friendly Court System. The victims of child sexual abuse become traumatized hence they need appropriate counselling prior to and after Court to restore self-esteem. The vital support services will not be done by the Department of Social Welfare alone but other Ministries and private voluntary organizations need to be ready to provide counselling services when called upon to do so.(emphasis added)(The Wynberg Report p15)

The Wynberg Report was produced in 1997, which is the same year that the VFS was formally set up. It took a lot of lobbying, recommendations and an inquiry to initiate the VFS. However, it was through an Act of Parliament that a Court specific to the vulnerable witness was set up. The Wynberg Report highlights the importance of the need for coordination in an effort to produce credible evidence in Court. Firstly due to the prevailing circumstances the coordination is lacking. Secondly the focus put on the need to get credible evidence underestimates the importance of the child's healing as the main objective of counselling.

In 2006 L.F. Kudya carried out research called: "A Critique of The Operation of The Law In Respect of The Prosecution and Trials of Rape Cases Involving Girls Aged Eight Years And Below in Zimbabwe." In that research Kudya highlights a number of issues which show that the child is adversely affected by the manner evidence is elicited from

her. One of the issues Kudya discusses is that the system is not functioning as effectively as it should. As a result of this, obtaining evidence from a child is another harrowing experience for her. The impression got seems to be that the VFS was created in order for the justice system to obtain the best evidence from the child without taking care of her emotional needs.

That also shows the importance of communication. If there had been continuous education on the VFS all the people involved would have continued to know their roles and why the system was set up in the first place. Reference was made to the Wynberg Report. The Report was produced in 1997 by the Department of Social Welfare. The department also produced the National Plan of Action for Orphans and Vulnerable Children (NPA for OVC) (NPA) for the period 2004-2010. It also produced 'Minimum Standards' in 2008 to guide institutions on how to handle children. These documents spell out how to coordinate children and ensure that children's right are protected. But the abused child who has to go through the Courts does not seem to feature much. One of the reasons for this may be that there is no legislation to support the acute need for counselling that the child has.

The Criminal Procedure and Evidence Act Chapter 9:07 as amended by the Criminal Law (Codification and Reform) Act Chapter 9:23 were amended to provide for a vulnerable witness. Section 319B of Chapter 9:23 provides for a vulnerable witness. A vulnerable witness in criminal proceedings in a Court of law is defined as a person who, in giving evidence is likely:

a) to suffer substantial emotional stress from giving evidence, or
b) to be intimidated whether by the accused or any other person or by the nature of the proceedings or by the place where they are being conducted so as not to be able to give evidence fully and truthfully

When a vulnerable witness gives evidence the Court exercises its discretion to allow such a witness to give evidence by other means including CCTV. It is important to note that the wording of the law does not specify that a child survivor of sexual abuse is a 'vulnerable witness'. The law does also not specify the use of the CCTV.

The law leaves the Court to decide, even in the case of a child, whether she is vulnerable or not. It is clear that when the law was amended, what was on people's minds was the intimidating atmosphere experienced in Courts of law. The use of the CCTV should help the child to heal because she will testify in a conducive atmosphere. This should enable the Court to get the best evidence.

The same child who is vulnerable at Court is also vulnerable at the hospital.She therefore requires special treatment. In keeping with the spirit ingrained by the multisectoral approach towards child sexual abuse a 'Protocol for the Multisectoral Management of Child Sexual Abuse in Zimbabwe' ('the Protocol or Guidelines') was developed with the assistance of the donor community. The Protocol guides the relevant personnel on how to deal with the child at each point up until the child testifies in a Court of law.

The aim of the Guidelines was to ensure that there would be a complimentary and coherent plan in the multisectoral management of child sexual abuse. It was hoped that with that plan the interests of survivors who reported would be safe-guarded. At the same time they would receive efficient and effective services.Such services would reduce the trauma suffered by the survivor. The Guidelines also highlighted the different roles and responsibilities of all the parties concerned. This process was to ensure that all the interventions would be both systematic and comprehensive. This therefore set a standard way of dealing with child sexual abuse.

Several government departments and NGOs were "bound" by the Guidelines. These included the Department of Social Welfare, the Zimbabwe Republic Police, the Department of Public Prosecutions, the Judiciary, the Law Society, the Ministry of Health and NGOs who provided support and counselling for children. It is not mandatory for parties to follow the Guidelines.This is problematic.The Guidelines have been in place for more than five years but still the parties "bound" do not seem to be functioning in a coherent and systematic way. The result of the failure to follow the Guidelines is that

at the end of the day it is the child who continues to suffer. This tends to defeat the whole purpose why the Guidelines were made in the first place.

The Protocol recognized that it would only be a question of time before these facilities were duplicated at centres country-wide. It was also foreseen that there would be extra resources in order to minimize any further trauma to the child. This can be seen in how the health personnel were guided:

> The aim of this protocol is to assist medical and nursing staff to manage cases of child sexual abuse sensitively and also efficiently in both legal and medical aspect. In central hospitals, Family Support Clinics may exist with additional resources and staff for more effective management of sexual abuse cases. Where a Family Support Clinic is easily accessible it, should be used, but out of the main centres, sexual abuse cases should be appropriately managed at the Primary Health Care Clinic or at the District Hospital level according to the principles given in this protocol.(Protocol page21).

The expectations have over the period suffered some setbacks. Interviews with the staff at the Clinic reveal that they are not able to conduct the counselling as much as they would wish. This shows that what was envisaged by the Guidelines is not what is happening. The Guidelines proposed the ideal situation; this is yet to be realised.

This is why the Clinic is dissatisfied with the lack of coordination between it and the Courts. That breakdown was not envisaged at the time that the program was started because all the main actors in the system were brought together.There was sufficient enthusiasm which took for granted continuous assessment and further education and refresher courses for all concerned. This is obviously not the case.

What this means is that the much needed evidence may not be as good as it ought to be because of the lack of continued support of the child. This may also mean that at the end of the day justice would not have been done, particularly to the child. The major problem is that the child continues to be traumatized. To a child who has been traumatized by

abuse, the existence of the Clinic, serves a limited role. This is certainly not what the Clinic is there for. The Clinic should offer continued support. It is because the system is not working as it should that the Clinic may appear as a tool of extracting evidence, that is the medical report.Its role in post rape counselling appears to be compromised. The absence of counselling is likely to adversely affect the child. Kudya noted:

> The setting up of the western oriented structures speaks volumes of the desire to get the best form of evidence from the victims. The next question is whether or not they are achieving that purpose. The follow up question is whether they are not instead adding more trauma to the child … (Kudya, p38)

The complimentary role of the Clinic is supposed to continue at the Courts. There should be a visible presence of the counsellor. This could be the Probation Officer who would then provide feedback to the Clinic. It could also be the Police who provide the Clinic with the feedback. However because the system is not functioning as it should be doing, different people, including those manning positions within the system, interpret the role of FSC differently, for example:

> Another pertinent feature about the Marondera doctors was that Family Support Trust did not train them. The FST is a non-governmental organization that was set up to train medical doctors that deal with abuse cases on how to examine and compile medical reports for Court. It also has rooms specially designed for the examination of victims of sexual abuse (Kudya p38)

Nonetheless, it is indeed correct that after examining abused children, doctors compile affidavits for the Courts. Before the VFS was introduced sexually abused children used to be examined in the usual examination rooms at the hospitals and the doctors still used to compile affidavits for use at Courts.Therefore compiling medical affidavits cannot be the reason for introducing a whole new system.

That interpretation cannot be faulted because there appears to be a complete lack of communication and more importantly there appears to be no particular benefit which the

child survivor is getting after having left the Clinic and the compilation of the medical affidavit. The purpose of setting up the FSC was and remains to offer psychosocial support to child survivors of sexual abuse.

Participants within the whole setting of the victim friendly system recognized the need to ensure that the child continued to receive counselling after trial. This is commented upon elsewhere in this paper.

The Department of Social Welfare through the NPA defines a vulnerable child as:

> "a child with unfulfilled rights"

and lists an abused child as falling within its definition of vulnerable. The Department of Social Welfare is also involved in a lot of support groups where children with various needs come together and share experiences. The department is encouraging child participation in as many activities as possible. However it is still not practical for it, until its staffing situation improves, to follow up individual children for counselling after abuse. It therefore relies on FST to do the counselling.

2.2 International and Regional Human Rights Instruments

The Universal Declaration of Human Rights in Article 25, provides for

> the right to a standard of living adequate for health and…
> medical care and necessary social services

Here "the necessary social services" can mean anything that a country is able to offer its citizens. It is therefore up to the country to do what it deems proper. Where an abused child is concerned it will also depends on how sensitive the systems which deal with the children are. In Zimbabwe there is a victim-friendly system in place but without safeguards to ensure that the services are actually enforced, it may be a while yet before all child survivors of rape access the services.

Article 3.1 of the Convention on the Rights of the Child (CRC) provides:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

And Article 3.3 provides:

> State Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and sustainability of their staff, as well as competent supervision

The law in Zimbabwe recognizes the importance of the best interests of children. Elsewhere in this paper mention is made of some "Minimum Standards" which are meant to provide guidance to all institutions which deal with children on how to handle children in a sensitive manner. This is meant to safeguard the interests of children. What is not clear is whether this is checked and corrective measures taken against a country which is not following them.

Article 16 of the African Charter on the Rights and Welfare of the Child provides:

1. State Parties to the present Charter shall take specific legislative administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.

2. Protective measures under this Article shall include effective procedures for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

Zimbabwe recognizes rape as being inhuman and degrading treatment.It amended the law to ensure that a child survivor of rape falls in the category of vulnerable witnesses. It also has created a child protection policy which is consistent with the Human Rights Instruments.

Article 4 (2) (e) and (f) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Charter) put an obligation on State Parties to:

> e) …implement programmes for the rehabilitation of women victims;
>
> f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;

Article 12 (d) of the same Instrument provides that the State must …

> Provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;

The Charter shows that the region is aware that women suffer abuses and that they need counselling. There is also recognition that information may be available but it has to be accessible for it to be effective. The Clinic is a good example of a service which is available. However the Clinic can only be effective if it is easily accessible.

Paragraph 7 of the Addendum to SADC Declaration on Violence against Women (The Addendum) recognizes that:

> Existing measures to protect women and children against violence have proved inadequate, ineffective and biased against the victims.

And the following recommendations were made:

> 11. Introducing, as a matter of priority, legal and administrative mechanisms for women and children subjected to violence, effective **access to counselling** restitution… (emphasis added);

16. Providing easily accessible information on services available to women and children victims/survivors of violence including women and children with disabilities;

17. Ensuring accessible, effective and responsive police, prosecutorial, health social welfare and other services, and establishing specialized units to redress cases of violence against women and children.

23. Ensuring that all these measures are implemented in an integrated manner.

It is instructive to note that at Regional level it was observed that the existing measures to protect women were ineffective. The Addendum thereafter made recommendations, to ensure, among other things, effective access to counselling. The importance of counselling has been recognized. What remains is how to ensure that it is accessed easily. Once that is achieved then counselling becomes effective.

It is institutions like Family Support (‘FS’) which can make counselling effective. FS can only work effectively and to its satisfaction once all players in the system perform their functions. The failure by the parties to properly utilize FS means that there is a disservice to the child survivors of rape. This also means that this unique service might not be fully appreciated and utilized.

So it is clear that both the legal and administrative mechanisms are in place. What is missing is effective access to counselling. One of the reasons why that access is hampered may be the breakdown of communication at various stages in the system.

2.3 Rights and Reality

The UDHR provides for the right to medical care and necessary social services. The realization of this right for abused children is dependent on a number of things. In the

case of accessing the Clinic it depends on whether or not the parent can get to the Clinic in order for the child to get counselling.

In one case a mother reported the abuse at a police post where there was no victim friendly unit. She and her daughter were referred to the main police station where this facility was to be found. The police had no vehicle to transport them there. The policeman had no money for transport. The alleged perpetrator paid the transport fares for the policeman. By the time they got to the right place the alleged perpetrator was nowhere to be seen. This frustrated the mother.

Of course services of the Clinic were obtained but with a lot of reservations regarding the whereabouts of the perpetrator. As indicated the Clinic services both urban and per-urban areas. Where survivors have transport they will come to the Clinic as early as they can. If they do not have money to pay for their own transport, getting to the Clinic can be a challenge. All this affects the expected smooth running of the counselling services of the Clinic.

The CRC provides for State Parties to ensure that at all times when the state establishes institutions the best interests of the child is a primary consideration. The African Charter also obliges the State to have follow up procedures. The problem in both cases is the ability of the State to comply. Where the state does not provide the facilities within walking distance, some of the survivors will not get the services. In the event that the State fails to comply for whatever reason, there does not seem to be a way of ensuring that this is done. Thus the accountability of the State in all cases is of primary importance.

The government has put in place on paper ways of coordinating NGOs. One of the limiting factors is adequate personnel. Generally government salaries are regarded as low. Until and unless government can offer salaries from which people can sustain themselves, its good intentions might never be realized. The result is that it is the children who suffer. Even if there is regular training on how to deal with the survivors this will

not resolve the problem because those trained people will continue to leave for better paying jobs. The protocol in place giving guidance to relevant departments can only be implemented if there are sufficient personnel to ensure meaningful implementation.

The Constitution of Zimbabwe (the Constitution), provides for the protection of the rights of the accused. Nothing is mentioned about the plight of the child victim. The Constitution also protects its citizens against inhuman and degrading treatment.Whereas a perpetrator's rights are protected from the time that they are arrested, the child seems to have no rights at that point. Instead the child may be told not to bath. The reason for ordering her not to bath is not always explained in a sensitive manner. That in itself is traumatic. It needs someone who can explain in a sensitive way. Survivors of child sexual abuse need to start healing as soon as possible. It is therefore desirable for the Constitution to have a provision for counselling or emotional support for abused children. This would provide a way of ensuring that in the event of abuse, the survivor would be entitled to counselling just as much as the accused person is entitled to appear before a Court of competent jurisdiction and to legal representation of his/ her own choice.

The Constitution is gender neutral but not child friendly. There may be a lot of policies made but if they are not supported by a Constitutional or legislative provision, their implementation may be another unfulfilled dream. Such a Constitutional provision would possibly require the amendment of both the Children's Act and the Criminal Procedure and Evidence Act to make specific provisions in the enabling acts.

CHAPTER THREE
RESEARCH METHODS AND METHODOLOGIES

3.1 Research Methods and Methodology

When I started the research I had an idea about what ought to have been happening. This is so because of my experience as a former Regional Magistrate, my involvement in the setting up of the system and also as a board member of the Trust I knew that there were some Guidelines which were supposed to be followed. I was also aware of some operational problems which the Clinic is facing due to financial limitations. So this research was a form of self interrogation.

Women's Law Approach

With that background I was honestly surprised by what I found out. I went out to see the lived realities of the respondents. I was keen to see for myself what exactly the respondents were doing to ensure that the rights of the child were upheld particularly the follow up after trial. Was the Clinic paying lip service to the protection of the rights or not? It was a revelation to me that the Clinic as it function at present does not get proper feed -back from the Courts regarding the progress at the Courts. Maybe the Clinic should really further empower the child and establish a hotline for follow up purposes. In the process of establishing how the children's rights were being enforced I automatically came face to face with the respondents' lived realities. That enabled me to empathize with the situation without losing my focus.

As a result of this approach my first assumption was confirmed. Child survivors of sexual abuse need counselling both as an aid to healing and in preparation for Court. They obviously need physical healing and the post exposure treatment which they get.

It goes without saying that the children need to be examined in a child friendly environment. This is consistent with International and Regional children's Human Rights instruments.

The reality is that due to financial limitations the ZRP is not always in a position to escort clients to the Clinic. Clients are referred and they make their way there.Even where the ZRP is able to escort the survivors, they use public transport. This shows that accessibility of the services is not easy. This confirmed my second assumption.

During the course of interviews with the respondents it became quite clear that counsellors feel that children need counselling and that the Clinic must maintain contact with the child. The Clinic must continue to assess the rate at which the child and her family are healing. Counsellors insisted that counselling is essential for the healing process. This confirmed my third assumption.

I will deal with the fourth and fifth assumptions jointly. This is because of the lived experiences of the respondents particularly the counsellors. Follow up of children should be facilitated from after the very first visit while the emotional wounds of the abuse are still fresh.This is the period before the trial. The Clinic also needs to know the progress that the child is making during the course of the trial.The Clinic also needs to follow up the child after the conclusion of the trial.This will ensure that the child has settled in society and is now prepared to face the future.

The position of the Clinic is that the child should receive counselling before, during and after the trial. This does not only depend on the ability of the client to go back to the Clinic. It also depends on the extent of the coordination of the communication between the police and the Clinic. As the situation stands, there is no coordination between the Court and the Clinic once the child has left the Clinic. So the assumptions were broadened to reflect the lived experiences of the respondents.

3.2 Data Collection Methods

The following data collection methods were used:

1. Interviews with members of staff of the Clinic, survivors, government departments and non-governmental organizations.

2. I consulted Clinic records and statistics

I did not have a structured questionnaire. I wanted the respondents to express themselves as freely as possible. I therefore asked what challenges the Clinic faced in the follow up of its clients after the conclusion of the trial. That is when I found they corrected me by pointing out that they are concerned with the follow –up before, during and after the trial. I thought that my position as a member of the board of trustees might be an impediment. This however worked to my advantage. The respondents expressed themselves openly. They explained the difficulties which they are facing. They showed that if the situation improved, the efficacy of the Clinic would be enhanced and more children would benefit. This would then also mean a positive impact would have been made on the whole victim-friendly system. Interviews with survivors were made easy by the counsellors who took me on board when they talked to the clients. Interviews with NGOs were also made easy by the fact that they were aware of my involvement with children. They too were concerned with the lack of proper coordination with the Clinic. They obviously have access to the Clinic because they can communicate with each other about the children's issues any time but that is rather haphazard. My experience with the government departments was also very pleasant and open.

CHAPTER FOUR
FINDINGS AND ANALYSIS

The Clinic is situated at Harare Hospital, behind the main hospital buildings. All the members of staff occupy a section of the first floor of an old building. The Clinic shares that building with the opportunistic infections Clinic. The Harare Clinic is the main Clinic of Family Support Trust. So apart from treating clients as a Clinic in its own right it is also the head office of the program. The Trust has other Clinics at Chitungwiza, Mutare and Beitbridge. In addition to this it has assisted some government hospitals to open child friendly Clinics. The Clinic also trains personnel for the hospitals.

When I approached the Director, I was apprehensive because I was not sure what her response would be. However my apprehension was allayed when I realized that I was welcome. The rest of the members of staff of the Clinic showed the same welcoming attitude much to my relief. The respondents were eager to tell me about their work in the Clinic. I detected an earnest plea in their honesty, an unexpressed hope for change which would help improve their work for the benefit of the children.

My focus was on how the Clinic followed up children or the challenges, if any, the Clinic faces after the criminal justice system has finished with the child. During the course of the interviews I found that what I referred to as follow-up means more than what happens after the conclusion of the trial in a situation where the abuser has been tried by a Court of law. What the Clinic means is that once a child has been examined, the Clinic expects to monitor the progress the child and her family make in the healing process. This was a big revelation to me. Of course it makes sense for the Clinic to follow up on the child before, during and after and not to have to wait until the criminal justice system has finished with the child. Once the child has started receiving counselling it is necessary to continue. Another reason is that, whether or not the abuser is successfully prosecuted should not have a bearing on the need for the Clinic to continue monitoring the child. What is of significance is the continuous liaison between the child and the Clinic through

the relevant offices. My initial assumption was relevant but did not include the necessary crucial period soon after the initial examination. Concentrating on post trial instead of post rape (or abuse) would not have exposed the nature of the need for follow in its proper context.

My narrow view of what the Clinic does was not without a basis. The mandate of the Clinic as I understood it and in terms of the Guidelines was to provide the specialized treatment that it does as part of a larger system. In terms of my untested understanding, the Clinic was providing the requisite services. The question of pretrial counselling was to me a duty taken care of by another government department and therefore under control. The reality however is that what I thought was happening was not happening. I was horrified by that finding.

THE CHALLENGES

4.1 Children continue to come for counselling

It is important to know what the children who have been to FSC or their parents have to say about the Clinic. It would not serve any purpose to provide a service without knowing what the people who get the service say about it. It is encouraging to learn that a client was satisfied with the service and passed on the word to others as follows:

> ‘Ten years have passed since Shelly Ndlovu discovered her daughter‘s terrible secret. During a visit with family in a rural village, a man had sexually abused the 13-year –old girl along with three other children. Ndlovu went to the police when she learned the news and from there, she was sent to the Family Support Trust (FST), the only Clinic in the country that specialized in such cases. At the Clinic, Ndlovu’s daughter received medical care and counselling. Today she is married with two children. “She was able to recover due to all the support she received at FST”, says Ndlovu. Since that time Ndlovu has worked tirelessly as an FST outreach volunteer to educate other families about the dangers of sexual abuse, how to identify the signs and where to go for help. Proudly wearing a T-shirt emblazoned “STOP Sexual Abuse”, Ndlovu and other FST volunteers visit churches, Clinics, police stations and attend community meetings to spread their message.”

> Today FST is still the only non-governmental organization in Zimbabwe providing both medical and psychological services to sexually and physically abused children and their families. The Clinics staffed with doctors nurses social workers psychologists and counsellors, are based… to ensure sexually abused children are not stigmatized while seeking care …All services are free of charge.'(A Partnership Making a Difference. Zimbabwe's Programme of Support. April 2008, p11)

The clients who come to the Clinic are very appreciative of the services which they get. If there was more immediate coordination I believe that more people would be saying the same. This would also help the Clinic to find out how to improve its services. However even with the situation as it is, the Clinic continues to register increases in the numbers of clients coming for treatment. Below are the figures for new cases just for 2008 and 2009.

Year	**Harare**
2008	1008
2009	1266
% increase	26%

The figures also show the breakdown of the survivors as follows:

Age	Number
0-5 years	278
6-11years	372
12-16 years	594
17+years	22

The above figures represent children who reported to the Clinic. If all abused children within the catchment area of the Clinic had easy access to the Clinic, the figures would be a lot higher. This assessment is made in view of the reality that the Clinic has limited resources to conduct outreach programmes. Its services are not as well-known as they could be. If the Clinic were made better known then more children would be aware of its existence and seek its services when they or their family or friends need them.

4.2 Pre-Trial

Getting to the Clinic

It is not easy for the children and their mothers to get to the Clinic. Some of the reasons include financial constraints, fear of repercussions within the family and stigma. Despite the various difficulties survivors experience they continue to come to the Clinic. This may be because of the small amount of publicity which the Clinic has had and also the presence of 'victim-friendly units' at police stations (these are units set up within police stations to deal with rape victims in a friendly manner). While these units have been established at all police stations country wide 'police -posts' or police substations do not have these units because they are small and therefore survivors are referred to the nearest main police station. Once a police station is reached they are referred to the Clinic. Some of the clients are aware of the existence of the Clinic and they sometimes go there even before reporting to the police.

Once the survivors are at the Clinic they are treated by experts: specially trained doctors, nurses and the counsellors. After this initial treatment the results of the examination are given to the police for use as evidence at the trial of the abuser. From this point onwards the system seems to forget about the child. Although the system sees the child it chooses not to hear the child's internal plea to be healed from inside.

Breakdown of communication after leaving the Clinic

After being treated at the Clinic, the child usually goes home and waits for communication from the police regarding when she will be require to come and give evidence in a Court of law. The Clinic says this is a crucial period in the healing process of the child. They need to know where the child is so that they continue counselling the child. They want as much as possible to keep contact with the police so that the police continues to update them about the whereabouts of the child and also when she will be going to the Court.

It is the police who maintain the links with the child right up to time of the trial. The Clinic would want to conduct home visits where their resources permit. They also want to know, in the event where the abuser was identified and taken to Court, the progress of the case. This helps them to explain to the child and so assist the healing process. Sometimes they manage to get to the child because they have the address of the child. What sometimes happens is that after arrest and the perpetrator appears before a Court of law. He may be granted bail. This means that he is free to go to his home. He will be place on remand. This means that he will report to the Court from home regularly. During this time the police will be conducting their investigations. This process might take quite a while. Nobody explains this to the child. Sometimes the perpetrator makes remarks showing that he is free and that nothing is going to happen to him. This is when the child or the mother tells the counsellors that the abuser is out of custody and they wonder what is happening. This, the Clinic says, is not conducive to healing. It demoralizes the survivors and their families. It also makes them lose confidence in the justice system of the country.

It would be much easier from a counselling point of view for the counsellors or the Clinic to know the progress at the Court so that they know how best to explain this to the child and protect the child.

This reduces the chances of being further traumatized by the sight of the abuser if he or she (the abuser) is out of custody. Prevention is always better than cure. If the Clinic knows what is happening at Court they are able to prevent or minimize any further trauma. Sometimes the child is moved to a different location either to avoid stigma or shield the perpetrator or because the family is divided over the effects of the abuse. The Clinic is the last to know and sometimes fails to make any other follow up with the child.

The Clinic is of the view that police are better placed to know about all this and should therefore always advise the Clinic about the movements of the child. In the event that the police too have lost contact with the child they should still advise the Clinic so that they

can work out the way forward together. Further even if the police fail to locate the child the chances are that they will eventually find her since she has to testify in Court.

Where the parents move the child and do not disclose where the child is the outreach officer at the Clinic recommended that parents need to be sensitized about the effects of child sexual abuse. When they understand, the impact of rape on the child is reduced. The officer also emphasized the importance of police expediting the investigations in cases of rape. The trials of these matters should be done while the young children still remember so that they can move on with their lives. The sad thing is that, in the event that a matter is not dealt with within a reasonable period the child marries. When police finally want the girl to testify, they will now be looking for a married woman. Where the rape was disclosed there is always the problem of opening an old wound. The problem is even worse where the rape would not have been disclosed to the family or the spouse.

Unfortunately police who are not trained to deal with survivors of rape in a sensitive manner are the ones who are sent to subpoena the now married woman. They just go to the address and ask to see this person who was a victim of rape. This sometimes has devastating effects on the marriage and family relations.

What is required according to the outreach and awareness officer of the Clinic is communication between the parties handling these matters. If there is sufficient follow up the girls and their families know how to handle situation that may arise. Good communication also means that even the police will know how approach such a witness. Some delays in completing the matters at the Courts may also be avoided. This will ensure that everything leading to the giving of evidence in a Court of law will be done within a reasonable period. The question of asking a married woman to come and testify in a case that involved her years back is therefore also avoidable.

The outreach officer discussed some of the ways the Clinic is dealing with post rape counselling. She also made suggestion on how to improve on what is happening at the moment. The Clinic is already helping children to form support groups. This helps the

children to share experiences. However a lot more needs to be done to help the children. Parents need to be trained on parenting skills. This will remind them of their role and help them mange the situation better. There is also a need for massive education campaigns to prevent the escalation of child sexual abuse. The police need transport to and from the Clinic during the process. The presence of a probation officer is always necessary. The probation officer can liaise between FST, the Court and the police. Further Social Welfare has offices country-wide. The probation officer can either link the child with the local social welfare officer or the Clinic. The role of the Victim-Friendly Coordinator can then be properly put into context.

There are other issues which interfere with post rape counselling at the Clinic. Sometimes the young girls are forced to marry the perpetrator. The parents get the bride price or "lobola". That way the crime is shelved but the child remains in trauma for the rest of her life. Some girls, due to immaturity, elope to the perpetrator so that the girl gets married to him. Once again, the trauma will not have been dealt with. Other parents decide to have out of Court settlements where the perpetrator pays the family. In return he will not be prosecuted.

Other issues also affecting the follow up of the survivor include poverty. Girls of a tender age elope to go and live with the perpetrator and parents get some food in return.

Survivors of rape sometimes feel guilty thinking that they were somehow responsible for the abuse. It is bad enough to feel guilty after the rape when the perpetrator is tried and convicted. It is therefore worse where nothing appears to have happened to the perpetrator after the report. One of the counsellors pointed out that in such a case the police should still advise the Clinic about what would have happened to the perpetrator. Where he has not been prosecuted the counsellor should know so that this is explained to the child. Counselling will boost the morale of the child and her family.

At times the family is so discouraged with the fact that the perpetrator has not been prosecuted that they approach lawyers. Such an expense can be avoided if the police

advise the Clinic of the reasons why prosecution was declined. Counsellors can explain this to the child so that she understands. The family will be saved from the desperation of approaching a lawyer. Lawyers are usually not trained counsellors and approaching them is likely to worsen the trauma as the child is likely to recount the events. It would be a good idea for lawyers to also refer their clients for counselling.

The FSC has community focal persons who volunteer to bring awareness to their communities. The volunteers play a significant role by linking survivors with the Clinic after the matter has been reported to the police. The volunteers only get transport allowance from the Clinic. With the limited funds that the Clinic has it is struggling to retain even those volunteers.

The administrator of the Clinic recommended that there be more community awareness programmes so that the community is aware of the functions of FSC. He further recommended that the donors need to know about the importance of following up the clients. Once donors understand they will appreciate the need to support the programmes. The administrator reiterated the need for close collaboration between the Clinic, the hospital and other government departments.

There is a serious breakdown of communication. The breakdown in communication does not affect the police and the Clinic alone. It affects other institutions and the Clinic e.g. other NGOs and government departments like the department of Social Welfare.

4.3 The Trial of the Abuser

When the trial takes place there is no communication at all between the Courts and the Clinic. Where there does happen to be any communication, it occurs when the police are asked by the prosecutor to subpoena the doctor who compiled the medical affidavit. When this happens the doctor will be called to clarify the affidavit in Court.

No particular reference will be made to the welfare of the child. At this point if the child has already testified, both she and her family will not even be aware that the trial is still in progress. If the child is present, it will be because the family will have taken the trouble to come back and see how the trial ends. It will also be because they have money to pay for their transport to and from the Court. Most, if not all parents, would like to see that justice is done to the abuser or at least know the outcome of the trial. However, due to lack of communication, all the parents who do not take the initiative to follow up on their own never know in full how a trial was concluded.

The point is that, if there was proper communication, all those involved would know the progress. This would in turn assist the Clinic in counselling the child. Under the prevailing circumstances however, the child is not given the pivotal role which she is supposed to get. She just comes from the Clinic and goes to Court. After the Court has taken evidence from her, she disappears into oblivion.

There seems to be no consideration at all about what happens about her psychosocial wellbeing. Her vulnerability as a child witness seems to end with the conclusion of her evidence. There is no practical mechanism to ensure that the child continues to get counselling even during the course of the trial. It is commendable that the CCTV is there (if it is working) to ensure that the child does not face her abuser while giving evidence.

The presence of a 'supports person' during the course of the trial is also commendable. However the healing process should be monitored by trained counsellors. They are in a position to assess at trial stage whether or not the child is in a position to testify. It is because of the absence of counselling services that children just proceed to testify. The Magistrates have to cope with children breaking down during the course of the trial. And because there is nowhere to send the child at that point, a child who breaks down is literally forced to resume giving her evidence later.

The lack of coordination of services between departments may be detrimental to the welfare of the child. Whatever services are offered should ensure that the best interests of

the child are protected. The Court is not a pleasant place to be. The process is intimidating. It is adversarial. The need for professional counselling and support cannot be overemphasized. Even if the child is at Court in the company of her parents or guardians, they too need counselling because they have been traumatized by the abuse of their child.

The process at Court continues to haunt the child and her parents. They are not given any special treatment. While waiting to testify the child and her family sit where everyone else who comes to Court sits. This exposes them to possible further trauma as people at Court usually share the reason why they are at Court. When this occurs the gains made by the Clinic at the initial attendance are eroded.

The efforts of putting a child friendly system at Court cannot function meaningfully if the child has no access to counselling while she is at Court. Various misfortunes befall witnesses, among them, failure to give evidence on the appointed date. This means that the child has to go back home and come back at a later date. When the child is asked to go back home and come back at a later date, she requires counselling. The prosecutor may tell her the reason for the postponement of the trial. However, she needs more than just the reason for the postponement. She may even blame herself wondering if this would have happened had she not been abused. It needs professionals to support her.

The police concentrate on ensuring the attendance of both the child and the offender but the psychological wellbeing of the child is not considered at all. If the law is applied without any sensitivity, it is doubtful whether the ends of justice are met. The Clinic is the place which offers the child the much-needed support. This can only be achieved if the Courts and the Clinic communicate as a matter of practice. In this way the Clinic can also assess how useful its services are and how it can improve on them.

Without proper communication with the Clinic, it is not quite accurate to say that the system is child friendly. The Clinic is frustrated that it is not kept informed about what

happens with child or to the child when she is at the Court. One of the respondents at the Clinic had this to say:

> The Clinic used to conduct pretrial sessions with the child in order to prepare the child for Court. This gives confidence to the child. There should be constant visits by ZRP to let the family know the stages being taken at any stage. Further, constant interaction with the child will ensure proper monitoring of the situation.

Another respondent expressed herself thus:

> Children need to be prepared and educated on what to expect in Court and to be followed up and find out how the case was handled in Court and what the outcome was as a way of psychosocial support. This is not happening at present.

Once the Clinic is kept in the picture it is in a position to say that it is following up its clients and therefore offering counselling which is part of its mandate.

4.4 Post Trial

Breakdown of communication after the trial- where is the counsellor?

After the trial where the abuser has been identified the police close their docket, they have performed their duty. The trial Magistrate's duty is completed once the child has given her testimony. The same can be said about the prosecutor. All the fuss that was created when the abuse was discovered vanishes. The child however still has a life to live.

No one at the Courts is particularly concerned with sending her back to the Clinic. Yet this is a system which is supposed to be child friendly. The system has sufficient Guidelines and the law providing support for the vulnerable child. What happens in practice is that the law is allowed to take its course. There is nothing unusual about this

because this is what is expected to happen. The issue to be concerned with now is the welfare and the whereabouts of the child from this point on. The child is nowhere in the picture. May be the child could feature briefly when she gets witnesses' expenses to enable her to travel back home. No mention is made of her and the Clinic. There is no mechanism to refer her back to the Clinic or indeed to any other institution like NGOs which offer counselling once the child has testified. Once again the child is simply a lone survivor without the professional support from the Clinic.

What frustrates the Clinic even more is that where they manage to track down the child, the child will ask questions about the outcome of the trial. If there was some form of communication between the police and the Clinic at the conclusion of the trial, the counsellors would find their job a lot easier. As things stand, the absence of this communication means no adequate counselling for the child. It is doubtful that the best interests of the child which are supposed to be safeguarded are given the attention they deserve under the circumstances. The question therefore is where is the counsellor? There does not seem in practice to be any space for the counsellor. This means that the Clinic remains a frustrated institution because its relevance to the healing process of the child is not adequately recognized.

It is also important to bear in mind that a system can only be sensitive because the personnel manning it are sensitive. So while the breakdown of communication or lack of proper coordination is a problem, the question that must also be asked is whether or not the Court personnel are sensitive to the plight of the child. If they were, the problem of coordination would be minimized. The personnel would ask about what other form of support the child needed to aid the healing process. But even if they did ask, without a proper system to be followed, the sensitive officers would still not get a satisfactory answer.

It also appears a problem of trained personnel leaving the Courts for greener pastures and new people coming on board. So the new personnel are likely not to have been trained about the system. What they know is the law. Once they have applied the law,

they have performed their duty. But it is important for the law to have a human face especially where the welfare of children is concerned. Because of the lack of training the gap between the Courts and the Clinic continues to widen.

The personnel at the Clinic feel that the Courts have forgotten about its (the Clinic's) existence. They feel that as far as the health of the child is concerned, the Clinic is the first port of call. That being the case, the Court should always refer the child back to the Clinic. This is not happening at the moment. The Clinic is sometimes further frustrated when it follows the child up and finds that the child has moved without leaving a forwarding address. If there was sufficient coordination the police would have alerted the Clinic.

4.5 The Players: what are they doing?

4.5.1 The Department of Social Welfare

The Department of Social Welfare (SW) is the body charged with coordinating the operations of the Clinic, other organizations and offering support to the child outside the Clinic. It has offices countrywide. Abused children are vulnerable in many ways.

When a child has been abused the police is supposed to inform SW. SW then begins to counsel the child and accompanies the child to the Clinic where possible. Even if they fail to accompany the child to the Clinic at least they would have afforded the child the necessary support at the right time. This is not happening at the moment.

After the Clinic has attended to the child, SW is supposed to continue with its supportive role and accompany the child to the Clinic. SW then reports back to the Clinic in addition to keeping its own records. That way the Clinic would be in a position to assess the healing process of the child. Together with SW the Clinic would work out the best way forward for any child. This is not happening at the moment.

The NPA for OVC (National Plan of Action for Orphans' and Vulnerable Children) has one National coordinator and three officers. These three officers coordinate the functions of at least thirty-one organizations nationwide. The Clinic is one of those organizations. It is not possible for these three people to concentrate on the requirements of one institution at the expense of thirty others. SW appreciates what FST is doing. SW says that the intervention by the Clinic is not enough. This is said because of the magnitude of the problem of child sexual abuse. Once again the gaps in communication are very visible in that SW acknowledges the work done by FS but is aware that more needs to be done.

There are a lot of children and their parents who do not know about FST. The Department of SW is encouraging the formation of child protection committees to promote and protect the rights of children in terms of the Children's Act. In these committees children are represented and child protection issues are discussed. Information will be disseminated. This also raises awareness amongst the children. SW suggests that FST should come up with programmes to reach these child protection committees. The FST should be working with the department at District level. Generally government has suffered an exodus of trained people. It is therefore handicapped in its operations. However it tries to create platforms for the NGOs they work with to share experiences. The core business of the NPA for OVC is to provide social protection to children in accordance with its policy.

In recognition of the existing gaps SW has also set up some standards of operation where it states that:

> Zimbabwe has approximately 1.6 million orphans and vulnerable children (OVC). Government, non-governmental organizations (NGOs) and international organizations work to provide care and support to as many of these children as possible. **Up until recently, however, one challenge was that their services were not always coordinated.** For this reason the, the Ministry of Public Service, Labour and Social Welfare (MoPSLSW), in consultation with other line ministries, NGOs, international organizations, donors, and children themselves, developed a National Action Plan for Orphans and Vulnerable Children (NAP for OVC) (emphasis added)(Minimum Standards p.3)

It is clear that SW is aware of its limitations regarding its role in coordinating. It therefore put in place a system meant to boost coordination. NPA for OVC has made the effort and says that it has:

> also created clearly –defined coordination mechanisms capable of harnessing the collective efforts of all partners from the community level up to the national level. A Monitoring and Evaluation (M&E) system was put in place that routinely **tracks output data on the number of children reached** through activities in each area (my emphasis)(Minimum Standards.p.3).

It is noted that the Guidelines to the Management of Child Sexual Abuse (the Protocol/ Guidelines), which have not yet been amended to reflect what is actually happening, continue to cite the Department of Social Welfare as it is supposed to function. According to the Guidelines the Department of Social Welfare is doing the following:

> To fulfill the demands of the act, the Department of Social Welfare operates on two interrelated levels-the curative and the preventive…
>
> THE CURATIVE LEVEL
> When a child is neglected, ill treated or abused the Department of Social Welfare puts in motion measures to address the situation. The Department offers counselling services to all persons of whatever age when this service is needed. It offers protection to vulnerable persons particularly children,……..Where there has been abuse of children, it is the Department of Social Welfare's routine to prepare reports for Juvenile Court and recommend a rehabilitation plan for the Officer to follow with the child and his/her family(Protocolp.9)
>
> PRETRIAL STAGE
> The Social Worker provides a pillar of strength for the child /... victim of abuse and their family all the time.
>
> 1. The moment the Social Worker receives a report from the general public he/she should make arrangements to see the alleged victim and alert the police.
> 2. If referral is made by the police the Social Worker must take this as a priority case and proceed to the police station or ask them to bring the victim over for counselling.
> 3. The Probation officer will reassure the victim.

The Guidelines on how to Manage Child Sexual Abuse lay down detailed procedures to cover the various stages the child goes through during the preparation for Court. The procedures cover both pre-trial and post-trial periods. These can then be compared with what is actually happening. The Guidelines show how the various departments are expected to deal with the minor child. This includes what should happen during police investigations and also what happens at the hospital when the child is undergoing medical examination. When the child gets to Court the personnel are guided as follows:

1. Make the victim aware that the perpetrator will be in Court to defend them and that he may be allowed bail or may even be acquitted.
2. Explain that the lawyers and the perpetrator may ask numerous questions and sometimes repeat themselves in an effort to establish loopholes in her/his story so as to win the case for the perpetrator. *Preparations for any eventuality in the out come of the case must be made for the Protection of the victim.*
3. Introduce the young victim to the anatomically correct dolls that may be used in the Court and make her feel comfortable to demonstrate her story Using such dolls.

Trial Stage

1. Introduce the child to the public prosecutor, intermediary and where necessary
   If the child feels safe and relaxed with the intermediary, the intermediary may show the child around the Courtroom.
2. In all cases of abuse, neglect and ill treatment, the Probation Officer's report for the Court.
3. In the case of sexual abuse the report must touch on the following observable behaviour:
   -Social/personal circumstances of the child;
   -Exposure to sexually transmitted infections including HIV/AIDS and
   -the possibility of the need to go through an abortion procedure.
4. A clear Rehabilitation Plan for the victim must be included in the report
   Where there is a victim support person at the Court the initial Probation Officer may hand over the child to them. Where they are not available and the child needs support in Court, a different Probation Officer may be asked to take on the task.
   The initial Probation Officer ***may not*** *be the one to take on this task because they may be asked to be a witness.*

Post Trial Stage

- If the victim and her family are not at Court on the day the matter is finalized, relay to them the outcome of the Court proceedings and provide appropriate counselling.
- Where they are available in Court, proceed to provide the necessary and appropriate counselling.
- Follow through the Rehabilitation Plan mentioned above.

- Follow through any medical tests that are still pending and counsel the victim and his family accordingly.
- Discuss recognition of future potential abuse situations, ways of avoiding them, and how to address any future situations.(The Protocol p 10)

The Guidelines address the post trial period. However this is not happening. There is a total absence of any person to counsel the child and advise the Clinic. This is why the Clinic is concerned. Due to lack of communication with the Courts, it has difficulties in explaining to the child the outcome of the trial.

What SW is doing is to keep track of the numbers of children reached. This is commendable. However, this does not necessarily mean that each child who reaches the Clinic is individually supported throughout the process. This falls far short of what is supposed to happen in terms of the Guidelines to the management of child sexual abuse and also what the Clinic sees as proper.

So while the numbers are monitored, the children are not getting the necessary support from the department. With three officers to deal with the whole country, it is too much to expect that they can cope with the needs of the Clinic.

4.5.2 The Ministry of Health and Child Welfare

The Clinic is situated at the hospital. There is no particular emphasis by the hospital authorities to highlight the specialized role of the Clinic. The continued existence of the Clinic is mainly due to the increase in the numbers of sexually abused children and the positive response from the donor community. During the course of the research, I found out that the officer responsible for children's issues in the Ministry of Health and Child Welfare had recently assumed duty in that office. She pointed out that one of her roles was to coordinate and harmonize organizations where there were conflicting roles. She was also in the process of developing programs so that people know where to go for particular needs. She also said that the functions of the Clinic fell within the ambit of the Millenium Development Goals.She was however not specific about the significance of counselling when the child attends the Clinic.

4.5.3 Non-Governmental Organizations

As mentioned earlier, there are at least thirty-one (31) non-governmental organizations (NGOs), dealing with child related issues. Some of them offer counselling while others deal with other issues. Of those which offer counselling each one of them targets a specific geographical area which may not necessarily include the Clinic's catchment area. Thus the counselling is piecemeal. The NGOs will accept any clients referred to them for counselling. There is no proper coordination between the Clinic and the NGOs. There is an awareness of the presence of the Clinic and the other NGOs and what each organization does. There is contact as and when necessary but this is not as systematic as it should be.

Some NGOs work through partners. In those circumstances, the NGO's do not work directly with the children. The exception is Norway which is in the process of preparing a programme of support for children going to Court before, during and after trial. Its aim is to prepare children so that they know what takes place at the Court. It offers support in the form of food and transport during the course of the trial, i.e., to ensure that the child gets to Court to give evidence. This is a new programme. This is a good programme. However what continues to be of concern is how this programme links up with the Clinic. There appears to be a duplication of roles. This can be avoided if the institutions communicated effectively. They would know exactly what each of them is doing. In that way would compliment each other well.

One of the problems witnesses face when they come to testify, especially if they come from outside Harare, is accommodation. So decent accommodation is greatly appreciated. Save the Children Norway is also looking at post trial interventions. It runs public awareness programmes to educate the public about child protection issues. It is also networking with other organizations. The table below summarizes some of its operations.

A Summary of the support offered to children by Save the Children Norway

Organization	Geographical Coverage	Interventions	
		During Trial	Post Trial
Simukai	Manicaland/Mutare/Rusape	Counselling	Emotional Support
Connect	Harare/Mash West/Central	Counselling	Emotional Support
Contact	Bulawayo/Mat North/South	Counselling	Emotional Support
Fynex	Mash East/Marondera/Chivhu	Counselling	Emotional Support

The NGO is based mainly in Harare. It has partner organizations which are operating in different parts of the country. While so operating, they only cover sections of the provinces, not the whole province. This means that even in those areas not all children in need are covered by these operations. I did not ask the criteria used to select the areas of operation. However, what still remains is that some children are left out of those programmes. The NGO focuses on vulnerable children. It supplies food to child witnesses. Food security is important in psychosocial support.

4.6 The Experience of Witnesses

Reading some of the available literature relevant to the victim friendly system one gets a feeling of despondency regarding the viability of the program more than ten years after it was started. It goes without saying that the economic meltdown which the country experienced had its effect. The people who started the system must have moved on to greener pastures. This created serious gaps. This is particularly telling in the Department of Social Welfare which provides all the necessary counselling to other government

departments. In 2006 Kabasa carried out a research concerning the welfare of rape victims at Court. In her research Kabasa highlighted the unfortunate position of the girl-child witness as follows:

> Victims of sexual assault fit into the vulnerable witness category and are covered by these provisions. These provisions embody the whole essence of the Victim-Friendly Courts. It is however interesting to note that the decision is made by the Court on its own initiative or on application by a party to the proceedings. For the six years that I have been a Regional Magistrate I have not dealt with applications from victims…it is automatically the prosecutor who makes that decision which invariably sees children under twelve automatically being afforded the use of the Victim-Friendly Court. It must be acknowledged however that these provisions show an appreciation of the need to protect vulnerable witnesses when testifying in Court. The law however has no provision for pre and post trial counselling in the event that the witnesses require such a service. Section 363 of the Criminal Procedure and Evidence Act Chapter 9:07 mentions the award of compensation to any person who has suffered personal injury as a direct result of the offence and this falls short of addressing psychological injury for victims of rape (Kabasa p.8).

Reference has been made to Guidelines which were meant to give the necessary guidance to the offices handling child survivors of sexual abuse. These were published in 2003. Three years later the system was still not still ensuring that the child got counselling while at the Court. The system was formally recognized in 1997. What this shows is that the gap between the agencies which support the child has continued to be there even though there are Guidelines in place. The present research has established that from the view of the Clinic, children are not coming back from the Court to it for further counselling.

The situation is therefore that these two crucial institutions whose procedures can make or break the psychological wellbeing of a child are not communicating at all. So no matter how good the Guidelines may be, and even if there is training, the training will be only an academic exercise if there is no system in place to enforce measures taken to

counsel child survivors of sexual abuse who appear before them. Even if the Courts use the CCTV to take evidence, this will not be of much use to the child after she has left the Court. The Magistrates need to be empowered to refer children for counselling both during the trial if it is deemed necessary, and after the trial as a matter of practice.

There is a serious breakdown of communication within the justice delivery system. One person who continues to suffer due to this breakdown of communication is the girl survivor of rape. If the system worked satisfactorily a child would be receiving counselling throughout the process. The Clinic would not have expressed its concern in the strong terms that it did. Even during this research, Regional Magistrates continue to be concerned with the absence of counselling. There is hope for a better system if the expected programme of support by Save the Children Norway is successful. That programme will benefit the children more if the communication with the Clinic is improved. This will ensure the presence of a counsellor whenever they are required and it will also avoid the duplication of roles. The presence of a counsellor changes the whole complexion of how a witness testifies. It is expected that if a child has received sufficient counselling she has more hope than one who has not received it. Further, the counsellor will be right there to explain both the attitude shown at Court and the reason why questions are asked in the manner that they are asked.

Kabasa goes on to say:

> When the Victim Friendly Courts (VFCs) were introduced it was believed the trauma of testifying in Court would be alleviated. However, previous research has shown that this is not necessarily so (Makazhe 2001, Ndlovu 200). Even in the VFC children are subjected to lengthy and rigorous cross examination. The children are traumatized by the rape and giving evidence and to compound matters there is lack of training on child psychology, communication skills and counselling for the Court officials (Kabasa, p14).

In the research by Kudya (Kudya 2006) the point was made that the emotional needs of the child were not taken care of during the period that she gives evidence. The impression

created by the failure of the system seems to be that the VFS is an impediment rather than a gain in the management of child sexual abuse. Yet the management is supposed to be 'holistic'. The same dissatisfaction is also shared by the personnel at the Clinic. The Clinic is the institution wanting to continuously monitor the progress made by the child., yet it is persistently kept out of the picture.

The Department of Social Welfare appropriately defined a 'vulnerable child' to include a child who has been sexually abused. In its standards of operation to guide institutions dealing with vulnerable children, the Department of Social Welfare set out "Dimensions" of quality which are a key part of these Standards on Child Protection, for example:

> Standards---Compassionate relations: The establishment of trust, respect, confidentiality, and responsiveness, achieved through ethical practice, effective communication and appropriate socio-economic factors. In compassionate relations, the service provider must maintain professional relationships with children. Children must be treated with dignity, empathy and respect. (Minimum Standards, p6, 8)

All these Guidelines are well meant. These particular Guidelines target schools, clinics and hospitals; but they do not include the Courts. Leaving out the Court as one of the places to exercise the provision of quality services means isolating the child survivor and witness at this totally unfriendly place.

The environment at Court has to be improved if the welfare of the child is placed at the centre as suggested by SW in one of its publications ('Children on centre stage `, a bi-annual publication for OVC programmers supported by the Southern Africa HIV and AIDS Information Service (SAfAIDS). Until that happens the child remains confused at Court and this only further traumatizes her. I have said that survivors of sexual abuse do not get any specialist treatment while at Court and that one of the problems is of matters being postponed. The following is an example of what happens at Court. It also shows why it is important for witnesses to be continuously supported during the whole process. I have indicated elsewhere on this paper that a lot of undesirable situations arise as children go to Court as witnesses.

> Witnesses' attendance at Court is supposed to be at the state's expense, they are subpoenaed and provided with bus warrants and once at Court they are entitled to receive witnesses' expenses. The victims interviewed revealed that when buses refuse to accept bus warrants they use their money but find it difficult to get it back as witnesses' expenses are not always paid on time. Due to the distances they travel, they come to Court a day before and have to sleep at the police station where they are not provided with food. Since they would have used the little money they had on bus fare, they go without food for up to two days or more. With no food and no decent accommodation they are expected to come into Court at the pain of being penalized for non attendance.
> (Kabasa at page 44)

If witnesses fail to attend Court they will be penalized. But when they come the state does not ensure that their basic necessities are met and yet in theory they should be met. Such a predicament in the absence of a satisfactory explanation and the necessary emotional support can only mean more trauma for the child. Sleeping at a police station is not the most desirable option to be taken by anybody. A witness' experience confirms this:

> 'We slept at the police station yesterday in an open space. We had no blankets. We did not have food, thank you for the food you gave us here, we could have died of hunger.

The witness above was thanking an officer of the victim-friendly Court for giving her food at the Court. Save the Children Norway had donated some money to buy food for the children who use the victim-friendly Court (Kabasa page 45).

As indicated earlier on, there is an awareness of each other's existence by partners to the system. Here a witness appreciates food but that same witness has not been afforded the counselling which she requires. The knowledge is not supported by the appropriate communication. When the victim-friendly programme was started, there was some feedback to the Clinic from the Court. We now know that is not happening. Further the rape cases received priority. The trials were 'fast- tracked'. This means that as soon as the police had finished investigating the matter the trial would be done while the events

were still fresh on the mind of the child. This is confirmed by one of the counsellors at the Clinic who remarked as follows:

> Courts have forgotten about fast tracking cases. Fast tracking reduces stigma and gives shock treatment to perpetrators who are caught unawares about the abuse…This can still be done if all stakeholders can do their part in time.

It is important to ensure that while it is good to ensure that rape matters are tried expeditiously, the counsellor should always ensure that the witness is at that stage ready to testify. If she is not ready then the trial should not be conducted. It should only be conducted when the witness is emotionally ready to testify.

The counsellor above also lamented that the fast tracking is sometimes disrupted by the failure by the child to disclose the abuse early. The counsellor also indicated that police were affected by limited financial resources as they sometimes did not have transport for both themselves and the survivors. The counsellor went on to suggest long term management after the Court has finished with the child. She had this to say:

> The Probation Officer of every district should be knowledgeable about cases in his/her district to be able to do a follow up and feedback. This will be holistic care to the child. Whether the child has moved to the rural home (or not) he/she should be supported.

The experience of Regional Magistrates is that children continue to break down during the proceedings because reliving the experience of the rape when giving her testimony causes more trauma. The best that the Regional Magistrate can do is to stop the trial and continue when the child is ready to do so. The prosecutors too can only wait until the child is 'composed' again to continue with her testimony.

The only person who can help the child under the circumstances is a counsellor. One Magistrate is said to have made recommendations in his judgement for the child to get counselling but there is no mechanism to ensure that this is done (Kabasa at page 54).This shows how bad the lack of coordination is.

Without an enabling legislative instrument to enforce counselling, Magistrates will be just as frustrated with the desperation of where to refer the children as the Clinic is with the failure of the children to be referred back to it by the Courts.

I cannot help constantly making reference to the Constitution of Zimbabwe. This is the supreme law of the land. It should protect the rights of the child as much as it does for the accused person.

The slightest suspicion that an accused person is mentally challenged and may therefore not have been mentally responsible for raping a three year old will prompt both the prosecution and the bench to have the person referred for mental examination not by one, but by two doctors. This is done to ascertain that the accused person was in his sound and sober senses when he committed the offence.

True, the abuser faces the prospects of a lengthy prison term if convicted for rape. But why can the law not have a matching provision for the counselling of the abused child? The situation as it is, presents the child as if she is the one on trial for being raped. It would not be surprising if some cases are not reported. If the Court is the public place that it is supposed to be, then what goes on at the Courts is public knowledge. One does not have to know the painful details of the experience a child goes through at Court for them to avoid the justice system.

The fact that a child will not be treated in a sensitive manner at the Court is sufficient to put anyone off. And yet the solution is less rigorous than referring an accused person for an examination in terms of Chapter 9:23. Rape trials constitute the daily “menu’ of a Regional Magistrate whereas the appearance of a mentally challenged person before a Court of law is not a daily occurrence. In fact, where it is clear that the perpetrator is mentally challenged the same criminal justice system ensures that he receives medical attention before he is tried. On the other hand, a minor child is expected not only to

testify, but to live with the consequences of the rape for the rest of her life without any counselling.

Equity demands that no one should suffer an injustice without a remedy. The minor child is a classic example of an injustice suffered with no remedy being provided. The expertise of a counsellor will make the justice system user friendly. It is not being suggested that a counsellor will bring total relief to the child. No, not at all. It is only being suggested that the counsellor is a vital member of both the health and justice system.

If the abused child is to receive both fairness and equality before the law which she is entitled to then she must have access to counselling services during the period she will be attending Court. At present she is deprived of both rights. Unfortunately because she is young she is not able to speak out. Psychologists say that an abused person is, in turn, likely to abuse into the future. This tested statement means that a serious disservice is being done to the girl child by failing to afford her counselling services. This may mean that the system is churning out future abusers by failing to counsel children who are forced to pass through its hands. Yet when offenders are in prison they get rehabilitated so that they can fit into the society when they come out of prison. The girl child's future, on the other hand, appears to be condemned simply because available resources are not properly coordinated.

The above are the interventions in place for the continued support of child survivors of sexual abuse. It is clear that the services offered are important. However without proper coordination the Clinic will remain frustrated because it cannot offer the counselling services satisfactorily.

4.7 The Victim-Friendly System Coordinator

This is the person whose role is to coordinate all government departments and NGOs in ensuring that the child gets the necessary support. He or she is supposed to highlight the weaknesses of the system. This office is housed in the office of the Chief Magistrate. This is because the Ministry of Justice runs the Courts where the child has to testify.

The coordinator says that the following support is given to the witness before the trial. Temporary shelter and overnight accommodation is offered for witnesses from remote areas. The child receives a medical examination and treatment as well as psychosocial support through counsellors and probation officers. The child also gets Court preparation by prosecutors and intermediaries. During the trial the child gets support in the form of the presence of a supports person, the use of CCTV and the payment of witness expenses. After the trial, according to the coordinator, the child gets support to ensure that the child reintegrates well into the family. The child also gets medical follow up. There was no specific reference to the Clinic although there is mention of medical examination and treatment.

The coordinator says there are a number of challenges which the system is facing. The challenges include that the referral system is too long. The victim is re-traumatized. The coordinator also stated that the response chain is being too slow. He pointed out that there is no “one-stop shop” for the child. Such a situation would hopefully reduce trauma since everything needed to be done on the child would be done to reduce any further trauma on the child. Another challenge is that when perpetrators are granted bail it causes the survivors to lose confidence in the justice system. This has already been commented on. The coordinator also raised the issue of out of Court settlements which have already been commented on. The staff situation in the Department of Social Welfare is another challenge meaning that only a few children are rehabilitated. The Courts themselves have backlogs. This means that children lose interest due to the delays which they experience. Shortage of electricity is another challenge which the system faces. This causes postponements. Further there is no guarantee that on the next date of hearing the matter

will be heard. Another challenge is that there is no legal education for survivors and supports persons. This causes the clients to complain about how they are treated at Court.

The coordinator noted, correctly, that the Guidelines which were meant for use in the multi-sectoral system are now outdated and need to be revised so that they reflect what is actually happening.

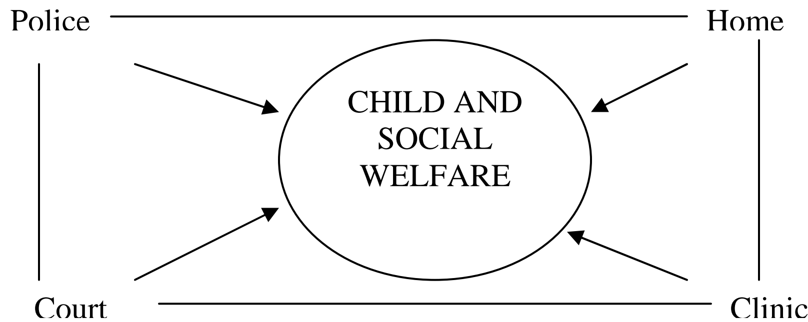
The contribution by the coordinator highlights the serious gaps which exist in the present system. The Clinic was set up specifically as a part of the system. However the information from the coordinator shows no communication with the Clinic. It also shows that the children are not getting the support they should get from the Clinic. All the challenges which the Courts are facing result in the further traumatization of the survivor. With sufficient communication between the Courts and the Clinic, the effects of these challenges would be less harsh because the child would have been counselled and therefore prepared to handle such eventualities.

One of the observations by the Director of the Clinic is that there is a lack of clarity of roles within the chain of the victim friendly system. When the system was set up there used to be pre Court preparation and there was feedback. This is no longer the case. Follow up at home should not be problematic provided there is sufficient communication and proper demarcation of roles. What the director of the Clinic is saying and what the national coordinator of the system is saying lead to one conclusion: that is there no proper communication between these two offices.

4.8 The Efficacy of the Clinic

The Clinic was set up as a part of victim-friendly system (the system). Its role is to treat the child by giving both medical treatment and psychosocial support under child friendly surroundings. Once it has performed its duty the next service provider within the system

would take over. At all times the child is suppsed to benefit from the support of a social worker or counsellor. The diagram below illustrates this.



At all times the common factor apart from the child, would be the social worker who would be with the child right through the whole process. Following up under the ideal situation should present no problems. However, the reality is that there is no social worker to accompany the child at the various stages of the trial. What this mean is that the Clinic has found itself having to do everything. But even then there is not enough communication for it to properly fulfill its extended role. The Clinic as an institution has its own challenges. Now that it carries out multiple roles its efficacy is seriously challenged. It has to stretch its meagre resources in order to fulfil multiple roles which were not part of its original mandate.

4.9 Problems within the Clinic

The Clinic is donor funded. That aspect on its own presents a problem. Donors prescribe how they expect their funds to be used. This leaves the Clinic with no flexibility in the programmes that it runs. The political climate also affects the degree to which donors are prepared to give their support or to continue doing so. As a result of this, the Clinic has insufficient funds to run its programmes. This means that while it may be the only Clinic offering the specialized treatment and coordination that it does, its very existence is always under threat.

Coupled with this is the shortage of staff. There is a group of dedicated staff which has weathered all the economic challenges which the country has been through. However, dedication without the appropriate remuneration does not always work. So, due to low salaries even dedicated staff sometimes leave. Right now the Clinic does not have its own psychologist. The children are examined by the hospital psychiatrist. The psychiatrist attends to psychiatric patients at the psychiatric unit. This does not go down well with children because sending them to that unit is as if it is being suggested that they are now mentally challenged due to the abuse. Further the doctors who work at the Clinic do so on a part time basis. This is because of the Clinic's financial limitations.

The counsellors do not have sufficient office space. They take turns to use one office for counselling. This affects their daily operations. The Clinic does not have enough vehicles to enable them to conduct home visits. There is one vehicle which has to prioritize duties. It is only after other duties have been carried out that the vehicle can take the counsellors out to see clients.

CHAPTER FIVE
CONCLUSION AND DISCUSSION

5.1 Discussion

It was in fact a dream. It appeared workable. But its realization has met with various challenges. The need for counselling continues to exist. The numbers of children who are abused continue to rise. The majority of the survivors are girls. There is a problem in respect of the extent of the counselling services the Clinic currently offers.

We have the law in place. There are also appropriate Guidelines in place. The main problem seems to be lack of coordination. Whatever services are in place are not properly coordinated or there is no communication with the Clinic at all once the child has left the Clinic. The Department of Social Welfare which is supposed to coordinate the process is clearly not in a position to do so. The Guidelines which were put in place at the inception of the system clearly lays out the amount of counselling and support which a survivor of sexual abuse requires. The grief expressed by the respondents about the need for continued communication with the child right through the whole process and not just post trial is now understood. It is rather unfortunate for the children that a system that was put in place so enthusiastically appears to be disintegrating.

From the information gathered during this research, it has been established that over 70% of child survivors who attend the Clinic are girls with girls up to the age of twelve making the majority of those survivors. It has also been established that there is a steady increase in the number of children who have been abused. However the Clinic is seriously under staffed. There is a serious shortage of space which leads to overcrowding at the Clinic. The Clinic therefore operates in undesirable surroundings. There is a breakdown of communication between the Clinic and other departments, particularly the Courts. This means that its role in the VFS is not fully functional. The Clinic is under-

funded and sometimes cannot retain staff. Since the Clinic is donor-funded it can only operate in terms programmes agreed to by the funding partners. The Clinic is not strategically positioned as it is situated behind the main buildings of the main hospital.

The Clinic is a necessary component of the management of child sexual abuse. It needs all the support it can get. The main requirement is adequate funding. In considering funding, the location of the Clinic should also be considered. It would be ideal if the Clinic could secure appropriate accommodation of its own. This will ensure that there are enough examination rooms and offices.

The Clinic is a lifetime investment for the nation. Constructing or buying a property to house the Clinic would be in the best interests of the minor child and of the country. The original plan as explained earlier on anticipated a growth rather than the shrinking or falling apart of the system. Adequate financial support for the Clinic will help revive the system as originally planned. Sufficient funds will ensure that staff is paid the appropriate salaries. That will enhance retention of staff. The Clinic can employ a fulltime coordinator. The coordinator will maintain close contact with the Courts and other government departments. This will ensure that children are followed up to satisfaction. As discussed earlier, Guidelines may be made by different government department but without the appropriate legislative provisions to enforce them, the Guidelines will remain good on paper and just gather dust while the girl child continues to suffer. Examples of this are the Guidelines and Minimum Standards which I have already referred to. Maybe the fact that the Guidelines are not law is the reason why they were not followed.

In earlier research by Kabasa an amendment to the Criminal Procedure and Evidence Act (Criminal Codification) along the following lines was suggested:

> S363 A: Provision of Counselling for victims of sexual abuse:
>
> "Every victim of sexual abuse shall be afforded the opportunity to receive counselling notwithstanding the outcome of the case. Provided that no victim who has attained the age of majority shall be referred for counselling unless the Court has sought (his)/ her views on the matter." (Kabasa at page 65).

An amendment of the enabling act would, as suggested above, ensure that the best interests of the child have been protected. An amendment to Zimbabwe's Constitution would still be necessary to ensure that where Acts are amended the rights of the child continue to be protected.

5.2 Why Counselling?

Rape survivors suffer immense trauma and this is seldom properly acknowledged. The effects of rape will continue to negatively affect a girl if she is not successfully counselled for the rest of her life. Hall says:

> If a woman seems nervous, dependent, miserable, or lacking in self-confidence either briefly or over a period of years, it is quite likely that rape or sexual assault is part of the reason why. It is certainly not the only problem in girls' or women's lives. But it can do a great deal to destroy what is every child's birthright-confidence in ourselves as a valued person, with some degree of control over our lives. A woman's or girl's own unfavorable image of herself may then be confirmed by others who put her down as inadequate, weak or crazy because she cannot 'get herself together'.(Hall p.143).

Rape happens in private. It is embarrassing and embarrassment may stop girls from disclosing it. The effects of not disclosing are traumatic as noted above. When the girls who have been brave enough to disclose the rape, or if someone finds out and leads to the rape being disclosed, all efforts should be made to ensure that as they pass through the justice system they are given enough support and counselling.

MacFarlane noted as follows:

> Sexual assault is much more an issue of power, domination, control, invasion, humiliation… It is about women losing control over their safety, losing autonomy over their bodies, and often fearing for their lives while being subjected to an attack… and it is the experience of [of death] that creates the significant physical and emotional disturbances in victims [both short term and long term] identified as rape trauma syndrome (MacFarlane 2004:78)

The rape trauma syndrome is regarded as the 'normal healthy and predictable response to a rape by a normal psychologically healthy person'. The symptoms of the syndrome include intrusive, involuntary and upsetting thoughts about the assault; flashback memories of the event; feelings of shame; feelings of guilt and self-blame; feelings of being dirty and contaminated by the rape; feelings of anger and rage and feelings of hopelessness and powerlessness(Appendix 1 to the Wynberg Report).

LaFontaine notes that:

> The sexual abuse can also trigger psychosomatic responses. Asthma and anorexia nervosa are common syndromes. Commonly there are also emotional problems, often long lasting, which are shown in various ways at different stages. Younger children may show open and even compulsive sexualized behavior, or regress to an earlier stage with wetting and soiling. School-age children may manifest sexualized behavior less often but may have problems in school, sleeping and eating disturbances, lack of self esteem and nightmares…All these symptoms show the effect of severe disturbance of the normal patterns of development, the trauma, pain and lowered self esteem which characterize victims of sexual abuse. They do not go away with the passage of time after the abuse has ended, for a wide variety of later effects have been pointed out, including sexual difficulties, inability to form lasting relationships, a serious lack of self –confidence, marital problems and inability to be good parents. Women who have been abused as children may be found among battering mothers. Girls who survive sexual abuse as children may find themselves attracted, tragically, by men who are, or become child molesters, and be unable to offer their children any

> protection…Repetition in the next generation is not inevitable ; not all abused children grow up to be abusing parents. **Nevertheless, the identification and treatment of sexually abused children becomes even more vital when it is likely to help the next generation as well.** (La Fontaine, p.84)(emphasis added)

It is clear that quite a lot of research has been done on the effects on rape or child sexual abuse. The emphasis is on counselling which will enable a child to recover and lead as normal a life as possible. It appears as if generally abused children face problems as noted below:

> Although society reacts with predictable horror at what is done to children by sex offenders, it apparently does not share a similar concern for what subsequently may happen to them at the hands of our law enforcement and child protection systems. Whether a child has been sexually assaulted by a stranger, an acquaintance, or a member of her own family, when the incident is brought to the light the family is usually found to be undergoing a state of crisis as it works through feelings of anger, fear, shock and confusion. In the midst of such vulnerability, the criminal justice, health and social service systems may descend upon a child and family with such a devastating impact that its recipients are left with the feeling that the "cure" is far worse than the symptoms. Many authorities agree that the emotional damage resulting from the intervention of "helping agents" in our society may equal or far exceed harm caused by the abusive incident itself. (Chapman and Gates, p97)

This only shows what happens when the child does not get the support that she deserves. Both Kabasa and Kudya (2006) (supra) have also highlighted the continued trauma children experience after leaving the Clinic. The Clinic itself points out what ought to be done. What is required is a properly coordinated system to ensure that the treatment does not cause more harm than what the actual abuse caused. It is in the best interests of the child that the counselling services at the Clinic are supported in full. Chapman and Gates further note that:

> The child who is usually under a great deal of emotional stress already may be required to recount the details of the case over and over at various stages In the legal process…During the process of investigation, the child may be taken to a hospital or a private physician for a medical examination. Here again the child is expected to recount the incident leading to the report…However… a gynaecological exam, even when performed under the best of circumstances can be an upsetting experience…The situation can be exacerbated if the medical personnel are not trained or sensitive or willing to spend time and patience required to handle these disturbing cases. (Chapman and Gates p97)

Our system has the counselling services in place, but when children go to Court, they are still subjected to more trauma. The counselling services which are already available have not been fully utilized. The Clinic is equipped to counsel. Even under the present economic challenges, there are people trained to examine the children in a manner that does not worsen their situation. What has been happening as a result of the lack of coordination within the system is that the children who went to the Clinic were only partially counselled. It becomes difficult under the circumstances to say that the Clinic is functioning efficiently. However the blame cannot be laid on any one section of the system in particular because when the VFS was initiated, all the relevant parties were trained. What needs to be done is to interrogate the system and see what went wrong and why. This will expose the weaknesses of the system. This will in turn require ways of correcting the mistakes.

5.3 So what happens now?

From the research it is clear that there is a serious breakdown of communication. There is also inadequate staff in the Department of Social Welfare which has the overall responsibility for safeguarding the welfare of the child. The Department cannot stretch its resources any further. Meanwhile the children need the services of the Clinic. The

absence of the Social Worker should not stall the flow of communications which is the current position.

The Clinic employs specially trained personnel. Instead of looking for either the police to coordinate or the Department of Social Welfare to send the social worker, the Clinic should be more proactive. A coordinator could be appointed and work from the Clinic. That person would keep the records of the children once they have been examined. She makes sure she has the personal details of the child and the referring police station. Her duty is to continuously liaise with the police with regards to any Court proceedings. If the matter has been referred to Court she should get the Court Record Book details. She should call the public prosecutor herself to find out the progress. This coordinator will have the contact numbers of all the relevant organizations. She will be responsible for answering all the queries from the other counsellors in the Clinic regarding the whereabouts of the child. Each counsellor looks after her clients from the beginning to the end. This ensures that the rapport created between the two is maintained. A child prefers to continue seeing the person who she is familiar with. This is what counsellors at the Clinic say: "A different counsellor should only follow up a colleague's client if the first counsellor is no longer able to do the work." This is understandable given the dehumanizing experience the child would have gone through and the need to reduce recounting her story to another person albeit under a friendly atmosphere. This is confirmed by Umlilo, who says,

> Of course we need to take time to choose someone we can trust, relate well to, one with whom we can be totally honest with. (Umlilop168).

The reason I am referring to the relationship between a client and their counsellor at this point is to highlight the point that once the Clinic has established relationships with the children it is important to keep them. It is undesirable, especially where there is a system in place to accommodate the sensitive nature of child sexual abuse, for children continue to suffer during the process of enforcing the law when that law was amended to reduce suffering.

The coordinator should follow up the Court cases or where she is not able to go to Court, the police should go so that she knows what is happening. There should be a provision on all dockets and Court records indicating the counselling status of the child.

Another way of trying to deal with this problem is to see the strength of the Clinic. The Clinic has been training personnel. It can continue to do so this will be less stressful on its meagre resources and limited staff. It can act in a consultative capacity in matters of child sexual abuse.

The suggested procedures mean that the Clinic has source more funds either to employ extra personnel to enhance its consultative capacity. This means that the Clinic has to convince donors about this need. This is a national problem and government should be approached to set a programme that will enable the Clinic's dependency on donor funding to be weaned off.

It is proposed that the government be lobbied to amend the law. Previous experience has shown that real change happens simultaneously with the change of law. Had the law not been changed to facilitate the installation of the CCTV, the Courts would not be exercising that option to take the evidence of vulnerable witnesses.

Counsellors and survivors alike emphasize the importance of counselling following rape and the need for a coordinated approach by all involved. Kabasa (p57) in her research spoke to seven counsellors who gave her an insight into this. The views of the counsellors are as follows:

> According to them the effects (of rape) range from hopelessness, suicidal tendencies guilt, low self –esteem, marital problems and truancy in young children. One organization is already training the police in basic counselling skill and they are prepared to offer counsel to rape victims **referred from Court.** Three organizations stated that it was very possible to work in collaboration with the government in

> providing counselling which they said is important for all rape victims. Long after the physical injuries have healed, and even more so when there are none in the first place, the emotional scars of rape and the toll it exacts from its victims, which is by far the least understood by the public in general, by the criminal justice system and its prosecutors and even by the victims themselves. I have often had women approach after hearing me speak, and for the first time confide that they were themselves of rape as long as thirty and forty years before, that they have lived with the confusion the shame, the guilt, the helplessness only now coming to understand the reasons.

Equally the survivors of rape have shown that they benefit from counselling. They show how difficult it is to live with the effects of rape. Below are the voices speaking about rape.

> One grandmother said her grandchild is now losing weight, she does not eat and keeps to herself. And the guardian of one of the Macheke girls said the girl grew up as an extrovert, very clever and intelligent but since the incident she is now unusually quiet. She is no longer the happy child that she used to be. At one time she was taken ill and she started crying when a male doctor asked her to lie down for an examination. They had to find a female doctor after the guardian explained the child's problem. She is fearful of all male adults.

It is clear that the emotional effects of rape are serious and that they cannot be wished away. They affect the child's behaviour in a very serious way. This continues to explain the frustration of the Clinic at not knowing the progress a child is making after her first visit to the Clinic. The Clinic remains committed to offering psychosocial support to abused children. This is necessary for the healing of the child. However its resources are limited. Further, because of the lack of proper coordination with other relevant departments it appears to work in isolation. This is undesirable. Better coordination with the other departments and adequate financial resources will enhance the operation of this Clinic. The services of the Clinic are indispensable for the healing of the abused child.

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