

# COUNTRY REPORT - ZIMBABWE

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## I. INTRODUCTION

Zimbabwe employs a dual system of law that is the traditional law and the Roman Dutch Law. The traditional law is mainly applied by the traditional chiefs, who are the custodians of the traditional law. The conventional law is the Roman Dutch Law. However, both laws are accepted and the decision arrived at based on each of these systems is legally binding.

The issues pertaining to child abuse and domestic violence are thus recognized in each of these systems. Zimbabwe is a signatory to some of the international conventions pertaining to Domestic Violence and Child Abuse.

The conventions have thus been assimilated into the justice system. This has greatly influenced the legal system and the approach to offences pertaining to domestic violence and child abuse. There is some legislation governing child abuse, but there is no legislation pertaining to domestic violence.

## II. THE CURRENT SITUATION AND PROBLEMS CONCERNING THE PREVALENCE OF DOMESTIC VIOLENCE

Recent research in Zimbabwe indicates that most acts of violence have gender aspects to them. The vast majority of acts of violence against women are perpetrated by men who have some sort of relationship with the victims be it in an intimate relationship, a working relationship or an acquaintance relationship.

A discussion on domestic violence must be based on an understanding of gender violence. Gender violence is defined "*as any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm, or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.*" (United Nations Declaration on the Elimination of Violence against Women).

Domestic violence therefore is the gender violence that occurs in private. This is because domestic violence specifically refers to any form of gender based violence that occurs in the home or in domestic, intimate relationships.

Domestic violence takes many forms; including:

### 1. Physical Abuse

Physical abuse takes the form of battery and sometimes results in permanent disability or death. This is the most common and can easily be identified since there is visible evidence of abuse.

### 2. Psychological Abuse

Psychological abuse may be verbal or psychological abuse which has the effect of undermining a woman's dignity, self worth and self confidence. This is a subtle form of violence as oftentimes there is no visible residual evidence of abuse.

### 3. Economic Abuse

Economic abuse is aimed at denying or controlling a person's financial resources. This form of violence is subtle for example, where a person is denied the right to work or a partner makes major financial decisions without consultation.

Research carried out in 2002 by a local non-governmental organization has shown that domestic violence

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in any of its forms is more likely to happen to women and girl children. Where 1.5 million women were abused or raped only 8% of that number were men who suffered partner abuse.

A survey was conducted on the prevalence of domestic violence in the Midlands Province, Zimbabwe, in 2002. This survey revealed that one in every three women has experienced domestic violence in one of its many forms at some point in life and more particularly in intimate relationships i.e. a love relationship or marriage.

#### 4. Wife Beating

Traditionally in our culture wife beating has been considered an appropriate way of correcting a woman's behaviour.

The position in customary law is that wife beating is not considered wrong or actionable under customary law. It is comparable to chastisement of a child. If a wife disobeys, or neglects any duty, her husband may punish her by assaulting her but he must not cause her any visible injury. The wife belongs to the husband. As head of the family he controls her and the children. If the beatings have reached unacceptable levels she may report to her in-laws who may intervene. If the family authorities rule that the husband's behaviour is unacceptable the husband must apologize with a gift.

However, the society is undergoing a process of rapid social change. This has an effect on how the issue of wife beating is regarded within our society. The change in the legal position may be summed up thus:

Under both customary and common law the husband had the right to physically chastise his wife as a correctional measure. There is no case law saying that the husband's right to chastise his wife is no more. Nonetheless it is quite clear that this purported right is no more. The legal position is therefore, that violence against wives is just as criminal as any other crime.

Husband battering has also been reported. However, there are no statistics, and also men are normally ashamed to make reports of assaults as this is normally seen as a sign of weakness.

#### 5. Sexual Assault

Sexual assault may take the form of unwanted sexual touching, attention, attempted or actual forced sexual intercourse.

In Zimbabwe the Sexual Offences Act now recognizes marital rape. A husband can rape his wife if she does not consent to the act. In the past, the law stated that a husband cannot rape his wife. However, if he forces her to be intimate, then he can be convicted of indecent assault and punished.

Although, The Sexual Offences Act is a progressive piece of legislation, cultural inhibitions make it difficult in this case for the women to report rape. As such it's rare for the criminal courts to handle cases of spousal rape.

### **III. CHILD ABUSE**

On the 20<sup>th</sup> of November 1989, the General Assembly of the United Nations, unanimously adopted the convention on the "Rights of the Child". This convention states that:

*"The state shall protect the child from all forms of maltreatment by parents or others responsible for child care and establish appropriate social programmes for the prevention of child abuse and treatment of victims (Art. 19), and the state shall protect the child from sexual exploitation, prostitution and involvement in pornography (Art 34)."*

Zimbabwe is a signatory and it began to work on examining the ways in which its laws reflected and protected children's rights. In 1992, Zimbabwe drew up a National Action Plan for Children, which considered issues such as child labour, abandonment of babies, child education and health. In Zimbabwe legal protection against abuse of children in various forms is provided for by the Marriage Act and the Sexual Offences Act. While the Zimbabwean law has its shortcomings it generally conforms to the United Nations Conventions.

A child is considered abused or at risk of abuse when the basic needs of the child are not met through avoidable acts of omission or commission. In the Children's Act, any person under the age of 16 is a child, while the legal age of majority states that anyone under the age of 18 is a minor.

#### **A. The Law on Rape and Sexual Abuse**

In Zimbabwe it is illegal to have sexual intercourse with a girl until she is sixteen, even if she is your wife. Sexual intercourse with a girl who is younger than sixteen is a crime of statutory rape which is governed by the Sexual Offences Act. It is a crime even if she agreed to have sex and even if she was physically sexually mature at the time. This is the law, but unfortunately in practice, this behaviour is often condoned. If the victim is less than 12 years the crime is called rape.

The law in this regard has been made to protect girls because at that age even if they consent they are not old enough to fully realize what it will mean in their lives if they have a sexual relationship.

Sexual offences against children also include indecent assault, sodomy, incest and abduction.

#### **B. Customary/Traditional Approach to Child Sexual Abuse**

Culturally, discussions pertaining to sexual issues have fallen away because of urbanization. Customarily, elders were elected to discuss this with children. This has made children susceptible to abuse. Below are a few traditional methods that leave a child open to abuse:

##### 1. Chikwambo and Ritual Murders

Chikwambo means the use of human organs and parts to make the holder richer. Even Customary law does not condone ritual murders, and the use of human portions to enhance wealth. Normally children are at risk; they are vulnerable and thus can easily be targeted in these rituals.

##### 2. Kuzvarira: Betrothment

This is when a young girl is forced into marrying usually an elderly man, by her parents and family.

##### 3. Inheritance of Right of Marriage

Normally, it is considered compulsory that in case of death of a wife the husband automatically gets the right to marry the sister of the deceased. In fact, it is the choice of the widow and her parents to agree to this. There should be clear message for all to avoid this misunderstanding as most people were abusing this customary concept.

##### 4. Chiramu: In-law

This is a practice in which a brother in law can indecently assault his young and unmarried sister in law under the guise of culture. This is meant to teach young girls how a man proposes and how to avoid him. The girl would also learn how to look after a husband, as she would be doing it for the brother-in-law. Many girl children have been abused as a result but most of these offences have gone unreported.

##### 5. Kuputsa or Kutengesha

This is a practice in which a young child is sold so as to benefit her family; this could also be referred to as trafficking.

##### 6. Customary Marriage

Customary law allows marriage to girls of 12 years. The consent of the girl child is required before the marriage is conceptualized. However, these girl children are still too young to marry and are also too young to give an informed consent.

Traditional beliefs have resulted in the increase of child abuse which in most cases is not reported since this happens in family circles. This is an example of where customary law and the Roman Dutch Law, though both recognized, conflict.

*The forms of reported sexual abuse include:*

- (i) Youth rape at music concerts.
- (ii) Rape and indecent assault by school teachers, school caretakers and headmasters. In 1988 the

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Minister of Education indicated that 800 school teachers were convicted of theft, statutory rape, and assault every year.

- (iii) Rape by family members, incest.
- (iv) Rape by traditional healers.
- (v) Rape when a man wants to claim a child as his bride to stake his claim.

**Official Data on Harare Rape Cases 1989 – 1995**

Records	1989-1995	1989-1992 Court Records
Age of victim	70% > 13 years	36% > 12 years
Sex of victim	All female	Not specified
Age of perpetrator	60% > 20 years	Not specified
Victim perpetrator relationship	9% strangers 29% family/relatives 29% domestic worker	98% strangers 7% family/relatives 4% lodgers
Use of threat/violence	42% of cases	Common
Means of disclosure	41% victims told someone	Not specified
Site of incident	27% injury discovered 39% in victims home	Often injury/STD discovered/reported
Offence to trial time lapse	Over one year 66%	
Trial outcome	57% found guilty and jailed	
Sentencing	Average 7 years	

Although rape is the most common offence against children, other forms of abuse of children occur. In 1998, 535 indecent assault cases involving boys living in the streets and rich men were reported.

**Number of Abused Children: City of Marondera**

Victims	Age 0-5 Yrs	Age 6-10 Yrs	Age 11-15 Yrs	Total
<b>2002</b> Girls	3	16	7	26
Boys	Nil	Nil	Nil	Nil
<b>2003</b> Girls	2	13	9	24
Boys	Nil	Nil	Nil	Nil
<b>2004</b> Girls	3	9	5	17
Boys	Nil	Nil	Nil	Nil

**Forms of Sexual Abuse: City of Marondera**

**Abuser/Accused**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
<b>Rape</b>	32	17	16	65
<b>Sodomy</b>	Nil	Nil	Nil	Nil
<b>Statutory Rape</b>	Nil	Nil	Nil	Nil
<b>Indecent Assault</b>	1	2	Nil	3

**Males**

<b>Age</b>	<b>13-17</b>	<b>18-19</b>	<b>20-30</b>	<b>31-60</b>	<b>61+</b>
<b>2002</b>	6	6	10	6	1
<b>2003</b>	3	5	1	9	2
<b>2004</b>	1	2	8	5	Nil

**Females**

<b>Age</b>	<b>13-17</b>	<b>18-19</b>	<b>20-30</b>	<b>31-60</b>	<b>61+</b>
<b>2002</b>	Nil	Nil	Nil	Nil	Nil
<b>2003</b>	Nil	Nil	Nil	Nil	Nil
<b>2004</b>	Nil	Nil	Nil	Nil	Nil

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Data on Child Sexual Abuse in Harare Region

All Forms of Abuse

Victims	Age 0-5	Age 6-10	Age 11-15	Total
2002 – Girls	26	35	58	119
Boys	4	3	2	9
2003 – Girls	21	37	72	130
Boys	3	2	-	5
2004 – Girls	33	64	120	217
Boys	-	2	-	2

Forms of Sexual Abuse

	2002	2003	2004	Total
Rape	119	122	207	448
Sodomy	3	8	2	13
Statutory Rape	1	4	3	8
Indecent Assault	5	1	7	13

Abuser/Accused

Males	Age 13-17	18-19	20-30	31-60	61+
2002	8	28	13	47	23
2003	29	32	12	40	17
2004	17	22	18	123	37
Females					
2002	1	2	-	6	-
2003	-	-	1	1	-
2004	-	-	2	-	-

**Risk Factors**

	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Abused at own home</b>	86	78	95
<b>Abused at abuser's home</b>	12	18	73
<b>Abused elsewhere</b>	30	39	51

**Abused/Abuser Relationship**

<b>Relationship</b>	<b>Number of Cases</b>	<b>Total</b>
<b>Father/Mother</b>	97	97
<b>Step-parent</b>	93	93
<b>Step-brother/sister</b>	48	48
<b>Uncle/aunt</b>	84	84
<b>Cousin (Male and female)</b>	13	13
<b>Brother/sister-in-law</b>	43	43
<b>Neighbour</b>	60	60
<b>Teacher</b>	17	17
<b>Stranger</b>	15	15
<b>Healer</b>	6	6
<b>Other</b>	-	-

From the data available, it can be concluded that the children are abused by people known to them, whom they trust and who are related to them.

*Most of the information on the extent of sexual abuse is anecdotal at best. Studies indicated underreporting due to:*

- (i) Children unable to verbalize that abuse has taken place.
- (ii) Threats by offenders, especially those known to children.
- (iii) Difficulties faced by children in reporting to parents with cultural inhibitions making it difficult.
- (iv) Cultural factors involving family privacy.
- (v) Respect for adults by children.
- (vi) Barriers in the police and legal systems to accepting information from children.
- (vii) Affected children e.g. street children fear investigations.
- (viii) Children are unable to give adequate evidence in court.
- (ix) Stigma and social problems arising after reporting making people hide the problem.
- (x) Lack of time and awareness of professionals in contact with children.

It should be pointed out that many children and families do not report abuse to the system because they fear the unknown, do not understand the system or simply want to make the problem go away through denial, and also because there is a feeling that the system does not offer an appropriate remedy for them.

Child sexual abuse is a multi-dimensional problem. It is viewed as both a moral and legal wrong. It is a sexual act that entails the use of physical violence upon the child. It has individual family and social implications in both modern and traditional culture and has economic causes and consequences.

### **C. Child Trafficking and Children in the Commercial Sex Trade**

This is an area that has failed to attract adequate attention, despite the fact that many children and women have been victims of trafficking. This is more so with the advent of street children. They are more likely to be subjected to trafficking.

Trafficking involves the recruitment, or transportation of people within a country or across borders and involves some elements of deception, coercion, force, debt bondage or fraud and normally the reason is to put such people under situations of abuse or exploitation e.g. pornography, prostitution and slavery.

Trafficking, although not well documented, is happening in Zimbabwe because there is a high increase in incidents of commercial sex work involving adolescents living on the streets, where they have become obvious victims of commercial sexual exploitation and trafficking. Statistics pertaining to trafficking are so hard to come by since the syndicates involved in this are highly organized and are unlikely to release any data.

## **IV. THE CURRENT SITUATION OF ACTUAL CRIMINAL PROCEEDINGS (INVESTIGATION AND SENTENCING) AGAINST PERPETRATORS OF DOMESTIC VIOLENCE AND CHILD ABUSE AND THEIR LIMITATIONS**

In Zimbabwe, a "Victim Friendly System" was adopted. This system improved the way in which vulnerable witnesses could be treated in the criminal justice system. This is necessitated by the fact that if the victims were badly treated, the abusers, upon being taken to court, were acquitted. This was attributed to the threatening and intimidatory nature of the legal and court system to sexual abuse victims, from the police station to the courts.

This has all changed with the introduction of the "Victim Friendly System". All stakeholders, from the police, the social welfare services, the doctors, prosecutors and magistrates have all received training to be victim friendly.

### **A. The Investigations**

The courts in Zimbabwe do not carry out investigations but use information gathered by the police. If a victim is badly treated at this level secondary trauma will have been caused and careful handling at other levels will not be able to empower the child/victim as a witness.

*The changes that have been introduced at this level are:*

1. Place of interview
2. Interviewing techniques
3. Accurate recording of the complainant to avoid repeated questioning
4. Confidential handling of information from the complainant
5. Sensitivity of the investigating officer

In the past social welfare services did not play a role at the early stages and did not play a role in cases which did not need a probation officer's report. In the victim friendly system, they now come in to provide support for the victims at the investigation stage, medical examination, and the trial stage. They give advice to the investigators on how to communicate with the victim, and how to avoid secondary trauma. If a juvenile offender is involved, then a social welfare officer, appointed by a Minister for social welfare, in terms of the Children's Act, will carry out a thorough investigation into the juvenile's social and personal background. He will then give an opinion as to the factors that may have influenced the juvenile offender in committing the offence. The probation officer also gives recommendations on whether there is room for reform and will also recommend the nature of the punishment most suitable in the circumstances and what the recommended punishment is meant to achieve.

After preliminary investigation, the victim is referred to a hospital for an examination. The hospital



personnel and doctors are also trained to be victim friendly. There are special medical institutions, called "Family Support Units", which have been set up. This examination of the victims is done in liaison with the social welfare services. Based on the examination, a medical report is prepared which forms part of the docket.

These documents are referred to the court. At the court, the evidence is assessed by the prosecutor, who may then make a decision to take the matter to court. The trial prosecutor has also received training in the handling of victims of abuse.

When the matter is taken to court criminal proceedings start. The Criminal Procedure and Evidence Act brought changes to the handling of vulnerable witnesses in the courtroom. The victim can testify in a separate room in the presence of an intermediary using closed circuit television.

The important aspect of the Victim Friendly System is that the victim does not have to see the accused and is able to give evidence freely. This system is for vulnerable witnesses regardless of age sex, or offence.

A key player in the victim friendly court is the intermediary, who acts as a buffer by absorbing the hostile question from the accused, and conveys it to the Victim, in a friendly way. The role of the intermediary is not only interpreting from one language to another, but to tone down the question. The Criminal Procedure and Evidence Act provides for the prosecution to make an application to the court, showing cause why the witness should be treated differently. Where the perpetrator does not oppose the application the case is held in the victim friendly court. The court can also order that the matter be held in the Victim Friendly Court.

### **B. Anatomically Correct Dolls**

There are some anatomically correct dolls, in the Victim Friendly Court, with which the child can demonstrate what happened to him or her. The purpose of the dolls is to encourage the witness especially child witnesses to talk about the alleged abuse. However, the use of the dolls is not covered by the Criminal Procedure and Evidence Act.

The victim friendly courts have got their practical constraints. These constraints affect the effectiveness of the victim friendly court procedures.

Firstly there is a shortage of manpower and shortage of resources. Secondly most of the people who could ordinarily benefit from the victim friendly courts are not aware of its existence. Thirdly, in some instances, the geographical location of the victim friendly courts make it difficult for the otherwise deserving victims to benefit from the system.

### **C. The Juvenile Offender**

The procedures for the arraignment or indictment of juvenile offenders are generally the same as those of adult persons as outlined in the Criminal Procedure and Evidence Act. Minors can be prosecuted and sentenced by the ordinary courts. However, in practice minors of tender age, for example ten years and below are normally referred to the juvenile court. If the matter is dealt with in the magistrates' court, after conviction, the matter can be referred to the Juvenile court.

The Juvenile Court in terms of the Children's Act, can order placement of a child in a certified institution or training institution or the placement of the offender in the hands of a suitable person or return of the juvenile offender to the custody of the parents.

Where a minor/Juvenile offender is charged with the commission of an offence the magistrate may instead of releasing him into the custody of the parents, refer him to a place of safety in terms of the Children's Act. A juvenile offender should not be detained in a prison cell or lock up unless his detention is necessary and no suitable place of safety is conveniently available for his detention.

The juvenile court effectively protects the interests of children. Zimbabwe Law, through the Children's Act, provides for the establishment of these courts. These courts are not bound by rules relating to civil or criminal procedure. They are required to conduct their business in such a manner, as the officer presiding deems best suited to do substantial justice.

The proceedings in the juvenile courts are held in camera. This means that only those persons whose presence is necessary or the legal practitioners involved or any other persons authorized by the court will be allowed to be present. It should also be pointed out that in terms of the Criminal Procedure and Evidence Act, an ordinary court which is not a juvenile court has the power to exclude from attendance any person whose presence is not required when the court is dealing with a juvenile accused or with a juvenile witness. Furthermore the publication of the identity or the name, address, school or place of occupation of any juvenile accused or witness is prohibited except where the court has authorized such publication where it is satisfied that this is not prejudicial to the interests of the minor or juvenile involved.

The exclusion of the public is intended to protect the dignity, self respect and general interest of the minor children involved in judicial proceedings.

## **V. OUTLINE OF APPLICABLE PUNISHMENTS AND SANCTIONS AGAINST PERPETRATORS**

The juvenile offender has got a peculiar vulnerability and this has to be considered in meting punishment. There are three important considerations with respect to juvenile offenders:

1. These offenders are themselves children and require assistance if the cycle of the abuse is to be broken.
2. Many offenders have witnessed or been victims of similar and related traumas in their lives.
3. Young offenders are likely to benefit from psychological intervention. Imprisonment is not the way to prepare young offenders for a healthy adult sex life.

It is well established that sexual offenders have a high propensity to re-offend and therefore a successful programme of intervention for young offenders would have considerable benefits for society.

### **A. Sentencing Options when Dealing with Juveniles and their Limitations**

There are various options open to the court when considering how to treat a juvenile after conviction. A probation officer's report is a requirement and should be made available to the court before the juvenile is sentenced. The probation officer's report makes the court's task easier in arriving at the sentence but the court is not bound by the report.

1. Imprisonment: Generally imprisonment is inappropriate for juveniles and should only be imposed as a last resort and only after obtaining a probation officer's report. Imprisonment is likely to be confined to adult juveniles or those approaching adulthood say 17 to 20.

The limitation in this regard is that imprisonment does not curb recidivism. This is likely to harden the juveniles. In the case of juveniles a number of offences committed relate to homelessness and other offences are a result of adolescent reaction to difficult socio-economic family circumstances and need for survival in a harsh environment. There is therefore a need to shift away from imprisonment as this is punitive and retributive and advance towards rehabilitation, education and restoration of the juvenile.

2. Fines: small fines may be suitable in some cases but the court should always consider the fact that it is the juvenile's parents or guardian who is likely to foot the bill.
3. Community Service: this can be one of the most effective penalties for juveniles. In a case where the court intends that the juvenile experiences the punishment, rather than impose a fine that is likely to be paid by an adult, this is an appropriate punishment. This is generally more suitable for those who are 16 years or older.
4. Corporal Punishment: in appropriate cases this can be useful alternative to imprisonment. It is normally imposed in cases where imprisonment would have been appropriate had the offender been an adult. This is normally used in sexual offences like rape, attempted rape and indecent assault.

However, the constitution of Zimbabwe prohibits the infliction of inhuman and degrading punishment or treatment. This is in line with article 37 of the Convention on the Rights of the Child, which mandates states to ensure that no child is subjected to cruel, inhuman or degrading treatment. Corporal punishment is thought to be degrading and inhuman.

### **B. Wholly Suspended Sentence of a Fine or Imprisonment**

The court should be particularly careful with wholly suspended prison sentences on juveniles as such a sentence may be too burdensome on the juvenile. The court should keep in mind that if the condition of suspension is breached a very young and immature offender may end up in prison, an eventuality which the court may be trying to avoid.

### **C. Outline of Applicable Punishment and Sanctions against Perpetrators: Adults**

In Zimbabwe in 1995, studies revealed that domestic violence accounted for more than 66% of murder cases that were going through the High Court in Harare. In looking at the sentencing patterns in these femicide cases it is worthwhile having some further background details of the nature of the crimes so as to compare this information with the sentence passed. The types of femicide cases identified related to:

1. Intimate femicide where women were killed by boyfriends or husbands in so called domestic disputes.
2. Women killed by other family members usually male, who wish to control the behaviour of the woman or girl.
3. Sexual murders where rape is often followed by murder either to cover up the rape or leave no witnesses or simply because the killer enjoys this form of ultimate violation.
4. Witch killings and ritualistic murder where for instance, in Zimbabwe, they maybe stoned when accused of being witches. There are also cases in which women and children were killed and organs removed for ritual purposes.
5. Suicides by women experiencing violence usually at the hands of the husband or other male family relatives.
6. Women killed by thieves in the course of robberies and because women are vulnerable both within their homes and on the streets.

The causes of death per the autopsies showed that the immediate cause of death was often a result of assaults, beatings and whippings. 14% of deaths in Zimbabwe were through stabbing, 10% were killed using axes. This shows just how many femicides are connected to some form of torture where the women are brutalized using a range of weapons and methods mainly by people with whom they are in some form of relationship.

The age range of the victims of femicide in Zimbabwe in a survey carried out by the National Sentencing Committee in 2002 showed the majority to be in the 21 – 30 age group, followed by the 31 – 40 age group and the 51 and over age group.

This is slightly different from the age analysis of the rape victims who tended to be younger; predominantly in their teens.

In the Zimbabwean High Court which has the jurisdiction to try these matters 36% were convicted of murder, 51% convicted of manslaughter, 13% a special verdict was returned, (that is a plea of insanity is returned) and 7% were acquitted.

The possible punishments and sanctions which can be passed against perpetrators include:

- (i) imprisonment
- (ii) fines
- (iii) customary law: compensation at times the victim's family is paid compensation and this is acceptable as settling the matter
- (iv) referral for psychiatric treatment for those who committed offences due to an underlying psychiatric illness
- (v) compensation can also be ordered by the court.

In conclusion, when dealing with cases of rape, sexual or physical abuse and femicide, there is need to enact laws specifically outlawing domestic violence, marital rape and other crimes. These would enable the presiding courts to pass sentences which effectively curb the continued abuse of both women and children.

### **D. The Current Treatment Programmes for Perpetrators and their Limitations**

Under traditional law and culture, offences pertaining to child sexual abuse are serious and are heavily

punished. The abused is taken away to an elder for counselling. The abuser is barred from visiting the area. The abuser would undergo traditional forms of punishment. However, the limitation of such form of punishment lies in the fact that the abuser may not reform, and the compensation paid does not benefit the victim but her family.

In Zimbabwe 'Rehabilitation' of the abuser is even well less provided for. The department of social welfare deals only with people under the age of 18 and has no jurisdiction to deal with adult offenders. If the abuser is the father of the victim and goes to jail, social welfare can provide some support for the family through public assistance.

In cases involving minor abusers, the Department of Social Welfare prepares a probation officer's report to assist the court in sentencing the abuser, outlining the abuser's family surroundings, and peer influence. Those between 16 and 18 are referred to a training institute which is like a prison. At both institutions the minor abusers undergo normal schooling, receive training in vocational courses and receive counselling. While this is in the interests of the juvenile offender the problem is that the minor abusers are not separated by crime such that sexual abusers are mixed with other offenders. The Department of Social Welfare should not only provide counselling to the offender, but also provide counselling to the minor abuser's family.

It was noted however that counselling resources are still inadequate relative to need. A wider range of community institutions needs to be supported in healing the family and child.

The other shortcoming in the treatment of the offender is the omission of rehabilitation. The law needs to incorporate knowledge of criminal psychology. The following are also some suggestions for sentencing which could be considered alongside the conventional sentences:

1. Psychotherapy and other character building opinions especially for young offenders.
2. Marital counselling should be mandatory to prevent domestic violence.
3. Drug rehabilitation/alcoholism and other anti-drug programmes should also be made available especially where it is proven that the commission of the offence is directly linked to the abuse of substances.

The weakness of the Zimbabwean system is that after conviction there is no follow up. A case follow up database would be a useful tool for monitoring the different types of interventions for individual offenders. This would enable us to move closer to punishment that suits the crime and rehabilitation that rebuilds the society.

In terms of the Criminal Procedure and Evidence Act, there are a number of non-custodial alternatives that need to be developed.

- (i) Payment of compensation or damage or pecuniary loss caused by the offence. This is particularly suitable in cases of arson or malicious injury to property. The person should be made to pay restitution. This should be encouraged to ensure that the convicted pays compensation to his victim. This is one way in which the victim could benefit from the criminal justice system.
- (ii) Submission to an institution for treatment. This could be useful in cases involving delinquent juveniles, youthful offenders and drug addicts. The perpetrators can be directed to undergo instruction at a particular institution or undergo therapy under the supervision of a medical expert.
- (iii) Submission to the control of a probation officer, appointed in terms of the Children's Act, or submission to the supervision of any other suitable person. This option would apply in situations in which the perpetrator is a juvenile. The juvenile could be directed to submit to the control of a probation officer or other persons occupying positions of authority in the community such as school headmasters or heads of institutions involved in child welfare.
- (iv) Compulsory attendance or residence at some specified centre for a specific purpose. The perpetrator can be directed to attend a particular place for training purposes. This option is well developed in western countries. Juvenile offenders are made to attend certain training or other educational institutions during the day or even reside at some of those training institutions for a specified period.

One other option which has hardly been applied is periodical imprisonment. In terms of the Criminal Procedure and Evidence Act, such a sentence can be imposed on people who fail to pay maintenance. This option should be revisited to cater for infractions of the law.

## **VI. THE CURRENT SITUATION OF CIVIL, ADMINISTRATIVE OR OTHER MEASURES AGAINST DOMESTIC VIOLENCE AND CHILD ABUSE AND THEIR LIMITATIONS**

One of the most serious problems for women who have been abused is how to keep the violent man away or how to stop him from beating his partner. This is when the abused seeks remedies in the civil courts.

In Zimbabwe the only way to do this is by getting a binding over order or an interdict. A binding over order is issued by a magistrate whereas an interdict is issued by a judge of the High Court. Both are court orders to stop the assailant's violent or threatening behaviour. However, an interdict naturally carries more weight since it is issued by the High Court.

The Criminal Procedure and Evidence Act provides for the issuing of peace, binding over orders or interdicts against violent people, including husbands or boyfriends and or women who assault their partners. This kind of order instructs the spouse not to behave violently towards the partner.

This Act also allows a court to order the 'abuser' to make payment to his victim in compensation for damages. This may be ordered if the victim specifically asks for compensation.

It should be noted that an interdict will only be issued if attached to a more substantial claim, for example divorce. A court may issue an interdict ordering a husband not to assault his wife if a divorce or judicial separation has been applied for.

In deciding whether or not to interdict a violent spouse, the judge is supposed to look at how likely the other claim is to succeed. If for example he thinks that the woman will change her mind about divorce, he will probably not consider her application for an interdict favourably. The limitation of this procedure therefore is that this limits the usefulness of interdicts for abused parties. This procedure is clearly not easy.

What makes it more difficult is that a woman can only go ahead with an interdict application if she has a certificate of urgency signed by a legal practitioner. Although the interdict procedure is relatively simple, she cannot get an interdict unless she can afford a lawyer.

The interdict carries far more weight than a binding over order from the magistrates court. Unfortunately, this is only one example of justice for those who can afford it.

## **VII. THE LAW AND STATUTES DEALING WITH ISSUES PERTAINING TO CHILD ABUSE**

### **A. Children's Act**

There is a need to prevent child sexual abuse by including in the Children's Act provisions prohibiting forced sexual acts or forced marriages with minors, first as a responsibility of the parent or guardian and where this fails, through state intervention.

### **B. Sexual Offences Act**

This Act is mainly aimed at:

1. Protecting young persons and persons with disabilities from sexual exploitation.
2. To combat prostitution.
3. To punish the deliberate transmission of H.I.V and Aids.
4. To provide for the compulsory H.I.V and Aids testing of sexual offenders.
5. To remove discriminatory acts against women.

The limitations of this piece of legislation are that the Act recognizes that it is a defence to claim ignorance of the victim's age and disability.

- The act requires that one has to have prior knowledge of one's H.I.V status prior to the

commission of the offence. In a situation in which one has not been tested then that person is not liable.

- The Act is silent to crucial issues of restorative justice - that is reparation of victims and rehabilitation of offenders.
- Although the Customary Marriage Act forbids the pledging of young girls and women in marriage the Act does not set a minimum age for marriage. According to Zimbabwean Customary law, the parent or guardian of a minor girl can facilitate a valid marriage to be contracted with the girl even if she is below the age of 16.
- It is important to note that while the Act ruled out the irrebutable presumption that a boy under the age of fourteen years is incapable of sexual intercourse by lowering this presumption to boys below the age of 12, the Act is silent on rehabilitative programmes for juvenile sex offenders.
- Although this Act does not deal specifically with youth, it may have been important in determining the degree of culpability of an offender or in establishing a basis for departure from a sentence proportionate to the seriousness of the offence.

*The other acts which apply to child abuse are:*

1. Censorship and Entertainment Act
2. Customary Marriage Act
3. Labour Act

*The limitations of these pieces of legislations are that:*

- (i) Most of this legislation is in English and legal jargon is used. This may be difficult for most people to understand. As such members of the public and the abused remain ignorant of their rights. There has been a suggestion that some pieces of legislation should be in vernacular.
- (ii) There is generally a lack of awareness campaigns and at times copies of the legislation are not distributed to the intended target.

### **C. An Integrated Approach to Domestic Violence and Child Abuse**

The criminal justice system in Zimbabwe should be made to work in order to reduce the incidence of Domestic Violence and Child Abuse.

It is important to have appropriate legislation that sends a message to communities that such behaviour is unacceptable. Legislation should stipulate sentences that act as a deterrent. To this end the sentence that is stipulated for a given crime is a determinant in the consideration of whether the crime is seriously regarded or not and increases or decreases the probabilities of the recurrence of the crime. A sentencing committee was therefore established to address people's concerns with regards the sentences passed on abusers and whether they are effective in reducing the incidence of domestic violence.

The second major point of intervention is to make court procedures accessible to survivors of violence. This has been achieved to a large extent by setting up the Victim Friendly Court. These were set up as a legal response to victims of sexual assault and other violence and allowed the victims to give evidence without intimidation from the accused person or counsel. However, there is a need to set up Victim Friendly Courts throughout the country so that they are accessible to all victims. Resources have to be made available.

The other intervention that should/could be resorted to is the imposition of mandatory sentences. There have been pleas to legislators for the imposition of mandatory sentences. The arguments are that legislative intervention takes away judicial discretion.

In Zimbabwe there is a Domestic Violence Bill, specifically dealing with issues pertaining to domestic violence. This has been tabled before Parliament but has not yet been enacted into law.

It is also important to note that many women who wish to pursue a legal remedy to their problems but

lack finances may eventually consult a non-governmental organization as a way of accessing legal advice and assistance to pursue their claim. The clientele of most non-governmental organizations are mostly women. For instance the Musasa Project a local non-governmental organization has women constituting 95% of its clientele. This non-governmental organization specializes in domestic violence. There is the Zimbabwe Women Lawyers Association and the Catholic Commission for Justice and Peace, which are local non-governmental organizations.

These organizations complement each other and have developed a broad based assistance and referral network amongst themselves and also with the justice delivery system. The justice delivery system and the government also refer cases to non-governmental organizations. This system is advantageous since there is a reciprocal relationship between the courts and the organizations that is beneficial to the victims.

The Zimbabwe Republic Police and state prosecutors have also received training from the non-governmental organizations on domestic violence and child abuse. Networking has yielded some practical advantages given the limitations of capacity (human and material). The victim's needs are addressed. Non-governmental organizations have mainly shouldered the burden of information dissemination on the issues pertaining to child abuse and domestic violence. The result has been that there has been an increase in the number of reported domestic violence cases. The non-governmental organizations in collaboration with the government agencies have played a pivotal role in providing services to women which include counselling, shelter, rehabilitation and legal representation.

With regards children's rights, the bulk of the burden has also been shouldered by some non-governmental organizations such as Girl Child Network, Child Law Foundation. They provide shelter and counselling. These link up with the justice delivery system on behalf of the children. Awareness campaigns to sensitize people on the plight of children have also been carried out through:

- (i) Awareness campaigns in schools
- (ii) The establishment of a help line for children
- (iii) The erection of billboards with information on child abuse and what constitutes child abuse
- (iv) The media has been used to inform people of children's rights. The effect is that there has been an increase in the number of children who have reported abuse, be it physical or sexual.

There is a need for continued networking and cooperation between players in the justice delivery system so as to produce a system that can better serve the needs of the victims, especially in the realm of domestic violence and child abuse. Traditional leaders who are the leaders of the customary law courts should also be included in the network. This will help fight abuse in the name of culture or tradition through the traditional chiefs. The community at large can be sensitized on issues involving domestic violence and child sexual abuse.

## VIII. CONCLUSION

It is recognized that the issue pertaining to Domestic Violence and Child Abuse is a multi-sectoral dimensional problem. These are viewed as both a moral and legal wrong. There are individual family and social implications in both modern and traditional culture and it has economic causes and consequences. The causes of abuse should be curbed. Although Zimbabwe has not yet enacted a domestic violence act, the legislation available can adequately deal with the issues arising from domestic violence. With regard to children it has been stated that the laws generally conform to United Nations regulations. What is required is a lot of education for the public so as to counter some of the cultural practices that encourage domestic violence and child abuse. The continued networking between various organizations and the justice system will go a long way in relieving the plight of the victims and assisting victims of child abuse and domestic violence.