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# Legal shortcomings in multisectoral forums responding to child sexual abuse (CSA): Lessons from a Zimbabwe case study

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## ABSTRACT

*Legal services constitute an important component of the Victim Friendly System (VFS) in Zimbabwe, a multisectoral forum that offers distinct but complimentary medical, psychosocial and legal services to child sexual abuse (CSA) survivors. The paper identifies a number of loopholes in the VFS judicial services. A qualitative approach was adopted with data collected from 38 participants and 4 key informants selected using theoretical and purposive sampling respectively. A total of 300 court transcripts of child sexual abuse cases were also reviewed. Findings show that there exist legal shortcomings that include contradictions; the system permitting witness interference; the system suffers limited coverage and that the system releases offenders on bail into the child's environment. We argue that these shortfalls are to the detriment of survivors' wellbeing. These findings provide some insights that are useful in improving child protection interventions. Given the well documented effects of CSA on survivors and the importance of legal systems in child protection, we recommend legal and policy reforms in line with international conventions. In addition, there is need to increase access of services including judicial services.*

**KEY TERMS:** *child sexual abuse, legal services, legal shortcomings, victim friendly system, Zimbabwe*

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## INTRODUCTION

Like many countries, Zimbabwe adopted laws that regulate human interaction and thus serve to safe guard individual human rights and to protect society including children (Kaseke 1993). This includes ratifying international and regional conventions; inclusion of the same principle in the constitution and domestication of the global best practices (Chitereka 2012). Chitereka (2012) further argues that by ratifying the United Nations Convention on the Rights of the Child (1990) and the African Charter on the Rights and Welfare of the Child – ACRWC (1999); the Government of Zimbabwe committed itself to implement the principles of protecting children including protection from abuse. Also, being party to these principles, Zimbabwe committed to the provision of redress including sanctioning violations. As such, Zimbabwe has a number of legal instruments that not only seek to protect children from abuse but sanction the violation of such laws (Muridzo 2018). In addition to the existence of the legal framework, Zimbabwe through the victim friendly system (VFS) to provide “a national set of measures designed to ensure the protection and active participation of sexual abuse and violence survivors through a multisectoral approach that offers medical, social, psychological and legal services” ( Muridzo and Chikadzi 2020). Judicial services constitute a component of the VFS in Zimbabwe (Muridzo 2018) that seek to address the justice needs of child sexual abuse (CSA) survivors (Jones and Jemmott 2009). This paper begins giving some background to CSA followed by the methodology that was used in the study. The paper then goes on to present and discuss the findings on shortcomings of the VFS legal system. Against the shortfalls we proffer some recommendations that may improve the legal system and child protection before concluding.

## BACKGROUND TO THE PROBLEM

CSA is a multi faceted global children’s rights issue and a global problem with adverse medical, psychological, behavioural and socioeconomic outcomes (Chitereka, 2012; Gwirayi 2013). According to Muridzo and Chikadzi (2020) the VFS was established to prevent child sexual abuse and mitigate its adverse effects. Despite an increase in both publicity on child sexual abuse and initiatives from the government and voluntary agencies constituting the VFS, child sexual abuse remains a major challenge in Zimbabwe (Muridzo, 2018). While child sexual abuse cases are characterised by underreporting, estimates show that about 100 girls are sexually abused in Zimbabwe on a daily basis (Mhlanga 2016; Mantula and Saloojee 2016). Child sexual abuse is associated with a host of negative aftermaths for the survivors and their ecological environments (Chitereka 2012, Muridzo 2018), strengthening calls for prevention of child sexual abuse. Muridzo et al (2018a) call for new ways to address the problem that include understanding existing interventions and appreciating challenges that are faced by role players as a starting point. This article therefore presents some legal shortfalls inherent in the VFS justice system. The findings of the study contribute to strengthening of strategies and interventions used in the fight against CSA. The study therefore set to explore the phenomenon of child sexual abuse in Zimbabwe. The specific objective relevant to this paper is “To investigate challenges faced by VFS stakeholders in Zimbabwe.” The well documented effects of CSA and the importance of interventions warrant appreciating the shortcomings inherent in the VFS with the view of improving services and mitigation measures. Notwithstanding other shortcomings inherent in the VFS, appreciation of legal shortcomings provides some insights that are useful in improving child protection interventions.

## METHODS

### Research approach and design

The study adopted a qualitative approach and a multiple case study design was used. The Victim Friendly System (VFS) was selected as the case to be studied. The VFS is multi-stakeholder forum made up of 29 Government and Non-Governmental organisations that provide complimentary medical, legal, social and psychological services to sexually abuse survivors.

### Study population and sampling

The unit of analysis was the VFS. The VFS is comprised of all government departments and Non-Governmental Organisations (NGOs) which are directly and indirectly involved in dealing with CSA survivors in Zimbabwe. Purposive sampling was used to select Harare and Gokwe as the study sites. In addition, theoretical sampling, a form of purposive sampling commonly used in qualitative research was used to select 38 representatives from the organisations that participate in the VFS. Purposive sampling was also used to select a social worker, a lawyer, a senior officer in the police and a traditional leader: chief who made up the key informant category. To augment and triangulate data VFS minutes of quarterly meetings were purposively selected. Also, 300 court files involving CSA cases for the period selected using systematic random sampling from Gokwe and Harare.

## Data-collection methods and tools

In-depth interviews were used as the main data collection method. Two different semi-structured interview schedules with open ended questions were used to guide the interview process. The first schedule had questions specific to key informants while the other interview schedule was specific to participants working in the VFS. The interviews were tape recorded to maintain accuracy narratives from interviewees.

## Ethical considerations

To abide by ethical standards, clearance to conduct the study was obtained from the relevant ethics clearance bodies. The study was cleared under protocol numbers H15/02/20 and MRCZ/A/1969 by two ethics clearing bodies.

## FINDINGS

Findings of this qualitative study show that there are a number of legal shortcomings inherent in the VFS. Among these legal shortcomings are legal contradictions; witness interference; limited access to the courts and releasing of accused CSA offenders on bail into the child's environment. These are discussed in the coming sections.

### Legal contradictions

Participants cited the legal contradictions as one of the legal shortfall in the VFS legal system. According to participants laws related to child sexual abuse and child protection were not in harmony. It was also explained that the laws were not in harmony with the supreme laws of the land. Participants felt that legal contradiction denied survivors justice and in some instances exposed children to child marriages. The legal contradictions are evident in the following comments by some of the participants:

*The problem is that our laws are not speaking to each other and that they contradict. That [contradiction] is the problem. You find child marriages because there is a law allowing that. Marriage laws allow that [child marriages yet the constitution defines a child as a person under the age 18 years. That is a contradiction (Mrs Moyo).*

*When we look at the constitution, it defines a child as being up to 18 years. But if you look at some of the laws in the country they define the child otherwise. The current Children's Act, defines a child as a person below the age of 16. This actually opens some children to abuse. Then we also look at Marring Act particularly the Customary which does not even give an age for marriage. Then when you look at the Civil [civil marriage], it gives room for girl children to be married at the age of 16 year. Again currently the age of consent is 12 years. But do we really think a child at this age can appreciate the consequences of sexual activities? . So those are some of the gaps that we see (Mr Chikerema).*

*I can see there is a loophole in our legal system. Our Children's Act and the Marriage Act say that children can consent to sexual intercourse at the age of sixteen years. This is despite us [the Constitution of Zimbabwe 2013] saying that a child is any person below the age of 18 [years]. So for that [inconsistency] people [offenders] are taking advantage of the lack of harmonization between the Children's Act ; Marriage Act and the Constitution of Zimbabwe (Mrs Dube ).*

While the country commits to international statutes and has domesticated its commitments to protect children, it is clear from the above participants' comments that there exist legal contradictions in the justice system. It is also evident from the verbatim that such contradictions can be exploited resulting in the denial to justice for survivors. Of concern is how the contradiction can legalise sexual exploitation of children through legalised "marriages" of children. Zimbabwe is signatory to the United Nations Convention on the Rights of the Child (1990) and the African Charter on the Rights and Welfare of the Child – ACRWC (1999) and has domesticated reflected in the Constitution of Zimbabwe Amendment Number 20 (2013) ( Gwirayi 2013). These instruments define a child as any person under the age of 18 years yet it is clear that some of the statutes permit the marriage of children. The legal discord represents violation of not only the country's constitution but the international conventions that the country is a signatory to.

### Allowing witness interference

Participants and documents reviewed also identified allowing witness interference as another legal challenge inherent in the VFS. Muridzo (2018) defines witness interference as actions by the significant other: significant others: families and relatives that negatively influence or diminish the legal case, evidence and CSA survivors' statements and testimonies and or lead to the withdrawal of a case before the courts of law. According to the participants witness interference is a common occurrence within the VFS legal system resulting in the withdrawal of cases and or the acquittal of CSA offender. Examples of witness interference cited by participants include changing of statements, destroying of evidence, giving false evidence in court, becoming hostile witnesses before the court and movement of the child survivors away from the jurisdiction of the courts. In one of the files reviewed in the study, an accused is released upon the withdrawal of case. The transcript read:

*The accused, 43years, is the stepfather of complainant, 12 years. It is alleged that sometime in December 2015, Spencer had anal sex with complainant on two separate occasions. The mother made a police report leading to accused person's arrest. The mother told the court that accused did not have anal sex with complainant. She says that she made a false report to try and fix her husband. She was angry with him because he was cheating with another woman who is in South Africa. She says she fabricated the allegations. She told her daughter Vimbai, to accuse Spencer that he had anal sex with here on two occasions. Told complainant to claim that on two occasions accused person made her lie facing down and raped her. The court found the accused person not guilty on both counts of indecent assault. Case was withdrawn after plea at the insistence of the State (Harare case 179).*

Concern over the problem of case withdrawals was also raised in meetings. The minutes read:

*It was very disturbing to note that a girl child is sexually abused by her own father or other close relatives and the other relatives try to conceal the offence. He said the initial statements made by the victims at the police will differ from what will be said in court. They change statements saying they would have been abused by a total stranger other than the father or stepfather. Regional court is encountering this problem because the docket would have been compiled and ready only for the complainant to change statements (Minutes of the VFS regional meeting held at Gokwe on the 6th of November 2015).*

The weakness was also echoed by one participant who said that:

*The retraction of statements by victims is very common. You may think you have evidence but when you get to court, witnesses may retract and withdraw their statements made in the initial affidavit. The withdrawal of statements is very common leading to some perpetrators getting away with sexually abusing children (Mrs Moyo).*

It is evident from the participants' accounts and the selected case records used that the VFS legal system allows witness interference. The system allows for the withdrawal of cases regardless of the offence being committed denying survivors justice. In addition, withdrawal of cases translates to returning offenders into the ecological environments of survivors. The possibility is high given that scholars (McPherson, Scribano & Stevens 2012; Sawyerr & Bagley 2017) suggest that CSA offenders were mainly household members: biological mother, biological father, step-parent, parent's partner, sibling, stepsibling and the sibling of the parent's partner. Lalor and McElvaney (2010); Bhaskaran, Seshadri, Srinath, Girimaji and Sagar (2016), found that CSA survivors are more likely to be sexually abused in the future. Thus, by permitting the withdrawal of cases the legal system sanctions revictimisation of survivors. On the other hand, families may be motivated by a number of reasons. Reasons could include dependency on the offender for a living by the survivor and or other family members. In addition, interference may be motivated by the desire to minimise social fallout such as conflict. Studies (Perez, Aldrian and Stender 1997; Hansen and Tavkar 201; Foster 2014) document a series of social and economic losses that can befall a family upon the arrest of a perpetrator. Such interference is detrimental to survivors as the abuses can continue unabated. Also survivors may miss out on critical intervention in the face of well documented negative effects of CSA: psychological, social, behavioural and physiological effects. If interested parties are able to interfere and influence a case before the court, this represents a major loophole in the justice system.

### Limited access to the justice system

Another loophole of the VFS justice system to come out strongly from the study is its limited geographical coverage. Most participants explained that certain parts of the country do not have VFS judicial services making

access to justice difficult. According to the participants justice was mainly confined and available in urban areas with the rural populace having to travel long distance to access justice. It was also explained that limited access to justice services was detrimental to survivors. Worse it was said cases could go unreported. In one of the minutes participants discuss the challenges people have to access courts. They examples they give show how judicial services are beyond the reach of people in remote areas.

*[Participant A] informed stakeholders that there is a place called Mbire District bordering Zimbabwe, Zambia and Mozambique. The people from this area [Mbire District] do not report abuse [CSA] cases because it is expensive for them to go to nearby districts serviced by courts. The closest [service point] being Kanyemba and Guruve, The transport system is so poor such that one needs 3 days to go to court (Minutes of the National Victim Friendly System meeting, 1<sup>st</sup> quarter meeting held on the 29<sup>th</sup> March of 2016).*

The challenge of limited access to justice was also echoed by one participant who said that:

*I know of communities in Chiredzi, where for them to get to the nearest police station they have to walk about 10 kilometers. So imagine the cases that go unreported and unattended because someone cannot foot for 10 kilometers [walk to service provider] (Mr Chikerema).*

The access challenge was also corroborated by a key informant, who noted that

*The inaccessibility of the VFS stakeholder by users makes the VFS ineffective. Furthermore, the VFS court is in 27 courts. And of the 27 courts only 18 are functioning. Zimbabwe has a total of 52 magistrate courts with only 18 are functional at the moment. The 52 courts are themselves inadequate This make services inaccessible to rural children (Mai Nharo).*

It is noticeable from the selected accounts above that judicial services are largely out of reach of many and suffer limited geographical coverage. Section 81 of the Zimbabwean Constitution (2103) not only spells out a comprehensive list of children rights but states that children are entitled to adequate protection by the courts. The current finding that children are disconnected from the courts does not only deny children access to a service but also represents a violation of their rights. As a result the majority of children remain cut off from much needed services including justice in the face of violations. The urban concentration of services including access to justice has its roots in the colonial legacy. Services were largely to benefit the white minority with little or no regard to the majority black population (Hall 1995). One of the implications of limited access to justice is the possible premature withdrawal from services (Kaseke 1995). This could also explain the witness withdrawal discussed above. In addition, children with disabilities may suffer exclusion from justice (Muridzo, Chikadzi and Kaseke 2018b). Given Kheswa (2014, p.961) estimates that “90% of the mentally challenged children experience sexual abuse at some point in their lives”; such children may remain alienated from the justice system. This current finding is in line with that of Kaseke (2015) who found similar results looking at access to social security services. According to Kanyenze, Kondo, Chitambira and Martens (2011) the majority of Zimbabweans live in rural areas.

### **Releasing of CSA offenders on bail into the child’s environment**

Releasing of CSA offenders on bail into the child’s environment was also identified as another notable loophole of the VFS justice system. According to the participants CSA offenders have the right to bail and can apply for bail. In one of the cases the accused was released on bail at their given address. Participants explained the explained that this often meant the very same environment where the abuse took place and where the child resides. The court record read:

*By consent of the State, the accused is granted bail. Accused is ordered to reside at given address until the matter is finalised. The accused is ordered not to interfere with the witnesses until matter is finalised (Harare case 99).*

The weakness of releasing of accused persons in the child’s environment was also echoed by one participant who said that:

*While our policy [legislation – the Children’s Act] provides for the placing of children in places of safety or alternative care, we have very few places of alternative care and homes. In the end children are released in the very environment where the abuse occurred. So those are some of the gaps (Mrs Banda).*

Mrs Gwara, one of the key informants corroborated and noted that,

*Children are released back into the same environment as the perpetrators. We do not have the shelters and infrastructure to place child survivors. The VFS is not protecting the victim. The VFS overlooks the victim (Mrs Gwara).*

The selected extracts from court transcripts above it is clear that the accused perpetrators may be released back into the ecological environment of the child survivor. Not only does realising offenders in the child's ecological cause secondary trauma it has the potential of resulting in the withdrawal of cases discussed above. According to September, Matne, Adam, and Kowen (2000), CSA primarily results in trauma; while unintended negative interventions result in trauma which they refer to as secondary trauma. Various studies (Lalor and McElvaney 2010; McPherson, Scribano and Stevens 2012; Muridzo 2018), find that in a majority of cases children are sexually abused by persons known to them located within the child's micro ecological environment. Releasing of the CSA offenders into the same community as the child survivor may allow for perpetrator and survivor contact leading to the child and families experiencing secondary trauma. The right of the accused to bail does not translate to the negation of the right to protection for survivors. While the Children Act (2001) provides for the placement of survivors in places of safety, this current finding exposes the inadequacies of existing child protection systems. Form one of the participant's comments that places of safety are few points to policy inadequacies and or under resourcing. Again, this points to the challenge of limited access to services that was raised above.

## RECOMMENDATIONS

While CSA in itself is a serious rights violation (Muridzo, Chikadzi and Kaseke 2018b), the shortfalls that were identified in the current study represent denial of rights. The legal shortcomings inherent in the VFS justice system sighted above: legal contradictions; witness interference; limited access to the courts and releasing of accused CSA offenders on bail into the child's environment; negatively affected access and provision of much needed holistic services to survivors of sexual abuse. In addition, these flaws denied survivors their rights to justice; rights contained in the constitution and those in international conventions to which Zimbabwe is a signatory (Chitereka 2012). Given the well documented effects of CSA on survivors and their ecological environment (Muridzo 2018), the following recommendations are made:

- Governments must harmonise laws in line with international conventions on the rights of the children to which they are signatories. Gwirayi (2013) further to say what is need is implementation of the commitments.
- Multisectoral forum responding to CSA should increase access of services including judicial services. This will guarantee survivors access to much needed interventions.
- Governments must also put in place enabling legislative frameworks that prohibit withdrawal of cases of CSA before the courts.
- Child Protection Services must guarantee CSA survivors places of safety.
- The courts must release alleged CSA offenders on bail, outside CSA survivors' ecological environment.

## CONCLUSION

The paper has revealed that there exists a number of shortfalls in the VFS legal system. These are contradictions; the system permitting witness interference; the system suffers limited coverage and that the system releases offenders on bail into the child's environment. These flaws potentially compromise the critical interventions for child survivors and valuable child protection measures. Legal interventions can be strengthened through statutory and policy reforms. Without adopting such legal and policy reforms, exiting child protection measures and legal interventions in particular will remain weak to the detriment of child sexual abuse survivors.

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