FACTORS RESPONSIBLE FOR LOW CONVICTION OF CHILD SEXUAL ABUSE OFFENDERS- LUSAKA DISTRICT, ZAMBIA

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Abstract

Child Sexual Abuse (CSA) is a worldwide phenomenon which has evolved from a matter of family to public concern. Numerous researches have demonstrated tremendous after-effects inclusive but not limited to psychological and physical. The international community, Zambia included battles to combat this ravaging scourge. Prosecution of offenders has re-emerged as a measure to stop CSA. This study examined factors responsible for low conviction of offenders of CSA in the face of substantial evidence. Survey design using qualitative methods: a questionnaire, semi structured interview and participant observation methods were used to conduct the study. The results showed: absence of technical knowledge of child psychology in courtrooms, an adversarial court system, official's lack of skills and training, understaffing and poverty, contribute to the failure to convict offenders.

Keywords: Child sexual abuse, conviction, victim, sexual abuse, criminal justice System

Introduction

Society is beset with the onslaught of CSA. Society's survival is threatened and Zambia with a population of 14million, 45% of whom are children, is severely affected. Successive years reveal increase from 38% in 2011 to 41% in 2013 (National Crime Statistics). Government has reacted

sharply to the escalated increase; thus, Penal code Amendment Act No. 15 of 2005, an act relating to CSA where minimum jail sentence for offenders was increased to 15years. Prior to that, sentencing was discretion of the court, thus even for a day. With the amendment, subordinate courts only hear and deceide whether an accussed based on the merits of the case is guilt and then sentencing is left to Judges of the High court for purposes of stiffer penalty with regard to longer jail sentence above 15years. This was regarded an effective measure that would deter and reduce CSA. To the contrary, stringent punishment has resulted in fewer convictions. 2015 makes 10 years since the amendment of the penal code on CSA cases and whereas statisitcs show that only 25.4% children were sexually abused in 2005 now about 41% (2015) are abused. There is growing disillusionment about the efficacy of the law to prevent CSA. This paper highlights, discusses and examines factors responsible for the low conviction of offenders of CSA in Lusaka District; the interconnection of factors and how this eventually leads to failure to convict offenders in the face of substantial evidence.

Methods

Sample and Procedures

Survey design using mixed methods were used to conduct the study and collect data, thus, a questionnaire, semi structured interview and participant observation methods. Questionnaire items were constructed on the basis of the study topic and literature review. 310 subjects purposively selected took part in the study (refer to table 1 below). Parental and children's consent was sought for children's participation. We adhered to ethics dealing with vulnerable children to avoid secondary victimization. Children were contacted through prosecutors and later observed twice on respective court dates in addition to the interview. Inclusion criterion was: survivor of SA, aged between 6-18yrs and were appearing in a CSA case as a witness. Lawyers were met at court and requested for participation. Mixed approach was also used for data analysis.

Table 1: Demographics of the participants (N=310)

Participant.	No.	Distribution.	Sex.		Age.	Work/experience.
			M.	F.		
Judiciary.	60	40 Mag.	25	15	25-50 (M=36)	3-26yrs (M=10)
		20 C/clerks.	14	6	21-45 (M=32)	2-25yrs (M=9)
Police Officers.	100	40 PP.	25	15	21-49 (M=33)	2-27yrs. (M=10)
		30 VSU	20	10	21=49 (M=34)	2=27yrs. (M=12)
		30 FD	18	12	21=49 (M=31)	2-27yrs. (M=11)
SAC	100	N/A	85	15	6-18yrs. (M=14)	N/A
Lawyers	50	N/A	35	15	25-51 (M=36)	3-26 (M=10)

Note: Mag. stands for magistrate; C/clerk for court clerk; PP for Public Prosecutor; VSU for Victim Support Unit; FD for Front Desk; SAC for Sexually Abused Children.

Results

Lack of understanding of CSA by stakeholders

Have you ever been trained in CSA, its impact and consequences, or child studies?

Table 2

Participant		Frequency	Yes	%	No	%
Magistrate		40	10	25	30	75
Clerk of court		20	5	25	15	75
Lawyers		50	5	10	45	90
Police	VSU	30	20	67	10	33
Officers	PP	40	15	38	25	62
	FD	30	5	17	25	83

Table 2 showed 75% magistrates, 75% clerks of court, 90% lawyers and 60% police officers were not trained in CSA or child studies. Muller, Hollely, Minnie and Muller (2009) state that for most service providers whenever they meet a “victim” of SA for the first time, the person often look just like any other. Service providers lack understanding of cognitive development and mental wellbeing of children that have undergone traumatic or stressful life situations in courtrooms (Muller, 2003). Effects of CSA include psychological, social and medical problems (Kendall-Tackett, 2002). Putnam (2003) argues effects may occur in cycles, manifesting immediately or later.

Theoretical models, moderating variables that contribute to the development of chronic posttraumatic stress symptomatology include degree of physical injury e.g., vaginal or anal intercourse, pain or danger resulting from the abuse and relationship to the perpetrator (Finkelhor, 2010). Other

factors include use of force, frequency, penetration and multiple perpetrators (Leserman, 2005). Erikson's psychosocial theory of development postulates that for most children, CSA occurs during the stages when major life tasks are supposed to be achieved, which are however, negatively affected (Dacey and Travers, 2002). Marc and Andrew (2011) argue that CSA affects the victim's development of trust and interpersonal skills adversely. Dacey and Travers (2002) posit it is crucial for children because SA may lead to feelings of inferiority.

Multiple interviews

Approximate the number of times you were interviewed by either your parents or others following disclosure of SA to the time you testified in court.

Table 3 Results of estimated number of interviews

Frequency.	Estimated of no. of interviews.					
	1-5	%	6-10	%	11-15+	%
100	23	23	52	52	25	25

Results in table 3 showed 77% victims were interviewed more than six times before going to trial. Children are generally interviewed between four and eleven times before trial and this serve more as a revictimization leading to suggestibility (Marc and Andrew, 2011).

Suggestibility is influencing of the child in one way or another, which results in the contamination of the original story (Muller, Hollely, Minnie and Muller, 2009). Faller (2000) defines suggestibility as the degree to which one's memory or recounting of an event is influenced by suggested information or misinformation. Kaufman (2006) found that when people are given misinformation, their responses were correct only 43% while when not, 67%. Faller (2000) posits that children can be influenced to say abuse occurred when it did not, and to say did not occur when it did.

Children usually trust other people, coupled with a natural inclination towards pleasing others, particularly adults and figures of authority, i.e., adults are always credible and competent on any matter (London, 2001). Lyon and Dorado (2008) noted that when a parent provides information, it would be believed as true simply because the parent said so. Kaufman (2006) argues that by simply mentioning an object in the course of questioning, you can add the object to someone's recollection.

Adversarial Court System-is understood (in this study) as a court system where the justice system and the legal process adds more trauma in addition to the sexual abuse experience on a victim due to the coercive nature of the legal system and procedures. Among the concerns are the victim child having to wait for trial for a long time, issues in the trial process such as implications of the Rules of Evidence and Cross Examination which

cause stress and truama on the children as well as coming face to face with suspect while giving testimony.

Describe your feeling (of anxiety/fear) while in court.

Table 4

Frequency.	Age.	Low.	%.	High.	%.
100	6-18	20	10	90	90

How did you find court during cross examination.

Table 5

Frequeny.	Friendly/accommodating.	%.	Unfriendly/unaccommodating.	%.
100	8	8	92	92

According to table 4, 90% victims were anxious in court while in table 5, 92% described court set up as unfriendly. Experts have described court setup as adversarial for victims of CSA (Schetky, 2014) and here below we focus on various factors illustrating that view.

Traditional court system- understood (in this study) as one that has made little or no strides in terms of reforms (legal processes and procedure) aspiring to move along with time and accommodate vunerable children that now appear as witnesses. Eastwood and Patton (2002) found the criminal justice process (CJS) reiterating many emotional and psychological characteristics i.e., physical and emotional fears, of the SA experience and victims overcoming such to disclose abuse. Dodge and Pankey (2003) identified nine stressors of the CJS including facing the accused and recounting embarrassing and frightening incidents in public. Nathanson and Saywitz (2003) argue that the presence of other people may produce withdrawal or avoidance symptoms in some children. Eastwood and Patton (2002) found that victims would not recommend others to "go through the same hell" as it was not worth it.

Di Blasio, Lonio and Proccia (2004) found children asked to identify an adult involved in a staged robbery through an identification parade unable to correctly identify the person when viewing live parade while in contrast, able to do so with photographs. Nathanson and Saywitx (2003) found quality of evidence affected due to courtroom context which creates anxiety normally associated with fear of perceived consequences and testimony under these conditions, suffering damages of reliability and quality.

Cross Examination (CE)-Cross examination, is the questioning of a witness at a trial by the party opposed to the party who called the witness to testify in order to test the truthfulness of a given testimony (Black, 2009). At CE, victims are subjected to repetitive questioning and interruptions, unrealistic recall of specific times and details and rapid questioning which

exhausts victims that endure long hours undergoing questions over an abusive experience (Theron, 2005). Zajac and Hayne (2006) found multiple-part questions difficult to answer for children due to difficult language, use of negatives, double negatives and lack of professional's training in appropriate questioning techniques. Proving the case beyond reasonable doubt, an important aspect in criminal matters tested during CE, has been found to have psychological implications for SAC as it calls for the victim to testify as if it were happening in the present (Eastwood and Patton, 2002).

Communication-Was it easy for you to follow/understand language/procedures in court and why things were done in a particular way?

Table 6

Frequency.	Notsure.	%.	Yes.	%.	No.	%.
100	50	50	13	13	37	37

Results in table 6 indicated 37% victims were not able to follow proceedings or understand legal procedures while 50% were not sure of what was happening. Victims could not follow proccedings due to the use of legal terminilogies without simplification especially with consideration to the developmental age of most of the children when they appear as witnesses.

Did the prosecutor or clerk of court take time to explain the meaning of certain words/procedures used in court e.g., plea, trail, adjournment, cross examination, defense etc.

Table 7

ɛquency.	Yes.	%.	Notsure.	%.	No.	%.
100	7	7	13	13	80	80

According to table 7, 80% stated that they were not aware of what was happening in court neither were they familiar with the terminology used. Zajac & Gross (2003) argue that court conventions and procedures of communication are not only foreign but also intimidating and confusing for children. Shaffer (2004) posit that children use language according to their developmental age. According to Ainsworth, Blehar, Barnett & Waters and Wall (2014), any lack of understanding for the children may serve to exacerbate distress already experienced as a result of the maltreatment. Sternberg, Lamb, Orbach, Esplin & Mitchell (2001) identified anxiety, irritability, hyper arousal, social withdrawal, fear, difficulty concentrating and problems of communication as relevant to courtroom. Study has shown that stress induces impairment of prefrontal functioning, an area for emotionally significant memories (Bremner, 2001), while the anterior cingulated gyrus is functionally less active with trauma and stress (Restak,

2000). Kallstrom-Faqua (2004) found that CSA causes disruptions in a victim's sense of self and ability to regulate reaction to stressful events.

Approximate the number of times you appeared in court before your matter concluded.

Table 8

Frequency	No. of times					
	10+	%	20+	%	25+	%
100	18	18	47	47	35	35

Results indicated 82% victims attended court more than 20 times before their matters concluded while18% attended up to 10 times.

Approximate the number of cases you handle in a year.

Table 9

Official	Frequency	2011	2012	2013
Magistrate	40	550+	450+	650+
Prosecutor	40	650+	750+	700+

Results showed that on average a magistrate handled 400 cases in a year while prosecutors had at least 500 cases. Theron (2005) argues that the problem of waiting for trial may appear to be procedural but yet simply shows the inability of the CJS to adequately focus on the victim's needs, thus CSA has represented an immense challenge to the CJS. Eastwood and Patton (2002) found the CJS interaction with the victim important in facilitation of healing of trauma and a reflection of an effective system. Ashworth and Horder (2013) argued that at the center of criminal justice and law is the principle of preventing harm. Charuvastra and Cloitre (2008) state that police responsiveness must focus on the needs of the child beyond resourcing or administration constraints. Sagy and Dotan (2001) highlight the need for police skills-interviewing and interrogating, that enable officers to relate to children victims together with their families in a manner that does not cause more trauma also known as secondary victimization.

Discussion

For many stakeholders, such as magistrates, defense counsel, police officers and prosecutors, the focus in criminal proceedings is the law. For a victim, however, dramatic changes take place after being exposed to SA and the victim is not just like any other person. SA constitutes an acute traumatic event changing and affecting the victim in many ways (Kallstrom-Faqua, 2004). The victim develops emotional, psychological and cognitive difficulties which affect ability to function psychologically or otherwise (Lev Weisel, 2008). Children than adults suffer intensely and persistently to trauma of SA as it is unique in terms of trauma compared to other types of trauma. A justice system that lacks understanding of the effects of abuse

basically results in the child suffering distress. It is the serious misunderstanding of the victim in court therefore, that jeopardizes objective adjudication of the law (Muller, 2003) and the victim cannot be effective as a witness; hence a guilt offender is acquitted and not due to insufficient evidence.

Victims of SA are interviewed many times, table 3 showed 77% were interviewed more than six times before trial. Undergoing multiple interviews has serious implications including suggestibility. Suggestibility affects the quality of testimony hence watering down the weight of the testimony. It often makes the child sound rehearsed as the original story loses consistency and the defense capitalizes to reduce credibility of the case. Suggestibility is also crucial because a belief exists that children can be misled, influenced and manipulated (Faller, 2000). Courts have therefore set a high standard of proof for sexual offences, especially involving children. This is with reference to the Rules of evidence which provide for coroboration in sexual offences hence the victim having to recount an abusive ordeal from the beginning to the end, essentially making the child re-live the entire experience as if it is happening again. Thus, to prove the case beyond all reasonable doubt. Children's memories, however, do not remain static and are affected every time the event is discussed (Schneider, 2010). High standard of proof equally includes the part where any little doubt in the mind of the magistrate going to the benefit of the accussed making the children feel distrusted by the legal system. At the same time magistrates are not given options in terms of decision making as long as the set standard is not met. In addition, children are subjected to multiple interviews which do not help in that by constantly talking about a traumatic event, victims remember every detail of a very intimate, painful and yet embarrassing experience, resulting in significant emotional stress and so the witness may dissociate to mentally escape (Marx, Calhoun, Wilson and Meyerson, 2001). Zajac and Hayne (2006) argue that multiple interviews diminish the witness's motivation and co-operation by the time he/she appears before court.

Most abusers tell victims they would not be believed and would be held responsible for the SA (Loverso, 2008) and the greatest fear of a victim is not to be believed (Pipe, Orbach, Lamb and Cederborg, 2007). Victims therefore have a tough time once in court: multiple interviews, threats of the abuser and a system that does not believe them. Eastwood and Patton (2002) posit that when the disbelief is distinctly and callously verbalized in the courtroom, the survivor is left feeling like an accused.

Unlike other judicial systems, the Zambian system while having made some strides in addressing CSA, such as amendment of the penal code (cited above) on sexual abuse of children and enactment of the Anti-Gender Based Act, may still be looked at as static and "traditional". This is because

only few changes in response to the 21st century demands such as the necessity to make provision for vulnerable children for their justice needs have been made. Children are now an active party, however, the system itself has not changed: training of officials and procedures clearly out of touch with today's reality and in several ways, abusive to children. It has remained an adult-oriented place using same procedures on vulnerable children, thus, still insensitive to their special needs, demands and requirements of justice. Children victims are subjected to confrontational testifying due to an adversarial and rigid court procedure. With visible traumatic symptoms, they come face to face with the offender. This means no physical separation and thus provides a threatening environment for the victim. This could be avoided through videotape and broadcasting of testimony via closed circuit hence avoid serious emotional distress which affects reasonable communication (Cross, Walsh, Simone and Jones, 2003).

In certain instances, children testify in the presence of strangers. Table 4 showed that 90% were fearful during proceedings which made them anxious and affected the quality of evidence. This was exacerbated by the physical identification of the alleged offender during trial and children often failed to identify individuals they had lived with for years. Experts have therefore described the above happenings as yet another form of abuse, only this time being the justice system itself (Eastwood and Patton, 2002).

A victim is further subjected to cross examination (CE) a legal requirement for all witnesses appearing in the court of law including vulnerable children victims of SA. CE, regarded as the center piece of the proceedings, is without doubt a well meant legal procedure, however, regularly abused and working against some clients of CJS. CE does considerable harm to SAC. According to table 5, 92% victims described CE as unfriendly. CE is by its very nature, very forceful as the defense twists questions the victim has to respond to. Some times responses are restricted to yes or no answers without further explanation until the prosecutor re-examines, by this time however, damage may have already been done. CE is also confusing because questions consecutively follow each other before the witness processes his/her thoughts. For most lawyers, the objective is to confuse the witness. This however, need not be, but to examine facts placed before court in order to discern the truth (Graycar and Morgan, 2002) and help the court come up with a more justifiable resolution. For most lawyers, if in the process of destroying evidence, it is necessary to destroy the child, then so be it (Eastwood and Patton, 2002).

The defense may also bend and distort evidence by suggestive questions. Muller, Van der, Merwe (2004) argues that justice cannot prevail in an atmosphere where witnesses are influenced and badgered. Thus words become weapons and the outcome depends on the confrontation between the

two sides. In the end the victim is placed in adversarial conditions which tests resilience of even the most resourceful adults (Zajac and Gross, 2003). Thus, the child is treated as though he/she has the same IQ with adults and counsel demands unrealistic specific times and details. The victim cannot think straight and gets completely worn down, that he/she begins to agree with anything. The result is inaccurate testimony hence the accused gets acquitted.

The kind of communication employed in criminal court proceedings, usually technical, often leaves victims at a loss, especially those in the early stages of language development (Shafter, 2004), a factor that is rarely considered. Table 6 showed that only 13% victims were able to follow proceedings while 37% were not and the remaining 50% were lost while table 7 indicated 80% had no one to explain the meaning of legal terms used or why things were done in a particular way during proceedings. Thus, the accepted terminology, certainly beyond comprehension of the victim, is in itself abuse and does not contribute to serving justice needs for victims. Jonker and Swanzen (2007) argued that court environment leaves children practically with little or no room to negotiate or maneuver, especially because this is an alien environment. Courtroom environment therefore stresses and confuses victims who are unable to comprehend and contribute meaningfully.

Police attitude and response are critical to ensuring enforcement of the law. Cross, Finkelhor and Ormrod (2005) argue that police know how to investigate crime, but often fail to apply this knowledge to child sexual assault. Singh (2004) postulates the historical "lackadaisical-uninterested, lukewarm" approach of police investigations; inadequate and inappropriately conducted and delayed evidence. The question is how effective are investigations in CSA cases? For this study, police rarely visited the scene of crime to consolidate evidence and connect the suspect to the child's story while most officers lacked skill and training (83% in table 2). Additionally, many police officers had a 'do not care' attitude towards CSA cases and Maguire (2009) argues that police initial response makes a lasting impression and if it is problematic, may traumatize the victim and the family withdrawing the victim from the CJS.

Police officers require right skills and personality to enhance convictions in CSA e.g., attending skills and a personality sympathetic to the victim. Table 2 indicated that only 17% front desk and 67% victim support officers possessed such skills. Right skills are however, important as research has, for example, shown that a female victim is more comfortable to deal with a fellow female when reporting a case than a male officer, no matter how good and welcoming he might be (Eastwood and Patton, 2002). However, such skills can only be acquired through appropriate specialized

training. According to Echlin and Osthoff (2000), successful intervention typically requires substantial knowledge about the dynamics of SA but such expertise has traditionally not been part of the CJS (Mills and Yoshihama, 2002).

Delayments and unnecessary adjournments characterize proceedings compounded by poor prosecutorial skills. Dodge and Pankey (2003) identified delayment and numerous unforeseen adjournments as one of stressors of the CJS. Table 8 indicated 82% victims went to court more than 20 times before their matters concluded. Delayment of cases may be attributed to, insufficient staff, lack of specialization and a heavy workload. Table 9 showed a magistrate handled a minimum of 400 cases every year while prosecutors had about 500 cases. Other factors were poor work attitude, corruption, defense counsels that had numerous cases before the subordinate and high courts and few courtrooms. Machandia (2005) suggested that the traditional slow response of the courts may deter victims from filing complaints while corruption threatened the effectiveness of the law. Thus the CJS has simply failed to focus on the needs of the victim hence a higher attrition rate of CSA cases.

To be effective, prosecutors need to conduct what is known as a pre-trial, one or two days before the actual hearing of the matter. When a victim is a child, this is even more necessary to build rapport and enable the child share intimate yet personal issues with a stranger. Evidence shows that when with a warm, supportive interviewer, children are more resistant to misleading questions (Lyon, Saywitz, Kaplan and Dorado, 2001) and when questioned under appropriate circumstances, they provide court with forensically important evidence. However, with such a huge workload, prosecutors did not seem to have sufficient time to prepare themselves or victims for court. Prosecutors must also possess necessary skills. Lamb, Hershkowitz, Orbah and Esplin (2011) emphasize the need to only conduct an investigatory interview if one is trained or directly supervised. Prosecutors, thus, should know when and what questions to ask, for example, to ask developmentally appropriate questions in the manner that meets the child's level of vocabulary and ability to understand (Johnson, 2004). Children give accurate answers to simple questions (Lyon, Saywitz, Kaplan and Dorado, 2001). Gulota and Resoning (2004) suggest that the consequence of poorly conducted questioning during trial might be instrumental for offenders been acquitted.

Though socioeconomic status were not mentioned in the results section, it is however important that it forms part of the discussion, especially with regard to the topic under review. This is because poverty is a major issue in this part of the world and in a number of ways connected to CSA. Among other factors, socioeconomic conditions affect testimony in SA

cases. Currently, poverty characterizes many Zambian families, especially the shanty townships in Lusaka district. Lusaka district is densely populated with over 2.5 million people but with limited social amenities. Townships have high poverty rates, number of children not attending school and orphaned mainly due to HIV/AIDS which has compounded occurrence of CSA (Mwewa and Qinglin, 2015). Majority of men and youth are unemployed, unable to support their families and have resorted to illicit drugs and alcohol (Central statistics office, 2012). Thus, from such a scenario, it is not difficult to establish how poverty may lead guardians to technically withdraw matters from court once the offender offer material things or promise marriage. Gallo and Matthews (2003) argues that though domestic violence occurs in all socioeconomic groups, there are close correlations between poverty and domestic violence. Thus, poverty directly or indirectly affects CSA.

Conclusion

There is no doubt that reform of the legal system; processes and the courtroom setting is needed to ensure the protection of children victims. Although we live in an adult-oriented society, legislation has to learn to protect children as there seem to be no better way than through legislation and the courts. Results showed that stakeholders were ignorant of CSA, an adversarial court system, officials lack of proper training and poverty contribute to low convictions of CSA offenders. This as it maybe, there is urgent need for reformation of legislation and the CJS in order to properly answer to the call of justice for children while at the same time avoid abusing some of its clients. Future studies should focus on ways of enhancing therapeutic jurisprudence that will improve and maintain the integrity of the CJS as well as ensuring that victims are not exposed to further victimization. This study is important as it enhances restructuring and reformation of the law and policy hence contribute to the development of a health society. The implication of the findings are obvious; continued rise in cases of CSA as offenders will not get the message that CSA is unacceptable, loss of confidence by the public in the CJS and endangered national social security due to CSA.

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