

# THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

## An Assessment of the Effectiveness of the Victim Friendly Legal System in Zimbabwe: A Case Study of Harare Metropolitan Province, Zimbabwe

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### **Abstract:**

*This study assessed the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province. The study focused on the victim friendly legal system in Zimbabwe since its inception in 1997, targeting the protection of child victims of sexual abuse from further traumatising in the criminal justice system. The study was conducted at the Harare Magistrates Courts which are located at the Rotten Row Building on the western side of Harare. The research methodology that was used to conduct the study was qualitative in nature. The research method used was a case study within the interpretive paradigm. The purposive sample used in this study consisted of seventeen (17) participants who were selected from the regional magistrates, regional public prosecutors, victim friendly unit police officers, and intermediaries who held different positions in the victim friendly legal system in Zimbabwe. Data generation was done using the in-depth face to face interview, observations and analysis of relevant documents to the study. The research findings from this study were presented in the form of themes that emerged. These themes were then divided into two categories, that is, themes concerning the positive aspects of the effectiveness of the victim friendly legal system in Zimbabwe and those concerning the negative aspects of its effectiveness. Themes that emerged were: the need to capacitate the victim friendly legal system staff members; recognition for professional counselling services need to child victims of sexual abuse; the need to embark on community awareness campaigns on the role of victim friendly (court) legal system procedures; establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe; inadequate victim friendly court equipment; challenges on the current policy and institutional arrangements of the victim friendly legal system in Zimbabwe; problems of safer houses; and interference by family members in trying to influence the victim in court. Recommendations from this research were on policy makers in government to come up with legislation that effectively complement the efforts by victim friendly legal system in protecting child victims of sexual abuse from further traumatising; the need to establish a one stop shop infrastructure in the victim friendly legal system and provision of transport, meals and accommodation to victims and vulnerable witnesses when they attend court sessions.*

**Keywords:** child sexual abuse, victim friendly system, trauma, victim.

### **1. Background and Motivation to Problem of the Study**

The establishment of the Victim Friendly Legal System (VFLS) in Zimbabwe was a development that was initiated by the government, women and children's rights activists in the early 1990's. In 1992, the Vulnerable Witness Committee (VWC) was set up by the Ministry of Justice, Legal and Parliamentary Affairs (MJLPA) and it comprised of magistrates, prosecutors, intermediaries and police officers. These people had the mandate to investigate problems faced by vulnerable witnesses in the Criminal Justice System in Zimbabwe (CJSZ). This committee was headed by the then Regional Magistrate Malaba and in 1993 the committee presented their "Vulnerable Witnesses Committee Report." A regional magistrate is a judiciary officer who presides over criminal cases of a serious nature. These crimes include rape, armed robbery, car theft, robbery and fraud. The Committee's Report spelt out the problems that were encountered by victims of crime and it presented its recommendations to the Ministry of Justice, Legal and Parliamentary Affairs. The committee was tasked with the responsibility to see that all victims of crime such as women and children were adequately protected from further abuse and trauma within the Criminal Justice System. This resulted in a multi-sectoral approach to offering welfare and judicial services to survivors of sexual violence and abuse. The recommendations of the committee's report incorporated contributions that were also made by most stakeholders with an interest in women and children's rights.

The Vulnerable Witnesses Committee Report (1992) findings and recommendations led to the formation of the Victim Friendly Court Committee that oversees the implementation of the protection of victims of crime and their active participation in the Criminal Justice System in Zimbabwe (CJSZ). The composition of the Criminal Justice System in Zimbabwe includes police officers, magistrates,

judges, public prosecutors, intermediaries, prison officers and lawyers. These professionals in the Criminal Justice System have a responsibility to ensure that justice delivery service is fair and should be given within a stipulated time frame. This raises the confidence of victims and alleged abusers on the CJSZ. The criminal legal procedure prevailing in South Africa, Zimbabwe and Namibia are based on the accusatorial system. The accusatorial system entails a conflict between the State and the person accused of committing a crime. This system is widely used in most of the countries in the world and it had been proven to be effective. The system pits the public prosecutor against the accused or his/her defence lawyer as a mechanism of arriving at the truth. Child victims and their witnesses are expected to eloquently and comprehensively verbalise their memories of the crime within the confines of the criminal justice system (Saywitz, 1995). They are expected to appear in person in court and present themselves for cross-examination by the perpetrator or his/her defence lawyer.

Copen (2000) also noted that the criminal court procedure created “the most challenging, demanding, confusing and difficult environment for any victim or witness”. These challenges were attributed to the victims’ fear of the police, court officials and the accused. There was no trust for all these people by victims of sexual abuse, thus creating a difficult environment for them to openly say what would have happened to them at the hands of the alleged abusers. The fundamental characteristics of the accusatorial system include confrontation, oral testimony and cross-examination. These fundamentals create particular difficulties for the victims and witnesses to any form of abuse, that is, sexual, physical, neglect or emotional (Davies and Westcott, 1995). Such difficulties could be as a result of misunderstandings of how the accusatorial system operates. From 2006 up to date, research has established that in order to protect child victims and witnesses from re-traumatisation during the course of the trial, there is need for professional counselling services (Marowa, 2011). The accusatorial system has proven to be effective in the criminal justice system due to its flexibility in allowing both the victim and the alleged abuser to express themselves in court without obstacles. For example, victims and alleged abusers have the freedom to express themselves using the language they are comfortable with such as Shona, Ndebele, Tonga, etc.

### *1.1. Statement of the Problem*

The effectiveness of the Victim Friendly Legal System in Zimbabwe has been perceived in different ways with regards to child sexually abused victims. These perceptions on its effectiveness from regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers have either been positive or negative. Claims by the different media houses in Zimbabwe (Newsday, Daily News, The Herald, etc) have been made that child sexual abuse victims continue to be abused even after the abuse has been reported to the police. The current policy and institutional arrangements in Zimbabwe do not appear to effectively complement the Victim Friendly Legal System on the protection of child sexual abuse victims. In view of the background and motivation to the problem of the study, I sought to assess the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of sexually abused victims.

### *1.2. Purpose of the Study*

The purpose of this study was to carry out an assessment of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse. This study was a case study approach which focused on the victim friendly courts situated at the Harare Magistrate Courts, Rotten Row Building within Harare Metropolitan Province.

### *1.3. Objectives of the Study*

The main aim of this study was to carry out an assessment of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse. The specific objectives to the study included:

- To assess the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse.
- To explore the role of professional counselling in the victim friendly legal system in Zimbabwe.
- To identify gaps in the current policy and institutional arrangements that complements the victim friendly legal system in the protection of child victims of sexual abuse from being further traumatised.
- To establish the perceptions on the role of various stakeholders in the victim friendly legal system towards the protection of child victims of sexual abuse from further traumatisation.
- To determine the response of the various stakeholders on issues about the effectiveness of the victim friendly legal system.

### *1.4. Research Questions*

How effective is the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?

- What is the role of professional counselling services in the victim friendly legal system?
- What are the gaps in the current policy and institutional arrangements that do not complement the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?
- What issues have been raised by key stakeholders on the effectiveness of the victim friendly legal system towards the protection of child victims of sexual abuse from being further traumatised?
- How has the response been to issues raised by stakeholders on the effectiveness of the victim friendly legal system in Zimbabwe?

### *1.5. Delimitation of the Study*

The researcher focused on government line Ministries of Justice, Legal and Parliamentary Affairs (Department of National Prosecuting Authority), Ministry of Home Affairs (Zimbabwe Republic Police Victim Friendly Unit Section) and the Judicial Service

Commission (Victim Friendly Courts at Harare Magistrates Court). These institutions were assessed on their practices, perceptions, attitudes, behaviours, meaning and values on the effectiveness of the victim friendly legal system in Zimbabwe in the protection of victims of child sexual abuse from further traumatisation.

### 1.6. Limitations of the Study

- Generalisability of information across settings. Due to the fact that the Victim Friendly Legal System is Eurocentric hence became difficult to establish the effectiveness of the system in the African context.
- The need to abide by Official Secrets Act policy and regulations that bound all the research participants as they were all government officials who are not supposed to denigrate government policies.

## 2. Conceptual Framework

Very few researchers have described the criteria used for selecting a conceptual framework for guiding the design of professional counselling service as an effective intervention strategy on child victims of sexual abuse. The United Nations Convention on the Rights of the Child (UNCRC) defined a child as a person under the age of eighteen (18) years. The Convention also acknowledged children's freedom from violence in several of its provisions especially under Article 19 on freedom from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person(s) who has (have) the care of the child. It was from this international convention that I derived the conceptual framework to this study. The conceptual framework/model of the study is deductively anchored on the UNCRC as articulated under Article 19. In the present study, the UNCRC is anchored on four pillars of the judicial system, the family, victims of sexual abuse (children) and stakeholders in the child welfare sector. These pillars allowed me to build a stronger conceptual framework that guided the study. The convention's four pillars formed the bedrock of my study where the participants were drawn from them. This gave me a stronger conceptual framework to the study. It was also imperative to realise that "counselling" covers: the provision of information and advice to empower children and support others acting on children's behalf regarding all courses of action required to prevent or respond to incidents of violence; sexual abuse; legal counselling; and psychological or psychosocial counselling, that is, therapeutic interventions designed to prevent, mitigate or repair the mental, moral and social damage caused by violence including help to address feelings of fear, guilt, shame and confusion children may experience. This conceptual framework was inductively derived from two (2) theories, that is, Humanistic Theory and Trauma Theory.

### 2.1. Theoretical Framework and Perspectives

Most research studies have an explicit or implicit theory which describes, explains, predicts or controls the phenomenon under study. Theories are linked to conceptual models and frameworks; whereas a conceptual model is more abstract than a theory. A theory may be derived from a model; the framework is derived inductively from the theory (Burns and Groves, 2001). Theories are important for intervention assessment of perception research because:

- They guide the development of the intervention and the design and conduct of the study; and
- Attempt to explain how the intervention works and which factors facilitate or inhibit the effectiveness of the intervention.

There is need to make an assessment of different theories available within a topical area of interest before selecting one. Some of the theories that were assessed in this study included the behavioural theory, cognitive-behavioural theory, crisis intervention, assessment theory, systems theory, social work critical theory, humanistic theory and trauma theory. These theories were relevant to my study as they informed in some way ranging from the victims' behaviour, actions, feelings and thoughts about their situation. In order to make an informed decision in selecting a conceptual model, the researcher conducted a comprehensive review of the related literature on the topic under study. The present study derived guidance and direction from the two (2) theories: the humanistic theory and trauma theory that I perceived to be more relevant to my study.

## 3. Methodology and Paradigm of the Study

For the purpose of this study, I made use of the qualitative methodology because it allowed me to get a deeper understanding of certain behaviours, emotional feelings and attitudes of research participants in the study. Any research study is guided by an underlying philosophy in which assumptions are made about epistemology (how we know what we know) and ontology (the nature of reality). These philosophical ideas are strongly linked to specific ways of conducting research such as in this study. The social sciences distinguish between two competing paradigms (sets of basic beliefs): positivism and interpretivism. The relative merits of these two competing methodologies and their methods have been debated in the social sciences over many years. Those taking a polarised view on the matter argue that qualitative and quantitative research methodologies are incompatible, owing to their respective ontological and epistemological positions. However, some have argued that the two methodologies are not mutually exclusive and there has been an increasing move towards mixed method studies, usually under the philosophical position of pragmatism (Bryman, 1988; Hammersley, 1992; Howe, 1988). This study adopted the qualitative research methodology.

### 3.1. The Sample and Sampling Procedure

All items in any field of inquiry constitute a 'Universe' or 'Target Population' (Kothari, 2004: 7-8). The study population consisted of regional magistrates serving in the Victim Friendly Legal System at the Harare Magistrate Court, Regional Public Prosecutors, Intermediaries, Police Officers in the Victim Friendly Unit and the National Coordinator of the Victim Friendly System in Zimbabwe. The accessible sample in this study comprised of five (5) regional magistrates, four (4) regional public prosecutors, four (4)

intermediaries, three (3) victim friendly trained police officers and one (1) national coordinator of the victim friendly system in Zimbabwe. Purposive sampling technique was employed to sample the Victim Friendly Court (VFC) that was considered for the case study. The use of the purposive sampling technique in this study ensured that the assessment of the victim friendly legal system's effectiveness was tested with research participants of different ages, gender and experiences of working in the system under the study. Representative sample in terms of generalisation to the population was not aimed for. The priority for the research was on achieving a sample size that ensured a variety and depth of experiences.

### 3.2. Data Generation Methods

- In-depth face to face interviews;
- Documentary analysis of court proceedings; and
- Observations of the court sessions in particular, victim friendly courts.

### 3.3. Research Findings

- Need for capacity building for the victim friendly legal system staff members;
- Recognition on the need for professional counselling services need to child victims of sexual abuse; and
- Establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe.
- Inadequate victim friendly court equipment;
- Challenges on policy, the current and institutional arrangements of the victim friendly system in Zimbabwe; and
- Problems of safer houses.

### 3.4. Conclusions

There were mixed reactions amongst research participants on the effectiveness of the victim friendly system in Zimbabwe. Interestingly, some of the regional magistrates who were interviewed in the study were contented that the victim friendly legal system in Zimbabwe was better at Harare Magistrates Court than in other parts of the country. They also concurred that there was room for improvement to make this system effective in terms of servicing both the victims and the perpetrators to their satisfaction. There were also other regional magistrates who felt that the system was effective in the protection of child victims of sexual abuse from further traumatising. They went on to say that since the inception of the victim friendly system in Zimbabwe in the year 2000 up to date, there was a significant improvement in the way cases involving sexually abused child victims had been handled from the police up to the courts. Privacy and confidentiality of victims was now an ethical requirement as compared to the year's 2000 going backwards. The increase in the number of victim friendly courts from thirteen (13) in 2006 to the current twenty-six (26) courts countrywide; clearance rate of case trials within three days and the conviction rate of perpetrators were some of the indicators of the effectiveness of the system. It is therefore my conclusion to this study on the assessment of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised that I categorically declare that the system has been effective in the protection of child victims of sexual abuse from being further traumatised.

### 3.5. Recommendations

These recommendations take into account the realities of the Zimbabwean political, social and economic environment in which victim friendly legal system is working.

- Need for the Zimbabwean government to come up with a more comprehensive approach towards providing children with the protection they need. This would necessitate for more constitutional changes, where the government commits itself to uphold the protection of children's rights, and to embracing of all international instruments that promote children's rights.
- Enactment of the victim friendly legal system policy.
- Establishment of a one stop shop infrastructure in the victim friendly system.
- Provision of transport, meals and accommodation to victims and vulnerable witnesses.
- Mandatory training and sensitisation of the police, the prosecutor and the presiding officer (magistrate) on child development, child language skills, the psychological effects of sexual abuse, child trauma and the role of the victim friendly legal system in Zimbabwe.
- Acceptance of the role of the different actors/role players to the victim friendly system by the community and what it represents means that different actors/role players would not consider themselves as outsiders seeking to usurp part of their authority.

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