

REVIEW OF PROTOCOL FOR THE MULTI-SECTORAL MANAGEMENT OF CHILD SEXUAL ABUSE IN ZIMBABWE

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Abstract

The Victim Friendly System consists of multisectoral partners including the police, Ministry of Justice and Legal Affairs, Ministry of Labour and Social Services to create a conducive environment for efficient and effective management of child sexual abuse before trial, during trial and post- trial process. This desk review analyses the *Multisectoral Protocol on the Management of Child Sexual Abuse* in relation to international and regional instruments such as the United Nations Convention on the Rights of the Child, African Charter on the Rights and welfare of Children. In addition the contents of the protocol contents are compared analysed to national policy frameworks to identify the gaps in the system and how it can be improved. In general the protocol guides the implementation justice for vulnerable victims and witnesses in child sexual abuse in line with international and regional standards before trial, during trial and after trial. The protocol ensures that the best interests of the child are protected, children are treated with respect, that they are heard, express their views and ensure that they receive effective assistance when in contact with the law. It provides a framework for child protection in Zimbabwe. It however needs systems strengthening to ensure that there are adequate human and financial resources, accountability systems, management information systems a monitoring and evaluation system for efficient and effective delivery of child justice.

Key words: children, sexual abuse, multi-sectoral approach, child justice, victim friendly system

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1.0 Introduction

Child sexual abuse and other forms of perpetrations against children present a great concern to most people around the world (Zuberi, 2005). The ensuing outline will discuss the international, regional and national policy frameworks related to child justice. The *Protocol on the Management of Child Sexual Abuse* in Zimbabwe will be analysed in respect to current situation and gaps that need to be bridged to bring the protocol in line with international standards.

1.1 Background

According to Plan International, (2009) Zimbabwe has seen an increase in the number of reported cases of child sexual abuse over the past years. Sexual violence is experienced by at least 15.5% of young women aged 15-19 years. An estimated 60% of rape cases brought to the attention of authorities involve child survivors, with more than half of these being girls. In 2009 Victim Friendly Courts heard 1,222 cases of sexual violence against children. Emerging evidence suggests that sexual violence is a significant problem for vulnerable children, orphans, and children living away from their family, in a distressed socio--economic context straining the capacity of family structures and traditional coping mechanisms. National AIDS Council (NAC) estimates from 2009 note that as many as 1 in 5 OVC adolescent girls are exposed to sexual violence before their 18th birthday. High levels of sexual harassment and sexual violence have also been reported in schools with 13% of girls reporting being sexually harassed by teachers and or fellow pupils and, of this, 7% report having been forced into sex at least once.

Despite an increase in the demand for justice services, the supply of these services has not been able to match with demand. This has been aggravated by the fact that Zimbabwe has experienced a decade of political and economic decline over the past decade. Worsened by the HIV and AIDS epidemic, the ability to maintain equitable and high quality services including justice services have been curtailed. Resource constraints, brain drain, poor working conditions and general overburden with work has affected the delivery of justice in Zimbabwe including managing child sexual abuse.

1.2 Objectives of the Review

The review is meant to contribute to the overall objective of the Government of Zimbabwe in establishing an effective system of justice for children in contact with the law within the context of international and regional documents. Objectives of the review are:

This desk review of available literature provides an opportunity to:

- i. To review existing international, regional and national legislative and policy frameworks and related material on the Victim Friendly Initiative and the current information management systems used by the multi-sectoral partners in the management of child sexual abuse within the Victim Friendly Initiative.
- ii. To review the current information management system used by the Multisectoral partners.
- iii. Identify gaps that should be filled in the current protocol to bring the frameworks fully in line with international standards.
- iv. Come up with recommendations for improving the Multisectoral protocol.

2.0 International and Regional Standards

Children's rights are protected by the UN Convention on the Rights of the Child (CRC). It is the most 'complete' human rights treaty in that it covers virtually all the civil, political, social and cultural rights of children. It emphasises that children are holders of rights, and their rights cover all aspects of their lives. It applies to all human beings under the age of 18. Importantly, article 19(1) of the UNCRC states:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child 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 who has the care of the child.

Four of the rights set out in the CRC have been identified as general principles that are to be considered in the implementation of every article of the CRC and in all situations concerning children, importantly, these are:

- Non-discrimination (article 2)

- Best interests of the child (article 3)
- Rights to life, survival and development (article 6)

- Right to be heard (article 12)

Article 19 also obliges States Parties to undertake protective measures such as identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment (Subsection 2).

Other important and related articles in the CRC include:

- Article 9: separation from parents following abuse and neglect;
- Article 20: alternative forms of care;
- Article 24(3): protection of children from harmful traditional practices;
- Article 28(2): engaging in school discipline without violence;
- Article 32: deals with child labour;
- Article 34: protection from sexual exploitation;
- Article 35: obliges the state to take appropriate measures to prohibit trafficking in children;
- Article 37: protection from torture and inhuman or degrading treatment or punishment; and,
- Article 39: rehabilitative care for victims of violence.

Children's rights are also protected by the African Charter on the Rights and Welfare of the Child (ACRWC) which was adopted on the 11th July 1990 and came into force on the 29th November 1999. Zimbabwe ratified the Convention on the Rights of the Child (CRC) in 1990, while the African Charter on the Rights and Welfare of the Child (ACRWC) was ratified on the 19th January 1995.

Article 16(1) of the ACRWC states that:

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

sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has care of the child.

Article 16 also obliges States Parties to undertake protective measures such as identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment (Subsection 2).

Other important articles in the ACRWC include:

- Article 5(3): prohibits the death penalty for crimes committed by children;
- Article 11(5): take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child;
- Article 15: deals with child labour, and covers both formal and informal sectors of employment;
- Article 17: deals with juvenile justice, and prevents torture, inhuman or degrading treatment or punishment;
- Article 21: deals with harmful social and cultural practices;
- Article 27: deals with sexual exploitation; and.
- Article 29: obliges states to take appropriate measures to prevent the sale, trafficking and abduction of children.

The CRC is the most widely ratified treaty in the world and ACRWC enjoys signature and/or ratification from 20 countries in the region, with only Sudan yet to become party to the treaty. However, in Zimbabwe, neither the Convention on the Rights of the Child nor the African Charter on the Rights and Welfare of the Child has been incorporated into domestic law through an Act of Parliament. They thus remain on the international level, serving only to give guidance to the courts but not legally binding on the government of Zimbabwe to fulfil (Makoni, 2005).

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC 2005/20, 2005 is an important guide relating to child witnesses and survivors in order

to ensure justice for child victims and witnesses of crime, professionals and others responsible for the well-being of those children must respect the following cross-cutting principles:

(a) *Dignity*. Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected;

(b) *Non-discrimination*. Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status;

(c) *Best interests of the child*. While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:

(i) *Protection*. Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect;

(ii) *Harmonious development*. Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development;

(d) *Right to participation*. Every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

2.1 National Legal and Policy Frameworks

There are no rights for children specifically enshrined in the constitution. However they are entitled the rights guaranteed all persons in Zimbabwe, regardless of age, by the Declaration of Rights. Section 20 of the Constitution provides that no person shall be hindered in the enjoyment of his freedom of expression – that is, freedom to hold opinions. However, because of the cultural and societal attitudes and concepts of parental discipline, children are not always awarded the freedom to express these views freely. In addition children's rights are recognised in Zimbabwean law as defined by the Children's Act, the Guardianship of Minors Act, Sexual Offences Act, Criminal Law (Codification and Reform) Act, Domestic violence Act and the Education Act. In addition Zimbabwe has assented to the United Nations' Convention on the Rights of the Child and ratified the African Charter on the Rights and Welfare of the Child. The fact that the country has ratified international and regional conventions and has legal instruments that address issues of juvenile justice provides a strong basis for the rights of children.

Section one of the Children's Act provides for the creation of the Child Welfare Council to promote and encourage the co-ordination of the activities of organizations which have as their object the promotion and protection of the rights of children. Section three of Children's Act provides that if any parent or guardian of a child or young person assaults, ill-treats, neglects, abandons or exposes him or allows, causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or to injure or detrimentally to affect his health or morals or any part or function of his mind or body, he shall be guilty of an offence.

To ensure access to justice for boys and girls, section two of the Act provides for the creation of Children's courts for any area. According to the Act, the Minister, in consultation with the Minister responsible for justice, shall appoint a probation officer for each child's court, and that probation officer is responsible for safeguarding the interests of any child or young person who is brought before the court and be present during all the proceedings of the court. In addition the Act provides that children's courts shall not be bound by any rules relating to civil or criminal proceedings and the proceedings of a children's court shall be conducted in a manner the

presiding officer sees best fitting to do substantial justice. The law does not describe the proceedings for child justice thereby leaving room to subjective interpretation.

Section four of the Children' Act, provides for the removal of a child from his/her parents by a police officer or probation officer to a place of safety if the child is in need of care where the child is being neglected or abused. A child can also be removed if the officer believes any of the following offences have been or are being committed upon or in connection with the child: abduction, child stealing, assault and sexual offences, ill treatment, neglect or exploitation. Part three section seventy of the Criminal Law (Codification and Reform) Act makes it a sexual crime to engage in sexual intercourse with a young person below the age of sixteen. The Sexual Offences Act also forbids sexual intercourse with girls and boys and contains provisions dealing with sexual offences committed against young persons. Section 94 of the Criminal Law (Codification and Reform) 9:23 makes girl pledging an offence liable to fine and/ imprisonment.

The Education Act, section 65(2)(c), allows school authorities to cane boys as a disciplinary measure. These provisions are clearly discriminatory in effect. Corporal punishment is inflicted on boys and not girls. The issue is not to have girls and boys being accorded the same negative treatment in relation to canning, but to do away with corporal punishment as it is inhuman and degrading treatment. Furthermore canning is incompatible with UNCRC.

Furthermore the Ministry of Education and Culture has a circular on child abuse and neglect which details the forms of abuse teachers should be alert for, and how to deal with such cases when they arise.

The Domestic Violence Act (Chapter 14:2006) also provides for the protection of children. The meaning of domestic violence in the Act wide to include physical abuse, sexual abuse, emotional abuse, child marriage, virginity testing, forced marriages and female genital mutilation.

National policies include the National Plan of Action for Orphans and Vulnerable Children where children who are sexually abused The National Plan of Action for children has as its main function to document the program and projects for the realization of children's rights that

different Ministries, cooperating partners and other stakeholders are implementing. The Secretariat is located within the Ministry of Health and Child Welfare

While there appear to be a strong legal framework, and mostly in line with the CRC, there are still some outstanding issues when it comes to the protection, promotion and fulfillment of children's rights. There is a gap between the legislative and policy framework and the reality on the ground. There is also a serious lack of resources for implementation (financial and human), coupled by lack of information and awareness in how to access the protection of the laws. Zimbabwe has over 200 NGOs working with children in different capacities but mainly in the provision of services to children in response to the escalating numbers of orphans. At the government level, different ministries have been working on different initiative, all aimed at advancing and protecting the rights of children. For example within the Zimbabwe Republic Police, a Victim Friendly Unit has been established at the Police General Headquarters with 42 units in all districts. These units have the specific mandate of handling cases of child abuse.

2.2 The Victim Friendly System

The Victim Friendly System refers to measures in place in relation to the protection and active participation of girls and boys in the criminal justice system. The concept of the Victim Friendly Court System in Zimbabwe was initiated by the Government and women and children's rights activists in the early 1990's as cases of child sexual abuse were rampant and because the accused were more often than not acquitted on grounds of insufficient evidence. The young complainants were unable to testify in open court with the accused present and the courtroom "manned" by male officials. In 1992, a Vulnerable Witness Committee was set up by the Ministry of Justice, Legal and Parliamentary Affairs. The committee comprised magistrates, prosecutors, and police officers and was tasked to investigate problems faced by vulnerable witnesses in the Criminal Justice System in Zimbabwe. In 1993 the committee presented the "Vulnerable Witnesses Committee Report" outlining the problems encountered by victims of crime and suggested recommendations incorporated from contributions stakeholders with an interest in women and children's rights. The findings and recommendations led to the formation of the Victim Friendly Court Committee to oversee the implementation of the protection of victims of crime and their active participation in the criminal justice system: (courts, police, hospitals, schools and the

Department of Social Welfare). This also led to legislative changes to the Criminal Procedure and Evidence Act to accommodate vulnerable witnesses. The amendment allowed the use of a separate room from where the child would give evidence via a closed circuit television system; Use of an intermediary who acted as a buffer between the questioner and the child; the presence of victim support person and the use of anatomically correct doll. The Victim Friendly System provides for the formation of Child Protection Committees to capture issues of child protection from grassroots level.

The Victim Friendly Initiative institutionalises the provision of Victim Friendly Courts for vulnerable witnesses, most of whom are children. The courts are however plagued by chronic under funding and breakdown of equipment. For children in conflict with the law, a Pre- trial Diversion programme has been added to the pre-existing Juvenile Courts System however it is marred by lack of human resource for it to achieve its full potential. The coordination of activities within the VFS is fragmented and there is no coordination at the central point as outlined between line ministries like health, Social Services, justice and the police are decentralised.

In 2003, a team of professionals from health, social services, police, and justice developed the Protocol for the Multi Sectoral Management of Child Sexual Abuse in Zimbabwe. This protocol is a guideline that guides professional involved in the management of child sexual abuse in the Victim Friendly System, thereby outlining the roles, responsibilities and procedures to be followed when dealing with vulnerable witnesses.

2.3 A critical Analysis

This analysis of the protocol will be guided by international and regional guidelines on child protection and management of child sexual abuse. The system recognises that children are vulnerable and therefore need protection from sexual abuse. First, it is important to stress that the protocol establishes the principle that there are several categories of professionals that can and should provide assistance to child victims and witnesses of child sexual abuse throughout the justice process. It has often been argued that it is a primary right, as well as a duty, of the parents to provide such assistance and that the intervention of the State in this regard could infringe that

right and duty. However, it was also recognised that multi-disciplinary expertise of professionals can support parents, who are often unfamiliar with the justice process, on how to best assist their children.

The protocol provides that all cases of abuse should be treated as true. In this light the system is in line with section three of UNCR which states that the best interests of the child should be primary although they should not undermine the rights of the accused or convicted person. This is in line with the Criminal Procedure Codification and Reform Act which makes it a crime for failure to report such crimes.

Although the system provides for the protection of children from child sexual abuse, it does not protect children from the risk of becoming victims of recidivist offenders. There is no system that keeps a database of perpetrators of sexual abuse in Zimbabwe. The protocol empowers educational institutions such as nursery schools, primary schools, etc. to deal with child sexual abuse, through awareness raising, school based monitoring and guidance and counseling thus promoting the right to special preventive measures as enshrined in the UNCRC. Thus the protocol has a preventive and curative component.

The UN guidelines provides for the creation of a national coordinating authority to coordinate the various activities related to victims' assistance among the main actors involved in providing assistance to victims. The VFS in Zimbabwe has a national Committee of the VFC under the Ministry of Justice and Legal Affairs. Whilst this is noble in that it coordinates and monitors child abuse cases throughout the country, this is not a coordinating body of the protocol. In addition the funding of this structure is limited rendering the VFC weak in terms of efficiency and effectiveness in service delivery.

Pre-Trial Period

During the pre-trial period, the protocol provides for an intermediary to assist victims of child sexual abuse in line with the UN international guidelines. The Pre-trial period begins with the reporting of a case, investigations, medical examinations, social support, confidentiality of child victims is critical in the justice chain. It provides for a supportive police officer specially trained

to deal with vulnerable witnesses from the Victim Friendly Unit in the ZRP. This is commendable as it is in line with UN international guidelines. However the Protocol is silent on the capacity of the Investigating Officer to handle child victims and sexual abuse cases thereby the case may be handled by incompetent people who may end up victimizing the vulnerable victim. The protocol protects the victim by ensuring that all proceedings are confidential as required by the law throughout the justice chain the protocol ensures that the victim is not identifiable hence protected and even where an HIV test is performed, such results shall be confidential. Before trial, the protocol ensures that a victim is informed of the processes involved in handling the case and that the victim's interests are not compromised thus moving in line with the provisions of the UNCRC that a child has a right to be informed. This is done by the Probation Officers from the Ministry of Labour and Social Services. However this department is crippled by lack of human resource and transport for the few available resources. One major challenge during examination of victims of sexual abuse is that special family clinics are few and in some centers they are not available and this compromises the quality and urgency of the reports.

During Trial

Paragraph 25 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime recognizes the need to develop and implement measures to assist children in testifying and giving evidence. The protocol requires that “Public Prosecutors treat victims in a respectful, friendly and empathetic manner.” This is imperative as it assists victims to open up and gain confidence in the judiciary system and the protocol.

In line with the Criminal Procedure and Codification Reform Act, the protocol provides for the provision of a support person to provide psychosocial support to the victim throughout the process. The VFS provides measures to protect the privacy and the physical and mental well-being of a child and to prevent undue distress and secondary victimization of a child. The use of facilities allowing the child to give evidence, without having to see the accused, from a special interview room on the premises of the court by means of closed-circuit television or with a removable screen or curtain to break the line of sight between the witness and the accused is complemented by the use of anatomically correct dolls. However the system is often marred by

inadequate technical support to repair equipment and stand-by support in light of rampant power cuts.

During trial the protocol provides transport, accommodation and subsistence for the child victim and their guardian which is in line with the right to effective subsistence enshrined in the UNCRC. Whilst this is commendable, in the current resource constraint environment, it is not every time that this assistance is availed and this often results in further trauma to the victim and guardian when they are already highly distressed.

According to paragraph 29 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, professionals should take measures to prevent hardship during the investigation. According to paragraph 41 of the Guidelines, professionals should be trained to effectively protect child victims and witnesses and meet. Police officers, prosecutors, lawyers and other criminal justice professionals working in the investigation of a case involving a child victim or witness of crimes must receive specific training on child-related issues as a prerequisite for working with child victims and witnesses. The protocol does not provide for this training hence in some instances cases are handled by incompetent professionals rendering the protocol ineffective and inefficient.

Post -Trial Period

The protocol recommends where necessary for the provision of post –trial support to be offered to the victim. This support can be provided by the police in the VFU or other supporting partners such as non-governmental organisations. However in some cases they are not professionally trained to offer psychosocial support. The protocol ensures justice by ensuring penalties are granted to offenders and this may have restorative effects.

3.0 Conclusion and Recommendations

The Victim friendly System is a structure to manage vulnerable witnesses within the justice system in the pre-trial, during and post-trial consisting of multisectoral partners. It recognizes that children in contact with the law are vulnerable and they need special attention if they are to access fair justice. In Zimbabwe, the 10 years that the VFS has been in operation, it has scored

its successes including sensitization of child sexual abuse. While there appears to be a strong legal framework, and mostly in line with the CRC, the problem is with the resources (financial, professional etc.) for implementation. There is also a lack of information and awareness in how to access the protection of the laws. Compared to International and regional policy frameworks, the protocol in Zimbabwe provides for the necessary structural requirements for ensuring child justice. The creation of VFU within the ZRP to handle cases of child sexual abuse and VFC with specialized equipment is commendable although there is need for adequate training in child psychology and child abuse.

The protocol has its own weaknesses, including:

- Weak coordination among partners in the protocol
- Lack of financial resources
- Overreliance on manual data management systems
- Inadequate human resources within the system
- No systems of accountability
- weak monitoring and evaluation systems
- inadequate support structures

To bring the protocol in line with international standards, this desk review recommends the following:

- Establishment of a coordinating body consisting of multisectoral partners at national levels with structures in provinces and districts
- Establishing a legal framework to guide the management of child victims and witnesses
- Comprehensive training of all partners within the protocol
- Child friendly budgeting systems

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