

A Critical Analysis of Factors that have Contributed to Court Acquittals in Girl Child Defilement Cases in Lusaka Urban

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Abstract: The aim of this dissertation was to examine factors that had contributed to court acquittals in girl child defilement cases in Lusaka Urban. Purposeful sampling technique and procedure was selected for this study because participants were selected according to the objective and needs of the study. Data was analysed using a strategy known as frame work analysis. This method is better suited for qualitative inquiry it is almost similar to grounded theory; however, framework analysis differs in that it is better adapted to research that has specific questions, a limited time frame, a pre-designed sample and a priori issues that need to be dealt with (Ritchie). The target population for this study were state police officers from Victim Support Unit of the Zambia Police Service, prosecutors from National Prosecution. A cross sectional qualitative exploratory and descriptive study design rooted in the deductive strategy were selected to anchor this study. Authority (NPA) and court magistrates who had handled girl child defilement cases before and Spencer, 1994). The findings of this study indicated that there were so many factors that contributed to court acquittals in girl child defilement cases inter alia lapses in criminal investigating; gaps in the law and lack of evidential corroboration. This study provided a fairly comprehensive picture of factors contributing to court acquittals in defilement cases. Secondly, and possibly the most importantly, this study brought out important information that could be used to inform policies at Zambia Police Service Headquarters, Ministry of Home Affairs and Internal Security and provide knowledge to interested stakeholders in the criminal justice system.

Key words: child; child abuse; sexual penetration and sexual abuse

1. INTRODUCTION

The offence of girl child defilement is addressed under the Penal Code section 138 Chapter 87 of the Laws of Zambia. According to the Penal Code, defilement is committed when sexual intercourse takes place with a child below the age of 16 years.

The phenomena of sexual violence have been studied in Zambia for many years. Many of the studies have shown that sexual violence is predominantly by males on females. Further, still the main reason has been highlighted as the societal and cultural imbalance that places a greater value on man and therefore, a sense of dominance (Job Simango, 2019 a).

Despite changes in society's attitudes towards women and gains made by women in education and the work force since the 1960s, statistics indicate that the incidence and prevalence rate of sexual assault has not changed significantly over the years (Job Simango, 2019 b).

In the past couple of years, several countries have responded to the problem of sexual violence by ensuring that the judicial systems are well equipped in as far as handling of sexual offences are concerned and also amending outdated criminal laws relating to defilement, rape and other forms of sexual and gender-based violence. As part of the reform process, several countries in the region including Zambia have enacted mandatory minimum sentences for sexual offences such as rape and "defilement." These have generally emerged in response to public outcry over high rates of sexual violence-particularly against children, and the widespread perception among the public and some lawmakers that perpetrators were not being adequately punished for these crimes (Job Simango, 2019 c).

Despite the government of Zambia putting up court systems and crafting laws relating sexual assaults on women and girls; There are unfounded claims coming from some members of the public and other stakeholders in criminal justice system; that are not supported by research findings that suggest that there were a lot of court acquittals relating to girl child defilement in Zambia. Some of the causes of

court acquittals were gaps in criminal investigations; corruption such as paying money to court official or police officers; gaps in the law flaws.

Additionally, in Zambia court acquittals in defilement cases are largely invisible. Although criminal trials are public, the vast majority of cases receive no public notice, and are particularly invisible when an acquittal occurs. Acquittals are in general immune from appeal, because rules against double jeopardy prevent the state from trying the defendant again.

This study therefore, looks at a critical analysis of factors that have contributed to court acquittals in girl child defilement cases in Lusaka Urban

1.1. Situational Analysis of Sexual Assaults against Children in Zambia

The 2022 Annual Gender Based Violence Disaggregated Data indicated that 8,037 child victims were abused countrywide representing 24% of all the victims of Gender Based Violence. Out of the 8,037 children, 6,316 or 78.6% were abused in the criminal case category comprising 1,289 boys representing 20.4% and 5,027 girls representing 79.6%. 1,721 representing 21.4% were abused under the non-criminal case category comprising of 796 boys representing 46.3% and 925 girls representing 53.7% (Zambia Police, 2022).

With regard to sexual offences; the 2022 GBV Criminal Report showed that 3,689 Sexual Offences representing 15.2% were recorded compared with 3,083 cases reported in 2021 showing an increase by 606 cases translating to 19.7% increase. Out of 3,689 cases, 2,778 victims representing 75.3% were girls, 830 victims representing 22.5%, were women, 61 victims representing 1.7% were boys whilst 20 victims representing 0.5% were men.

2,570 cases of Child defilement representing 69.7% of all reported sexual offences recorded comprising 2,566 girls and 4 boys, representing 99.8% and 0.2% of all victims of sexual abuse (Zambia Police, 2022).

1.2. Lusaka Province

Lusaka Province recorded the highest number of child defilement cases with 678 cases representing 26.4% of all child defilement cases reported country wide. Eastern Province recorded 387 cases representing 15.1%, followed by Southern Province with 329 cases representing 12.8%, Central Province recorded 272 cases representing 10.6%, Copper belt Province recorded 212 cases representing 8.2% of all the reported defilement cases (Zambia Police, 2022).

1.3. Other Provinces

Northern Province recorded 200 representing 7.8%, North-Western Province recorded 169 representing 6.6%, and Western Province recorded 142 representing 5.5%. Muchinga Province recorded 93 representing 3.6%. Luapula Province recorded 80 representing 3.1% cases. Airport Division recorded 8 cases of Defilement representing 0.3% while Tazara recorded nil (Zambia Police, 2022).

1.4. Statement of the Problem

According to section 19 of the Children's Code Act of 2022, the child has the right to be protected from sexual exploitation such as defilement. The offence of girl child defilement is addressed under sections 138 Chapter 87 of the Laws of Zambia. According to the Penal Code, defilement is committed when sexual intercourse takes place with a child below the age of 16 years. In upholding children's rights, the court has a mandate to ensure that perpetrators of defilement are incarcerated. To do so, the court has to apply the laws and procedures as provided for in the Zambian statute books.

However, there were unsubstantiated non-empirical claims suggesting that there were a lot of court acquittals relating to girl child defilement in Zambia and some of the factors that had been identified as contributing to court acquittals were lapses in police investigations; court bribes; flaws in the Zambia national laws regarding child defilement cases and some obstacles encountered when prosecuting cases of defilement in Zambia.

In the absence of empirical evidence, it was difficult to either agree or refute such unsubstantiated claims.

1.5. General Objective

To examine factors that have contributed to court acquittals in child defilement cases in Lusaka

1.6. Specific Research Objectives

- To determine whether lapses in Police investigations contribute to court acquittals in child defilement cases.
- To find out whether lack of evidential corroboration contribute to court acquittals in defilement cases.
- To ascertain whether the Zambia national's laws have flaws that contribute to court acquittals in girl child defilement.
- To determine the obstacles encountered when prosecuting cases of girl child defilement in Zambia

1.7. Research Questions

- How do lapses in Police investigations contribute to court acquittals in girl child defilement cases?
- How do lack of evidential corroboration contribute to court acquittals in defilement cases?
- What are some of the flaws in the Zambia national laws that contribute to court acquittals in girl child defilement cases?
- What are some of the obstacles encountered when prosecuting cases of defilement?

1.8. Significance of the Study

The importance of carrying out this study was that the recommendation and the results of the project would provide information for use at the ministry of justice, the Zambia police service, judiciary, National Prosecution Authority, over sight bodies in the criminal justice system like parliament, civil society organization, policy makers at Ministry of Home Affairs and Internal Security and the general citizenry on the issue of court acquittals in defilement cases.

1.9. Justification of Study

The Government of the Republic of Zambia is determined to ensure that perpetrators of sexual violence are dealt with in accordance with the Zambian laws. This task has been specifically assigned to the Zambia Police Service, the National Prosecution Authority, Judiciary and other stakeholders in the criminal justice system. But even with establishment of these institutions and crafting of new laws relating to sexual offences; many perpetrators of these vices are acquitted by the courts. This study sought to add more knowledge to what has been written down so far. This study was therefore, relevant because it looked at the rights of the girl child and also brought out pertinent issues regarding factors contributing to court acquittals in girl child defilement cases in Lusaka.

1.10. Scope of the Study

This study was limited to informants who had handled the cases of defilement before. Looking at the research objectives, the study was further limited to employ qualitative inquiry and as such the specific logic that could best guide the inquiry was abduction which does not require quantitative statistics.

1.11. Geographical Scope

The study was carried out in Lusaka and within the precincts of Lusaka Central Police Station, National Prosecution Authority headquarters and Lusaka Magistrate Court Complex. These institutions were chosen because the informants of this study were purposively selected therein.

Additionally, the geographical scope of this paper was limited to Lusaka (central region of the country) due to high number of defilement cases that were reported.

2. CONCEPTUAL FRAMEWORK

A number of terms used in this study are normally a preserve of criminal law. However, in this study, they are informed by the human rights perspective as presented here below. The author adopted the human rights perspective because defilement is done on the person of the child, thereby an infringement on the rights of the child. It was thus necessary to examine the rights of the child as they relate to defilement; the court processes that follow and personnel involved in as far as obtaining justice for the child is concerned. In dealing with matters affecting the child, the principle of the Best Interest of the Child as envisaged in the Children's Code Act No.12 of 2022 provides a guide to personnel tasked with the duty to handle child victims. Flowing from the Best Interest of the Child principle are some specific

rights. Below, the research report discusses the Best Interest of the Child principle and child's rights as they relate to child victims of defilement.

According to the Children's Code Act No.12 of 2022, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

According to Section 4 of the Children's Code Act of 2022, the following principles shall apply in matters relating to children: (a) devotion to the best interests of a child; (b) the observance of the right to life, survival and development of a child; (c) the observance of children's rights as an integral part of attaining equity and equality among children in all spheres of life.

2.1. The Child's Rights with Regard to Defilement

The judiciary plays a crucial role in enforcing children's rights at domestic level. Even the most wonderful guarantees of children's rights will be of little effect or will be moribund in the absence of an independent and competent judiciary willing to enforce them (Article 2(2) of the CRC). The subordinate court in criminal trials is a court of first instance, on appeal matters reach as far as the Supreme Court of Zambia which is the highest court in the land 'Dagenais v. Canadian Broadcasting Corporation, 1994'. For instance, in the case of Steven Makayo v The People SCZ Appeal No. 584/2013 which was a defilement case the magistrate convicted the accused and committed him to the High Court for sentence. In passing sentence, the Judge had this to say:

"I have considered the mitigation but this is yet another shocking set of facts that an old man decides to defile a 5-year-old child. We can only ask God to save this country from this evil that has intoxicated so many men. The Courts shall not hesitate in its duty to protect its infant citizens. I sentence you to 40 years' imprisonment with hard labor."

As demonstrated in the case cited above, it is clear that in Zambia, young children are victims of defilement and many of them are at risk of being defiled. It has also been shown that the Zambian courts play a crucial role in as far as protecting the girl child's rights from being defiled.

In a criminal trial there are two competing rights. The rights of the accused persons to a fair trial must be balanced against the protection of the right of the victims of defilement earlier explained. This does not mean, however, that the rights of either accused persons or victims who appear before the court can be violated, dismissed or subsumed by the rights of the other. In relation to defilement, the children's rights needing protection are:

2.2. Right to Survival and Development

Section 5 of Children's Code Act, 2022 states, "A child has an inherent right to life, dignity and respect and it is the responsibility of the State and the family to ensure the survival and development of the child."

2.3. Protection from Maltreatment and Other Forms of Exploitation

Section 17 (1) of Children's Code Act, 2022 states, "A child is entitled to protection from maltreatment and any other form of exploitation, including sale, trafficking, abduction, cyber bullying or online exploitation by any person."

2.4. Protection from Negative Tradition/Religious Practices and Child Marriage

Section 18(1) of Children's Code Act, 2022 states, "a person shall not subject a girl child to female genital mutilation." Sub section (2) (a) (b) states, 'A person shall not subject a child to-child marriage; or cultural rites, and religious or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity, and physical or psychological development.'

3. RESEARCH METHODOLOGY

3.1. Introduction

This chapter describes the methodology that was used to achieve the objectives of this study. The methodology included the explanation and justification of the research design, location of the study,

study population, sample determination, data collection methods, data collection instruments, validity and reliability tests, data collection procedure, data analysis and ethical considerations.

3.2. Research Design

A cross sectional qualitative exploratory and descriptive study design rooted in the deductive strategy was selected to anchor this study. A cross-sectional design was thought to be appealing for reasons of economy of time and cost and the researcher was not committed to bring out causal interpretations or to test hypothesis of cause and effect. However, the researcher intended to bring out an understanding of the actual reality of the court acquittals in defilement cases which maybe described by Jürgen Habermas as life world, as it was unfolding.

3.3. Location of Study

This study was located in Lusaka and it was done within the precincts of Lusaka Central Police Station, National Prosecution Authority and Lusaka Magistrate Court Complex. Data was collected and analysed between August 2023 and September, 2023.

3.4. Study Population

According to (Best and Khan 2008) ‘a population is any group of individuals that has one or more characteristics in common and that are of interest to the researcher’.

Thus, the target population for this study were police officers from Victim Support Unit of the Zambia Police Service, prosecutors from National Prosecution Authority and court magistrates at Lusaka Magistrate Court Complex.

3.5. Sample Determination

According to (Patton, 2002), there are no rules for sample size in qualitative inquiry, the sample size depends on what you want to know, the purpose of the inquiry, what is at stake, what will be useful, what will have credibility, and what can be done with available time and resources? (pp. 242-243) Some qualitative research methodologists present general guidelines for sample size of interviews. (Onwuegbuzie and Leech, 2011) recommends that before deciding on an appropriate sample size, qualitative researchers should consider identifying a corpus of interpretive studies that used the same design as in the proposed study on the other hand (Creswell 2007) suggest at least six sources of evidence.

However, in this study it was envisaged that the total number of informants would be as follows: 10 police officers from Victim Support Unit; 10 prosecutors from National Prosecution Authority and 5 court magistrates.

3.6. Sampling Techniques and Procedures

The sampling techniques and procedures in qualitative research are not well defined. Selection of participants in qualitative research depends on the purpose of the research and is found to rely heavily on the researcher’s discretion (Morse, 1991).

Two types of sampling techniques discussed in the past qualitative researches are theoretical and purposeful sampling (Coyne, 1997). Morse has not provided any difference between purpose and theoretical sampling and used it as synonymously. Therefore, purposeful sampling technique and procedure was selected for this study because participants were selected according to the objective and needs of this study; additionally, in order for the researcher to have an in-depth understanding of the subject matter he selected information-rich samples (Shaheen and Kumar, 2016). Selection of informants was only done after several observational visits to the sites (Lusaka Central Police; Lusaka Magistrates Court Complex and National Prosecution Authority head office in Lusaka). The visit assisted in selecting and locating the sample that fitted well with the purpose and objective of this study. This type of sampling helped the researcher to select sources of information that aided in answering the research objectives.

In the initial level the researcher selected participants who had broad and general knowledge of the court acquittals in defilement cases. Then as the study progressed descriptions was expanded and based on the initial analysis further, informants were sought. In the final stage, typical cases were selected to verify the findings and to understand the breadth of the concept or phenomena.

3.7. Data Collection Methods

In this project primary data was collected through one-to-one interviews which was conducted with police officers from Victim Support Unit of the Zambia Police Service, Prosecutors from National Prosecution Authority and Magistrates from Lusaka Magistrate Court Complex. All the interviewees were not be coerced to take part in the discussions (Atkinson and Coffey, 1997) and this technique that was employed assisted the researcher elicit important information from the informants regarding court acquittals in defilement cases (Wisker and Robinson, 2012). This formula was complimented by Focus group discussions for two reasons (1) the writer lacked valuable facts about the topic which was under discussion and (2) he intended to understand the subject matter from the view point of research participants (Stewart and Shamdasani, 1990).

It is important to note that interviews and focus group discussions were triangulated with documentary reviews. This particular method of eliciting qualitative data allowed the researcher to critically examine and interpret print or electronic documents in order to understand court acquittals in defilement cases (Corbin and Strauss, 2008).

According to (Atkinson and Coffey, 1997) documents are referred to as 'social facts', which are produced, shared, and used in socially organised ways, they include minutes of the meeting, books and magazines. The advantage of this strategy is that it breeds dependability of information (Eisn,1991). Secondary data was complimented with information that was collected from the Zambia Law reports, Zambian Case Laws on defilement, Law Journal Articles, published and unpublished Legal research papers, Internet Sources, newspaper articles and judicial and police reports on the issue of defilement

3.8. Data Collection Instruments

The semi-structured interview guides were the main tool of conducting the interviews, supplemented by the note book and a recorder. The note book was used to create a log book of the research, as well as other relevant points in the desk research. A tape recorder or a phone recorder was used to record the responses. This was important in order to ensure that no information from the respondents was omitted during data analysis.

3.8.1. Interview guide

A semi-structured interview guide is an instrument used to collect qualitative data with pre-determined set of closed ended questions and also open-ended questions that would stimulate discussion with the prospect for the interviewer to explore particular themes or responses further. It does not limit informants to a set of pre-determined answers (unlike a structured questionnaire). However, it allows the respondents to discuss and raise issues that you as a researcher may not have considered.

In order to get as much information as possible about the participants' perceptions, the researcher used semi structured interviews to collect data. Interviews allow the informants to express themselves fully and during an interview the respondent can bring out useful information that the researcher may not even have thought about. Furthermore, semi-structured interviews accorded the researcher the advantage of being able to ask many follow up questions to obtain more detailed information. Further, the one-on-one interviews was used to triangulate the information collected through other means with the purpose of strengthening reliability of the collected data (http://evaluationtoolbox.net.au/index.php?option=com_content&view=article&id=31&Itemid=137 accessed on 9th July, 2023 at 24:00 hours).

3.9. Validity and Reliability Test

In qualitative research validity and reliability is the extent to which the data and the interpretation of the data are credible and trustworthy. These two aspects assist the examiners and researchers distinguish low quality from high quality research project (Creswell, 2007). Hence, the researcher was sensitive to the issues of validity and reliability in this project. The writer was attuned to the multiple factors that pose risks to the validity of the findings, plan and implement various strategies into each stage of the research project to avoid or weaken these threatening factors (Creswell ,2007) identifies 8 strategies that can be employed to enhance accuracy of research findings: (1) Prolonged engagement and persistence data gathering-this ensures that the researcher does not draw conclusion based on one isolated experience with the phenomenon; (2) Thick description- ensures that sufficient level of detail about the phenomenon is included so that other researchers may draw same or similar conclusions.

Hence, validity and reliability can only be judged if a very detailed account of the context or setting within which the study took place and a thorough description of the procedures from the beginning to the end is given; (3) Member Checks-This allows the researcher to present the findings and conclusions to the original informants so that they can evaluate whether what they said was accurately portrayed, this ensures that the researcher and the informant are viewing the data consistently;

(4) triangulation-refers to using multiple data sources such as interviews, focus group discussions, documentary review in order to build up the complete picture of the phenomenon; (5) discrepant information-acknowledges observations and findings that run contrary to the study key themes; (6) clarifying researcher bias- Having conducted a number of research projects at undergraduate and now post graduate, the researcher was aware of the possibility of introducing bias at various points of the research process. It is for this reason (Field and Morse, 1985) recommends that researchers undergo extensive and rigorous training as interviewers and observers before undertaking qualitative studies.

Researchers need to be trained in a manner that encourages an objective view of the phenomena under study. Furthermore, every researcher should examine and declare his underlying values and assumptions in light of the research situation so that they can be considered when reading the research. Several writers recommend that the researcher spends a period of time in the situation before data collection starts. According to this view point the researcher is on the advantage side because he is a senior police officer and he had been a prosecutor before, research sites is his former working places and therefore, he was already sensitized to the situation and at the same time some subjects who were his former workmates are already used to his presence (Field. P. A., and Morse, 1985). (Leininger. M.M, 1991) suggests that the researcher should always assess and gauge his relationships with the subjects being studied in order to enter or get close to the people or situation under study, or to move from a stranger or distrusted person to a trusted and friendly person during the research process (7) peer debriefing- This involves independent analysis of the data by others (e.g. research colleagues, a judge panel or participant informants. The researcher therefore, engaged other social scientists from University of Lusaka, University of Zambia and Mulungushi University to validate the document to ensure it made sense. This independent analysis was then compared with this research project (8) External auditor-refers to someone who is not familiar with the researcher or the study who can review the logic, coherence and consistency of the study. In this project an external auditor from the Mulungushi University was engaged.

In summary, in this project scientific procedures were followed in the selection of the appropriate research methods which were used; *interalia*, sample determination; sampling techniques and procedures; data collection methods and data collection instruments.

3.10. Data Analysis

The data that was collected using triangulation as stated in data collection methods of this study was critically examined using a strategy known as frame work analysis. Frame work analysis is a variant of content using matrix, it was developed by Jane Ritchie and Liz Spencer in the early 1990s. It is a very popular research technique recently and gives clear steps in qualitative analysis.

The key characteristics are:

- It is a case and theme-based approach just like any form of content analysis using matrix.
- These themes very often use hierarchy of themes and sub-themes
- It reduces data through summarization and synthesis. In framework analysis we use summaries and try to synthesize data rather than just coding or pick some fragment from it.
- It tries to retain the links to the original data whether they are interviews or field notes (Ritchie and Spencer. L, 1994)

The following is the five steps that the research will use to analyse data:

- Familiarisation-this refers to reading the transcripts, listening to audio recordings, watching the videos or reading the field notes again and again. What was happening was that every evening the researcher sat in his study room to listen and jot down all the interview and focus group discussion audio recordings of a particular day.

- Identifying thematic framework-when the researcher immersed himself in the data (as indicated in step one) he began to identify themes and sub-themes and often it occurred inductively. But at times the researcher could identify key themes from the literature and this appeared to be the simplest.
- Indexing (coding)-refers to selecting interesting fragments or portion of data that corresponds with a particular theme, just like one would do in any form of content analysis.
- Charting-refers to summaries what people say and what you hear from the recordings. In short you begin to tell a story. Here the writer started arranging the specific pieces of data that were indexed in the third phase and arranged them according to the headings. This meant that the data was lifted from its original textual context and placed in charts that consisted of the headings and subheadings that were drawn during the thematic framework, or from a priori research inquiries or in the manner that was perceived to be the best way to report the research. The important point to remember here is that although the pieces of data are lifted from their context, the data was still clearly identified as to what case it came from. For clarity, cases should always be kept in the same order in each chart (Ritchie.j and Spencer. L, 1994)
- The final stage, mapping and interpretation, involves the analysis of the key characteristics as laid out in the charts. This analysis should be able to provide a schematic diagram of the event/phenomenon thus guiding the researcher in their interpretation of the data set. It is at this point that the researcher is cognizant of the objectives of qualitative analysis, which are: “defining concepts, mapping range and nature of phenomena, creating typologies, finding associations, providing explanations, and developing strategies” (Ritchie.j and Spencer. L, 1994). Once again, these concepts, technologies, and associations are reflective of the participant. Therefore, any strategy or recommendations made by the researcher echoed the true attitudes, beliefs, and values of the participants.

3.11. Ethical Issues

The word Ethics is a derivative from the Greek word ethos, meaning personality or tradition and connotes a social code that conveys moral integrity and consistent values (Partington. A, 2003). More in relation to the ethics of science, Mouton (2001) is of the opinion that the ethics of science concerns what is wrong and what is right when conducting research. To this end all researchers, regardless of research designs, sampling, techniques and choice of methods, are subjected to ethical considerations (Gratton, C., and Jones. I, 2010).

Although the researcher is a senior police officer, he obtained permission from the Inspector General of police to conduct research at Lusaka Central Police and also permission from the authorities at Judiciary and National Prosecution Authority. Participants who agreed to take part in the research, were assured of the right to maintain their privacy. Participants were also assured of the ethical boundaries such as anonymity and confidentiality.

4. RESEARCH FINDINGS

This chapter presents the details or answers to the four research questions. The researcher has opted to use Gadamerian hermeneutic circuitry to present the data. The researcher considers Hans Georg Gadamer thoughts as the basic framework to present the data because his approach to understanding addresses many needs of the diverse groups of criminal justice system (Police officers, prosecutors, magistrates, judges and survivors of girl child sexual assault). As Richard Palmer describes Gadamer’s philosophy, “the keys to understanding are not manipulation and control but participation and openness, not knowledge but experience, not methodology but dialectic. For Gadamer, the purpose of hermeneutics was not to put forward rules for ‘objectively valid’ understanding but to conceive understanding itself as comprehensively as possible” (Palmer, R.E, 1969). Understanding, from this perspective, is a matter of presenting the factors contributing to girl child defilement in verbatim and giving them an explanatory touch. Here are the findings of the research project:

4.1. Lapses in Police Investigations in Girl Child Defilement Cases

This section investigated lapses in criminal investigation in relation to defilement offences. According to the research findings, the aim of investigation in girl child defilement or investigation in general is threefold: (1) to identify the suspect; (2) to locate the suspect; and (3) to provide evidence of suspect’s guilt.

The research found out that in the performance of police officer's duties in defilement cases, the investigator must seek to establish the six (6) cardinal points of investigation, namely: whether the offence of defilement was committed? How the offence was committed; who committed it; where the offence was committed; when it was committed; and why it was committed.

With regard to lapses in criminal investigations or gathering of information which is supposed to be presented to the National Prosecution Authority (NPA) for indictment and later presented to the courts of law.

The research found out that some defilement cases had been thrown out partly because the police and other officers handling the matter did not have adequate information on the case.

Senior Prosecutor 'A' gave an example, of one case that was thrown out, 'there was a defilement case that was thrown out because the criminal investigator did not do two things: he did not visit the crime scene and also did not make an effort to go to the school to obtain records regarding the age of the child who at the time did not have birth records.

In addition, he recommended that, 'there was need for a multi-sectoral approach to the problem of defilement for example, the National Prosecution Authority (NPA) assisting the police officers fill the gaps which are created during investigations of defilement offences.'

He observed that, 'the judiciary had failed to adopt and implement a multi-disciplinary approach to the problem. According to the statistics, the majority of the victims are under the age of 10 years. The implication is that the courts have a legal impediment in ensuring successful and massive prosecutions. Many cases of defilement that had trickled through the police and some had resulted into prosecutions. Yet, the conviction rates are extremely low'.

He noted that concerning sexual offences affecting the children, the legal position is that it is a requirement of the law that evidence of children in itself, cannot as a matter of law secure a conviction. It needs to be confirmed by independent evidence or what is referred to as corroboration. He argued that a conundrum of the said legal provision was that most defilement offences were largely committed in private hence, they were rarely witnessed by third parties. Yet the law insists that for a conviction to stand, the evidence of victims or affected children must be supported by independent evidence.

4.2. Jurisdiction

Field data indicate that police officers who work at the police station or police post, which has territorial jurisdiction of the area where the crime of defilement has been committed have a duty to respond promptly to a request made by any person for assistance and offer such protection as the circumstances of the case or the person who made the report requires even when the person reporting is not the victim of the offence committed. Crime investigators immediately undertake the necessary investigation and processing of the crime scene.

In addition, members of the public are encouraged to file a complaint of defilement with the police at the place- (a) where the offender resides; (b) where the victim resides; (c) where the gender-based violence occurred or is occurring or is likely to occur; (d) if the victim has left the victim's usual place of abode, where the victim is residing temporarily; or (e) that is convenient for the person filing the complaint.

4.3. Methods of Dealing with Complaints of Child Defilement

Field data indicate that a police officer, labour inspector, social worker, counsellor, medical practitioner, legal practitioner, nurse, religious leader, traditional leader, teacher, employer or other person or institution with information concerning the commission of defilement shall-

(a) Inform a victim of the victim's rights and any basic support which may be available to assist the victim; (b) obtain for the victim, or advise the victim how to obtain shelter, medical treatment, legal services, counselling or other service that may be required in the circumstances; and (c) advise the victim of the victim's right to lodge a complaint against the respondent including remedies available to the victim.

Where a police officer at the inquiries office (I.O) receives a complaint of defilement he/she shall- (a) interview the parties and witnesses; (b) record the complaint in detail and provide the victim with an

extract of the complaint, upon request, in a language the victim understands; (c) assist the victim to obtain medical treatment, where necessary; (d) assist the victim to a place of safety as the circumstances of the case or as the victim requires where the victim expresses concern about safety; (e) protect the victim to enable the victim retrieve personal belongings, where applicable; and (f) assist and advise the victim to preserve evidence.

Where one of the parties or witnesses to an act of defilement is a child, a police officer who receives the complaint shall interview the child in the presence of-(a) the parent or guardian of the child; or (b) a next friend, where the parent or guardian is the respondent.

Police assistance consists of the following: (1) Issuing a medical form to the victim and, where necessary, sending the victim to a health facility. A victim of defilement shall be entitled to free medical treatment at a public health facility and a free medical report within a reasonable period of time. Family mediation or intervention shall not be a bar to the investigation or prosecution of a complaint of gender-based violence.

A police officer may, without a warrant, arrest a person where the police officer has reasonable grounds to believe that the person-(a) is committing, or has committed, an offence of defilement; (b) is about to commit an offence and there is no other way to prevent the commission of the offence; (c) unless arrested, will- (i) escape or cause an unreasonable delay, trouble or expense in being made answerable to justice; (ii) interfere with the witnesses; or (iii) tamper with, or destroy, relevant evidence or material; (d) is willfully obstructing the police officer in the execution of police duties.

4.4. Lack of Evidential Corroboration in Defilement Cases

According to the research findings, the most important evidence in defilement cases comes from the child victim. However, children's evidence requires corroboration despite the nature of the offence which necessitates that the victim be secluded during the commission of the offence. In Zambia, corroboration is required as a matter of law. In sexual cases including defilement, though not an ingredient of the offence, corroboration is a necessary factor in proving that an offence has been committed.

Key informant senior prosecutor 'B' from National Prosecution Authority (NPA) defined corroboration as 'fresh, independent and admissible evidence that strengthens confirms or supports the evidence already given by another a particular witness. Corroboration evidence tends to confirm, support or strengthen other evidence'.

In *The People v Shamwana and Others* the Supreme Court quoted *R v Baskerville* in which Lord Reading CJ as he then was stated:

"We hold that the evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him to the crime. In other words, it may be evidence which implicates him, that is the evidence that the crime has been committed but also that the prisoner committed it."

The rule developed in the Zambian courts from common law. Under the common law, the evidence of a sexual victim must be corroborated. This can be corroborated with direct or indirect circumstantial evidence. According to (Tibatemwa, 2005), at common law every judge is supposed to warn him/herself and the assessors of the danger of convicting an accused person of a sexual offence on the uncorroborated evidence.

The rule was developed by the English courts and adopted by the Zambian courts on the basis that women and girls lie in sexual matters. A well-known English case is that of *R vs. Henry and Manning* (1969) where it was stated:

'In cases of alleged sexual offences, it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these cases women and girls do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not to enumerate, and sometimes for no reason at all.'

Therefore, the cautionary rule was introduced so that whatever a woman or girl says relating to an allegation of rape or defilement is thoroughly scrutinised. This is because of the strong belief that women are prone to tell false stories. Hence, the need for corroboration evidence has been applied to all sexual offences.

He added,

‘Sexual offences require corroboration because the prosecutrix may be motivated by spite, sexual frustration or unpredictable emotional responses’.

During one-to-one interview with an informant (prosecutor ‘A’) at National Prosecution Authority (NPA) the research found out that corroboration is a must in every defilement case and that its absence is fatal to the prosecution’s case as it can lead to the acquittal of the accused person.

The prosecutor explained that ‘corroboration as being “something more.” So, even evidence that appears unconnected to the evidence given by the witness can amount to corroboration.’ She added that ‘corroborative evidence is usually difficult to adduce with regard to the identity of the offender especially where the victim is of tender age’.

During one-to-one interview with the magistrate at the Magistrate Courts, she took time to point out the different elements to a defilement case as being: age of the victim, medical report, corroborative evidence and *voire dire*. What she observed was that when a defilement case is received by the judge in the High Court for sentence, the judge must ensure that all the ingredients of the offence of defilement are proved and also whether evidence was corroborated or not. It was also pointed out that the child has the right to legal representation, to medical attention, to hide their identity (by not indicating the child’s name on the indictment and holding trial in camera) and is entitled to presence of a guardian during the proceedings.

One senior police officer from Criminal Investigation Department (C.I.D) at Police headquarters was of the view that corroboration is important and is also a good requirement as it rules out the dangers of false implication. He argued that it is important for corroborative evidence to be present considering the seriousness of the sentence in defilement cases, ‘Imagine sending an innocent person to jail for life, we want convictions which are based on cogent and relevant evidence. Corroboration thus helps in discharging the burden of proof’.

A lady from Young Women Christian Association who was not part of the informants highlighted one important issue, she said, ‘The requirement for corroboration is discriminatory because it is only a requirement on child witnesses yet both children and adults do lie’. She added that, ‘in fact, adults lie more than children. In addition, while corroborative evidence is necessary; it must not be stringent at the expense of upholding the rights of the victims’.

The research further found out that corroborative evidence is very difficult and average/rare to find in a defilement case. During one-to-one interviews it was pointed out that corroborative evidence is often available but that the court needs to know what it is looking for. Prosecutor ‘A’ stated that in the absence of corroborative evidence, the court concludes that the prosecution has not proved their case beyond all reasonable doubt thereby leading to the acquittal of the accused.

Therefore, in the in the interest of justice, he felt that when facts are notoriously pointing to the accused, the court should have the discretion to convict on the uncorroborated evidence and that there is no need to worry or fear passing a wrong verdict.

He further, recommended that, although in sexual offences as a matter of practice corroboration is needed to secure a conviction. Procedural requirements, for instance, the need for corroboration as to the identity of the accused and the commission of the crime to remove possibilities of false implications and fabrications of the story by the complainant as some cases have provided more protection to the perpetrators of sexual violence than the victim. There is need to remove the rule of corroboration because the rules work particularly to the disadvantage of victims of sexual offences. Although the rules do not differentiate between the genders of the victims, nevertheless the majority of victims of sexual offences are female. He suggested that the reasons for the existence of the corroboration rules in sexual cases are insulting to women in general, and to complainants in particular, when those reasons are not objectively based, and the rules are applied irrespective of the particular facts of the case. It has

also been argued that the prospect of the recitation by the judge of the corroboration warning, and its possible effect upon the judgment, operates as a deterrent to the prosecution of complaints by female victims of sexual crimes.

The removal of the rule of corroboration sexual offences enables victims come forward easily and also ensure more convictions.

4.5. Flaws in the Zambia National Laws Regarding Girl Child Defilement

During one-to-one interviews, Senior prosecutor 'B' read out the law on defilement, 'Section 138 (1) of the Penal Code states- Any person who unlawfully and carnally knows any child commits a felony and is liable upon conviction to life imprisonment or a term not less than 15 years.

He said, 'It is in my contention that section 138(1) Chapter 87 of the laws of Zambia should be revised because it contributes to court acquittals in child defilement offences in Zambia and also abuse of children below the age of 16 years'.

The word 'and' between 'unlawfully' and 'carnally' implies that it is possible to carnally know a child in a lawful manner but also in unlawful manner. In other words, not all carnal knowledge of a child is unlawful. In the famous case of *R v Chinjamba*, the court held that a man cannot be convicted of having unlawful carnal knowledge of a girl under the age of 16 years if he has married her under customary.

According to his analysis customary marriage has only two important components-the payment of dowry and the agreement between the groom's family and bride's family. Once these are present, it means the marriage is legally recognized. Therefore, in Zambia no crime is committed even when a man has sex with a minor whom he has legally married under customary law.

Magistrate 'B' was of the view that, 'Archaic and repugnant practices under customary law such as marrying of young girls below the age of 16 years should be criminalized. This should be followed by the removal of the word "unlawful" with regard to sexual offences in the Zambian Penal Code. As the word unlawful means illegal, the law allows men who marry young girls under customary law to get away with having carnal knowledge of a child. Let me also take this opportunity to state that the law also turns a blind eye to the plight of a woman who are forced by their husbands to have sex without their consent'.

Further, the research found out that, this formulation of the law is wide enough to encompass and permit carnal knowledge of a child under African customary laws and practices, such as early marriage. As a state party to international human rights law, which mandates the state to protect the child, it is unacceptable and detestable for Zambia to have such a provision in statute law today.

The principle of equal treatment before the law requires that the laws of Zambia treat every child in the same manner as others in similar conditions and circumstances. By permitting children who are subject to African customary law to be violated sexually, section 138(1) of the Penal Code accords differential treatment to African and non-African children in Zambia, thus it flies in the face of the principle of equal treatment before the law.

Prosecutor 'A' observed that, 'notwithstanding, I am of the opinion that section 138(1) must distinguish between offenders. Currently, the prohibition in section 138(1) is a blanket prohibition that does not look at the profile of the offender and the circumstances under which the carnal knowledge took place. So, for example, a 12-year-old boy who had carnal knowledge of his 15-year-old girlfriend could face punishment as prescribed in the Penal Code. It does not matter that the two were in a relationship, and that the girl did not refuse to engage in the act. Much as a minor cannot give consent, when punishing the offender, the law must distinguish between instances where the offender is an adult who had sex with the girl child; and those where the girl child willingly engaged in the act with a fellow minor. Most certainly, it is unfair to treat the 12-year-old boy in the scenario outlined above, in the same way as a 40-year-old man who had carnal knowledge of a two-year-old girl child. In short, the argument presented here is that the law fails to offer adequate protection to the boy child who has committed a sexual offence, which is not as vile as rape or the usual cases of defilement. Yet, Zambia is obliged under Article 3(2) of the Convention on the rights of the child (CRC) to undertake to ensure the child such protection and care as is necessary for his or her well-being.'

Magistrate “A” stated that, ‘the law in its current form is not doing enough to uphold the rights of the victim in that even though the accused can be convicted, the victim does not benefit any way to help her in life following the trauma she had gone through.

Some of the flaws in the national laws are some of the reasons the courts are acquitting suspects. Therefore, it is quite clear that the law needs to be amended to make it alive to the rights of the child. The strict requirement for corroboration and the non-reception of unsworn testimony is problematic for the child. Its existence would have been contributing to court acquittals. In her concluding remarks she pointed out that, ‘despite the government enacting Children’s Code Act No.12 of 2022 which subsequently repealed the following laws relating to Children (1) the Legitimacy Act, 1929 (2) the Adoption Act, 1956, (3) the Juveniles Act, 1956 and (4) the Affiliation and Maintenance of Children Act, 1989 and incorporated the international children’s rights. It is clear that Zambia’s national laws such as the Penal Code Chapter 87 of the laws of Zambia have some serious flaws, which are not compatible with cardinal principles in international human rights law and which at times contribute to court acquittals in defilement cases.’

Magistrate ‘B’ said, ‘when drafting the laws on sexual violence, careful attention must be given to the language used to facilitate the understanding by the general population less it will be a preserve of few individuals who can understand and apply legal terms (The Legal Profession), which should not be the case in democratic states like Zambia. Therefore, the law on sexual violence should be couched in simple and clear language without Latin maxims.

Another recommendation is, ‘the dualistic nature of the Zambian Legal System which recognizes the existence of both customary and statutory laws has contributed to sexual violence in Zambia. Customary law applicable in Zambia today is discriminatory. Therefore, customary practices and traditions that make women and girls prone to sexual violence should be criminalized. There is also need that legislation is enacted to codify customary law so that it is harmonized with statutory law.

On the other hand, junior prosecutor ‘C’ was of the view that, ‘the law in its current form is adequate and upholds the rights of the victim in the sense that the punishment is ‘okay,’ that is, the law has provided adequate or harsh punishment for the offenders (minimum of 15 years). By this, it is sending a deterrent message’.

Additionally, he observed that, ‘the law is sufficient because the victims receive free medical attention and counselling as well as the fact that court proceedings are held in camera. In view of the harsh punishment for child defilers, it is important that offenders who are really guilty are sent for reformation at a correction center. In this way, the victim’s rights as provided in the law are upheld whilst taking note of the suspect’s rights as well.’

4.6. Some of the Obstacles Encountered When Prosecuting Cases of Defilement

4.6.0. Lack of Specialization

A key informant who is the senior prosecutor at NPA emphasized that there was need for capacity development in sexual offences for prosecutors even for those who have already obtained their legal education.

She indicated that NPA has concentrated their specialization in cases that involve money laundering, complex corruption, cyber cases, and banking. But sexual crimes are at times complex and require specialized skills, so it is pertinent that prosecutors receive ongoing training in this area. Additionally, a Magistrate highlighted that crimes are region specific. For instance, in the southern part of Zambia, most people’s economic activity revolves around ranching and agriculture, so the vast majority of criminal cases are stock theft, wild life, poaching, and trafficking.

Due to the region-specific nature of the crimes, prosecutors need experience in those particular cases. If prosecutors move to a different region, those prosecutors would have to become familiar with the specialized crimes of that region. A Magistrate stated that “prosecutors cannot be jacks of all trades” and they need to develop skills through training on region-specific crimes.

She also observed that the lack of specialized training among prosecutors led to mishandling of sexual offences especially those that involve children which require a degree of expertise for successful

prosecution. The informant also observed that lack of specialization among prosecutors of criminal offences may result in wrongful acquittals and convictions.

4.6.1. Lack of Legal Training for Criminal Investigation Officers

A key informant Magistrate 'A' indicated that 'a prominent issue within prosecution is a lack of formal legal education for police officers who handle defilement cases. Obtaining a legal education has not always been easy because most police officers do not have the capacity to sponsor themselves to school; because most of them have huge family responsibilities and others lack interest in school.

Despite police officers having the closest amount of knowledge when it comes to criminal law and the elements needed to prosecute a criminal offence such as defilement and also the vast experience; their lack of legal education is sometimes a handicap'.

Field notes showed that police officers received specialized training in other areas such as gender-based violence which had significant impact on their job performance.

4.6.2. Lack of Witness Support

During our interviews with Prosecutor 'A', it was noted that there are many lacking resources regarding witness support. The current prosecution system does not have adequate witness /victim protection particularly as it relates to children. For instance, a child victim has to testify and undergo cross examination in open court and in the presence of the accused, which creates a situation that traumatizes the witness/victim support is a major problem in the current prosecutorial sector that affects the effectiveness of their testimonies and therefore, may lead to suspects being acquitted by competent courts of law.

He added, 'these girls who are abused sexually or physically they do not have either psychological, emotional or financial support. This is a barrier to effective prosecution as this makes the witness/victim less forthcoming as a result of psychological and emotional distresses.

The research found out that the National Prosecution Authority (NPA) Act provides for a Witness Management fund. The purpose of this fund is to provide money and resources for transporting witnesses to and from court. It caters for logistics, travel and possible stay within the location of the court in which they will be required to appear and testify.

In addition, the Act provides for counselling of witnesses before they testify in court. The prosecutors do not provide this counselling as the National Prosecution Authority (NPA) does not have professional counsellors to provide counselling to witnesses/victims.

However, prosecutors are only able to provide counselling to witnesses/victims using the limited knowledge they have acquired from counselling witnesses/victims in the past. Their limited knowledge is not supported by psychological expertise, but is instead derived only through personal experience.

This research also established that if the counselling is done and the witness/victim is still not ready to testify, they are not forced to testify.

Prosecutor 'B' suggested that there was need for more funding towards the NPA witness fund as it would make it possible for the NPA to hire trained psychologists or professional counselors that have expertise and knowledge. The informant emphasized that it was difficult to effectively counsel witnesses/victims in cases dealing with children, sexual offences and Gender Based Violence (GBV), without a professional background in counselling because as mentioned earlier, all prosecutors have in terms of counselling experience are the skills that they have picked up along the way.

Further, the research found out that there should be a standard of how to deal with the emotional support of victims from a professional perspective, particularly when dealing with traumatic criminal offences. This can help prosecutors in obtaining useful evidence from the witness/victim. In the absence of professional emotional support, prosecutors might end up without sufficient evidence to successfully prosecute a matter.

4.6.3. Limited Resources

The research found out that in comparison to the private sector, prosecutors at the subordinate court level are underfunded, which lowers their capacity to successfully prosecute defilement cases.

Magistrate 'A' indicated that subordinate court prosecutors do not have facilities for research, so many of them try to use their own resources. Because there is no funding, prosecutors lack material resources to be adequately prepared for their roles. For instance, prosecutors cannot guarantee safety, compensation, or transportation for their witnesses.

Without aid, witnesses are unable to properly testify for the prosecution's clients. Additionally, lack of funding also prevents prosecutors from obtaining the most basic resources such as paper or the internet. Without these vital materials, prosecutors are severely under-resourced and are crippled from maximizing their potential.

A Magistrate mentioned two vital limitations of prosecutors: the internet and court spaces. In regard to a lack of internet, rural areas have more difficulty than urban areas obtaining internet connection.

This becomes a major challenge as those in the rural area, with limited access to the internet, are not always able to immediately access statutory amendments. In regard to the limited court spaces, this is a major challenge since all trials are in-person.

For instance, there could be four to five trials occurring at the same time, but only two court rooms available. This means that the court rooms must be shared according to the seniority of the Magistrates, which is a major inconvenience and delays

This section among other things summarized the key research findings on factors contributing to court acquittals in girl child defilement cases.

5. DISCUSSION OF RESEARCH FINDINGS

5.1. Introduction

This study is a premiere to get into the courts of law to examine factors contributing to court acquittals in girl child defilement cases. It is a study that got information from interviews, court judgments, books and documentation like minutes. The study critically analysed factors contributing to court acquittals in girl child defilement cases.

5.2. What this Study Shows

This study had questions that were set at the beginning to which answers were needed. The study was anchored on one overarching question which was "What are some of the factors that have contributed to court acquittals in child defilement cases in Lusaka?"

There is evidence to indicate that there are a lot of factors that contribute to court acquittals in girl child defilement cases. The factors range from lapses in criminal investigations, gaps in the national laws and lack of evidential corroboration evidences.

Specifically, the answers to the research questions are as follows: In reference to research question one: How do lapses in Police investigations contribute to court acquittals in girl child defilement cases?

Criminal investigations and gathering of information by the police officer are very important because the prosecutors and the courts of law rely on it for successful prosecution of the offender. Some defilement cases had been thrown out and perpetrator (s) acquitted partly because the police and other officers handling the matter did not have adequate information on the case.

Regarding research question two: How do lack of evidential corroboration contribute to court acquittals in defilement cases?

In sexual cases including defilement, though not an ingredient of the offence, corroboration is a necessary factor in proving that an offence has been committed. Under the common law, the evidence of a sexual victim must be corroborated. This can be corroborated with direct or indirect circumstantial evidence. At common law every judge is supposed to warn him/herself and the danger of convicting an accused person of a sexual offence on the uncorroborated evidence. The rule was developed by the English courts and adopted by the Zambian courts on the basis that women and girls may lie in sexual matters.

In reference to research question three: What are some of the gaps in the Zambia national laws that contribute to court acquittals in girl child defilement cases?

The formulation of the law is wide enough to encompass and permit carnal knowledge of a child under African customary laws and practices, such as early marriage. For example, in Zambia girl child defilement does not hold water where the man legally marries the child regardless of the age. By permitting children who are subject to African customary law to be violated sexually, section 138(1) of the Penal Code accords differential treatment to African and non-African children in Zambia, thus it flies in the face of the principle of equal treatment before the law. Therefore, this gap needs filling in.

Considering research question four: What are some of the obstacles encountered when prosecuting cases of defilement?

The following are some of the challenges encountered when prosecuting cases of defilement:

5.2.1. Lack of Specialization

Lack of specialization in sexual offences is one of the obstacles in effective prosecution of defilement cases.

5.2.2. Lack of Legal Training for Criminal Investigation Officers

Lack of formal legal education for police officers who handle defilement cases poses a big challenge.

5.2.3. Lack of Witness Support

Lacking resources regarding witness support is another challenge in the fight against child defilement. The current prosecution system does not have adequate witness /victim protection particularly as it relates to children. For instance, a child victim has to testify and undergo cross examination in open court and in the presence of the accused, which creates a situation that traumatizes the witness/victim; support is a major problem in the current prosecutorial sector that affects the effectiveness of their testimonies and therefore, may lead to suspects being acquitted by competent courts of law.

5.2.4. Limited Resources

The prosecutors at the Subordinate Court level are underfunded, which lowers their capacity to successfully prosecute defilement cases.

5.3. Limitation of the Study

The short comings for this study was that case study methodologies such as this one has been disparaged by many researchers for lacking the grounds for generalization (Yin, R. K, 1994) contends that case studies are only “generalizable to theoretical propositions and not to populations or universes”. Yin explained that the purpose of case studies is to expand theory and not in statistical generalization. (Stake R.E, 1995) also asserts that with case studies researchers make “naturalistic generalizations,” which are different from deductive generalizations based on statistical analysis.

5.4. Strengths

In spite of the limitations, this study has notable strengths and these are drawn from the following standpoints:

- The study has provided room for readers to appreciate the lived life at courts of law and to understand from their points of view the goings on.
- To the research fraternity, the data adds gaps in knowledge and practices of court processes in defilement cases where they were missing. The methodology used could be applied in other settings where police officers, prosecutors and magistrates are players.
- This study has theoretically generated themes and sub themes which could be used as variables in quantitative research. This study brings to the fore significant features that have not been extensively studied either in the Zambian context or in Africa

6. RECOMMENDATIONS

- There is need to remove the rule of corroboration because the rules work particularly to the disadvantage of victims of sexual offences. It is recommended that the prospect of the recitation by the judge of the corroboration warning, and its possible effect upon the judgment, operates as a deterrent to the prosecution of complaints by female victims of sexual crimes. The removal of the rule of corroboration sexual offences enables victims come forward easily and also ensure more convictions.

- It is recommended that section 138(1) Chapter 87 of the laws of Zambia should be revised because it contributes to court acquittals in child defilement offences in Zambia and also abuse of children below the age of 16 years. The word ‘and’ between ‘unlawfully’ and ‘carnally’ implies that it is possible to carnally know a child in a lawful manner but also in unlawful manner.
- The dualistic nature of the Zambian Legal System which recognizes the existence of both customary and statutory laws has contributed to sexual violence in Zambia. Customary law applicable in Zambia today is discriminatory. Therefore, customary practices and traditions that make women and girls prone to sexual violence should be criminalized. There is also need that legislation is enacted to codify customary law so that it is harmonized with statutory law.

This study is suggesting that future research may cover the following question which the data is begging to generate.

- What are some of the factors contributing to the successful prosecution of defilement case?

7. CONCLUSION

This article analysed factors that have contributed to court acquittals in child defilement cases in Lusaka and was anchored on one overarching research question which was “*What are some of the factors that have contributed to court acquittals in child defilement cases in Lusaka?*”

The findings of the present study indicate that there are so many factors that contribute to court acquittals in girl child defilement cases *interalia* lapses in criminal investigating; gaps in the law and lack of evidential corroboration.

The analysis of the research findings fulfils a double purpose. Firstly, by analyzing the four research questions, qualitatively and theoretically informed themes and sub themes which in quantitative research would qualify as variables and attributes. This study provides a fairly comprehensive picture of factors contributing to court acquittals in defilement cases. Secondly, and possibly the most importantly, this study brings out important information that can be used to inform policies at Zambia Police Service Headquarters, Ministry of Home Affairs and Internal Security and provide knowledge to interested stakeholders in the criminal justice system. Further, the study will benefit lecturers, instructors, serving police officers and police recruits in the three police academies in Zambia namely: Zambia Police College, Geoffrey Mukuma training school and Zambia Police Kamfinsa training school.

Findings of this study have also revealed that there are gaps in law in relation to defilement of the girl child that need filling and also obstacles that hinder effective prosecution of defilement cases.

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AUTHORS' BIOGRAPHY



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