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**A Study of the Effectiveness of the legal
system in dealing with child abuse cases- The
family Perspective.**

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Abstract

The thesis examines the effectiveness of the legal system in processing cases of child sexual abuse in Zambia. The study legal and extra-legal factors that influence families' decisions on which mode of justice to use between formal justice system and traditional/informal justice system and conflict solutions in court. The study examines the topic from the perspective of the families of the victims i.e. I analyze their views of justice, their judgement of their alternatives in the court system and their role in the litigation. The study of child sexual abuse is made from the standpoint of middle range theories to explain factors that influence decisions when choosing which mode of justice to use. Procedural justice theory is also used to explain how the families view the justice system.. Middle range theories and procedural justice theory are used to analyze in-depth interviews with 8 families of children who have been victims of child sexual abuse and the written records that are available about their case.

Keywords, Child sexual abuse, family perspective, , decision making, , middle range theories, procedural justice theory, traditional justice system, formal justice system , court, police, .

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Dedication

I would like to dedicate this work to the families that shared their experiences which made this work possible and to my late parents (Dryson Phiri and Grace Phiri), Henriette Othilie-Oktande Andersen, Darian Chisomo Phiri and Gabriel Andersen-Phiri.

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Acronyms and abbreviations

AIDS	Acquired Immune Deficiency Syndrom
PEP	Post Exposure Prophylaxes
UTH	University Teaching Hospital
CSA	Child Sexual Abuse
CSO	Central Statistical Office of Zambia
GDP	Gross Domestic Product
GRZ	Government of the Republic of Zambia
HIV	Human Immunodeficiency Virus
AIDS	Acquired Immune Deficiency Syndrome
NGOs	Non-Governmental Organisations
NSD	Norwegian Centre for Research Data
OlsoMet	Oslo Metropolitan University
ZP	Zambia Police
ZDHS	Zambia Demographic Health Survey
ZNESAR	Zambia National Environmental Situational Analysis Report
DSO	District Social Welfare Officer

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CHAPTER 1: INTRODUCTION

1.1 Statement of the problem

“The concept of violence bears some kind of deep and intimate relationship to the notions of harm, destruction and human suffering. And this truism goes a long way towards explaining why violence is generally regarded as an extremely serious social problem” (Vorobej, 2016, p. 1). Just like most societies around the world, Zambia is a country that is faced by violence. This Violence takes different forms and ranges from physical, sexual, emotional, psychological to cultural violence.

Since violence takes various forms, there is need to draw it down to a specific as concepts within it can be studied independently for a better understanding. As such I picked sexual violence and under sexual violence I further narrowed it down to child sexual abuse with my area of interest being the “family”. The reason for picking the family was to find out their perceived experiences with the justice system when dealing with the child sexual abuse case. As this would give a different dimension of looking at child sexual abuse as most of the existing research in Zambia has focused on victims and perpetrators.

Child Sexual Abuse affects the victims both “physically (genital trauma, contraction of infections, pregnancy, etc.) and psychosocial (emotional dysregulation, bed wetting, regression of milestones, relational problems, poor self-esteem and other psychiatric diagnosis such as depression, eating disorders, substance misuse disorders, dissociative anxiety disorders, anxiety disorders, posttraumatic stress disorder (PTSD), etc.)” (Akan et al, 2015, p. 170). CSA also has a trickledown effect on the families of the victims and as such their position in CSA cases is very important for this research

The fact that it has not received great attention in Zambia is still surprising and according to Lalor (2004, page 3), he suggests that the “reason that the sexual abuse of children may not have received more attention in SSA is the range of competing social problems affecting children, such as war, disease, poverty, hunger and homelessness.” These problems have not spared Zambia, with

poverty levels standing at 60 percent (ZDHS, 2014, page 2), “Exposure to infectious diseases, malnutrition, poor hygiene and sanitation, and unhealthy environments compromises early childhood development (ZDHS, 2014, page 137)” these are the areas that have received attention. While curbing down gender based violence has taken centre stage, the problem of child sexual abuse has lagged behind as it has not received much attention as it needs to.

This leaves room for more research on the topic so as to bridge the knowledge gap that exists in this field that would in turn influence policy. Since most previous research has focused more on the legal aspects and the victims physical and psychosocial health, there is need for a research that looks into the family views of the entire process from when the case is reported to the last hearing in court. This gives a different dimension on how child sexual abuse is viewed.

In 2011 the Victim Support Unit (VSU) of the Zambia Police (ZP), nationwide, reported 1939 cases of defilement of children while statistics of 2012 showed that the number of cases had increased to 2396 cases (Akani et al, 2015, p.170-171). ZP records from previous years also show that child sexual abuse reports keep on increasing annually. “The Zambia Demographic Health Survey (ZDHS) shows that 15% of girls aged 14 years and below have experienced sexual violence already at some point in their lives” (Akani et al , 2015, p. 171). It is evident from the above statistics that CSA is a global problem but it is also a Zambian problem

Finding studies that defines child sexual abuse uniformly is a problem and the most key figures in Zambia (Zambian Constitution and Non-Governmental Organizations) gives it different dimensions. Akani et al (2015, 171) has noted “how CSA studies are a challenge because researchers have never quite defined CSA in uniform terms. “CSA experiences vary greatly over multiple dimensions including, but not limited to: duration, frequency, intrusiveness of acts perpetrated, and relationship with the perpetrator” and age. He further noted how some researchers have been broad and included even indecent exposure while some data from government offices like the Zambia Police statistics refer to only penetration (also called 'carnal knowledge') according to the law”. Having highlighted that, this research will only refer to child sexual abuse as that involving penetration or canal knowledge as it is mostly the type of child sexual abuse that goes through to court.

Child sexual abuse (CSA) is a global public health and human rights concern. Although considered to be less prevalent than other forms of abuse and neglect (Olafson, 2011). “Sexual abuse of children occurs throughout the world and can occur in different circumstances and settings” (Yahaya et al. 2012, p. 2). According to the world health organization (WHO), it has estimated that 40 million children between the ages of 0-14 are victims of child abuse and neglect annually around the world (WHO, 1999, p. 17).

WHO estimates that 150 million girls and 73 million boys under 18 experienced forced sexual intercourse or other forms of sexual violence during 2002 (WHO, 2002, p.). The issue of protecting children from maltreatment and other forms of violence is a critically important issue requiring the world’s full attention (Svevo-Cianci, 2009)

According to a study carried out in the Sub-Saharan Africa by the pan African medical Journal between 2005 and 2008, it reported that cases of Child Sexual Abuse were highest in Zambia (4.3%) and the least in Liberia (0.3%) (Yahaya et al, 2012, p.3). Research has shown that the percentage was 41% in 2013 (National Crime Statistics). When you compare the 2008 and 2013 statistics, there is a sharp increase and in response, the government of Zambia reacted by Amending the Penal code Act No. 15 of 2005 which states that the offender is to be given a minimum of 15 years jail time. Prior to that, sentencing was usually at the discretion of the court handling that case (Mwewa et al, 2015, p.16). This move was highly welcome with the view that it was going to minimize prevalence of the child sexual abuse cases.

It is very hard to know the exact prevalence rate in Zambia because of lack of extensive research and data in this field. However, according to Barth, et al (2013, p 469-483), Fifty-five studies from 24 countries were carried out in a meta-analysis study. According to four predefined types of sexual abuse, prevalence estimates ranged from 8 to 31 % for girls and 3 to 17 % for boys. Nine girls and 3 boys out of 100 are victims of forced intercourse. “And in Zambia, statistics show that 25.4% of children were sexually abused in 2005 as compared to 41% in 2015” (Mwewa et al, 2015, p. 17).

1. 1.1 Culture

Some cultural practices are believed to have led to an increase in child sexual abuse in Zambia. A practice which is called “Virgin cure” is one of such practices. “Traditional healers are often spreading the myth that sex with a young virgin can cure HIV” (Jere, 2003). As such, men are believed to be targeting much younger sexual partners whom they believe to be HIV negative (Jere, 2003). Other cultural practices such as early marriage also contribute to the increase of child abuse. According to the Zambia Demographic Health Survey (2001-2002, p.96), “Nationwide, 8 percent of girls were married by age 15, and 42 percent were married by age 18.” This shows that there is a significant number of child abuse cases perpetrated by child marriage.

1.1.2 Poor sleeping arrangements

Poor sleeping arrangements was also could also be cited as one of the factors leading to the increase of child sexual abuse. A study carried out in the Caribbean’s on the risk factors of child abuse and the practitioners interviewed in Barbados cited poverty for creating an enabling environment for child abuse to take place. “Poor or inadequate sleeping arrangements were seen by practitioners everywhere as leading to overcrowding and the sharing of beds, factors which could lead to inappropriate sexual behaviours. Overcrowding, in particular, was seen as crucial: the physical proximity of adult males (in most cases step-fathers) to their step-daughters increased the risk that these girls would be abused” (UNICEF, 2010, p. 11).

It’s also important to note that Zambia operate under a dual legal system which allows for both legal and customary law to operate. “Under the customary law, once a girl attains puberty, she is assumed to be ready for marriage and with the consent of the parents, she could be married off” (Times of Zambia, 2014).

From this background above, research in this field was considered because of a lot of challenges that families face in their pursuit for justice. Some of the challenges they face are within the family, some are external through the legal processes (Police and court proceedings). The challenges within the family would include the decision making process on whether to take the case to court or solve it traditionally between the family of the victim and perpetrator.

Zambia is a society that has families that practice matrilineal and patrilineal system. As such, when a girl is getting married, her mother's brother must be consulted. In many matrilineal societies, the maternal uncle is the go-between or undertakes all the arrangements and responsibilities” (Tembo, 2018 p.5). Traditionally the uncles have more power to decide on such cases than the biological parents. This means when the uncle and family have different standpoints on the situation, then that poses a challenge to the family.

The legal challenges include the lack of will power of the police officers to deal with such cases effectively. Some claims are that the police receive bribes from the perpetrators family so as not to work on the cases, or destroy or lose the case documents on purpose so that the case loses ground. Mwewa has reported that “corruption threatens the effectiveness of the law when it comes to dealing with CSA” (Mwewa et al, 2015:26). The last but not least, it would also be interesting to explore the challenges the challenges the families face with the court system which has been deemed by many as not “friendly” courts. The Zambian legal system lacks child friendly courts where the victims would not feel intimidated but rather feel protected by the court proceedings. These challenges leaves a lot to be examined.

Poor Monitoring Mechanism for Children’s Rights

Other factors contributing to child sexual abuse has been attributed to lack of children’s rights monitoring mechanisms. Even though “Zambia signed the Convention on 30th September 1990 and ratified it on 6th December 1991 without any reservations. Despite this early signing and ratification, the Convention has only been partially incorporated into domestic law. it required an enabling legislation for this right to become enforceable” (CHIN, 2008). “Despite having revised the National Child Policy in 2006, there is still no implementation framework for the policy. Overall, government, on the localization and implementation of the CRC has made no remarkable progress after the submission of her First and Initial Periodic State Party Report in 2002 (CHIN, 2008)”.

“Zambian government has made little and limited progress towards the implementation of the UNCRC, but this progress has for the most part been watered down by other negative factors that have been left unattended (CHIN 2008). For instance harmful cultural practices that leave children vulnerable.”

1.2 Purpose of the study

The traditional and legal factors mentioned in the above paragraphs, show that there are still gaps between the traditional customary law and the courts when it comes to working with child sexual abuse cases in unison. The traditional system allowing girls to get married soon after puberty while the legal system stipulates that anyone below the age of 18 should not get married. The other aspect that has a discrepancy is the way cases of child sexual abuse are handled with the traditional system supporting reconciliation between the family of the perpetrator and the victim while the legal justice system advocates for justice for the victim. This makes this research an interesting topic to look into as it would give the reader a looking glass through which the families of the victims view the justice system, why they chose the mode of conflict resolution and the dynamics of decision making in the family to come up with such decisions

The above statement is a clear indication that there is lack of stipulation in terms of the clarity of the service guidelines between the traditional system and legal system and their processes have not helped to reduce the child sexual abuse. For instance in Zambia, in 2009, Police recorded 1,676 defilement cases, but there were only 277 convictions and 63 acquittals (The guardian, 2011). This leaves about 1336 cases of which among them are cases, awaiting trial, among them are also cases that were withdrawn from court and sorted out using the traditional justice system and this research will provide the reader with how the families view the justice system and their reason for choosing one form of justice system over the other.

1.3 Significance of the study

My study will build on the knowledge of the study used in the literature Review by using it as a reference point. The study used in the literature review focused more on why families choose either the legal and traditional system. Not only will my study focus on Traditional vs Legal system of solving child sexual abuse cases, my study will further go on to investigate how the legal system deals with child sexual abuse cases as told from a family perspective.

1.4 Research Aims

The aim of the study is to examine the role of the families of the victims of child sexual abuse in legal system in processing cases associated with child sexual abuse in Zambia and examine factors that impact whether a family choose to process the case in court or through informal negotiations with the family of the perpetrator (the traditional system for solving conflicts). The thesis aims is to compare the traditional system of dealing with child abuse and the modern legal system (formal justice system). I examine the step by step process of how a case is supposed to be dealt with as stipulated in the Zambian Legal system versus how it is dealt with in reality.- as experienced and accounted for by the families of the victims' and social workers in the case

1.5 Research Questions

The overarching questions in this research include

- How does the modern legal system in Zambia work from when a case is reported to the last hearing in court?
- What are the factors that influence families' decision to use one form of justice over the other (Traditional vs legal system).
- What was the families' view of the modern legal justice and their own role in court?
- How is the decision making process/negotiations within the family in terms of dealing with such cases. Do families reach settlement before or after the legal processes are over?

1.5 Key concepts and definitions

1.5.1 Family

A family, like in any other society is an important institution. Just like many other concepts, the concept of family has been met with many definitions. Below are two definitions given by the American census bureau and Popenoe. According to the US Census Bureau, "A family consists of two or more people, one of whom is the householder, related by birth, marriage, or adoption and

residing in the same housing unit (US, Census Bureau, 2014). However Popenoe (1992:1) offers a more general definition of what constitutes a family: “Domestic group consisting of at least one adult and one dependent”. This definition is more applicable to the Zambia because it is general and gives room for modification.

For the purpose of this research, I will use the definition by Popenoe with some modification to mean a “domestic group that consist of either parents, guardians, children or relatives that live together”. Allying this definition to my research question I will look at the family to mean “the participant” that represented the family during court proceedings which would be either the mother, father or both or the guardian to the victim. So I will be getting the views of the representative of the family.

1.6.1 Forms of Justice

It is important to note that Zambia has a constitution which allows for both the modern legal system and traditional legal system to operate side by side. According to article 147, close 2 of the Zambian constitution, “alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted, subject to clause (3) which states that “Traditional dispute mechanism shall not intervene with the bill of rights” (Constitution of Zambia, 2014, p. 112). Meaning the traditional justice system shall be allowed to operate as long as they are in accordance with the constitutional laws of Zambia.

Modern legal system

The modern legal system or criminal justice system “is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws” (Boyd, 2017, p. 64). In, Zambia, the modern justice system is set up in a way that the Supreme Court stands at the helm of all courts as it is an appeal court on all matters. it has jurisdiction on all legal and constitutional disputes. Below it is the high court which has the authority to hear the criminal and civil cases and all the appeals from the courts below it. The industrial court deals with labor and industrial matters while the Magistrate courts have also have some jurisdiction over some civil and criminal cases. Last but not least the customary or local courts hears the most civil and petty criminal cases. The local courts employ the principle of customary law in dealing with these cases which varies throughout the country (Magagula, 2009). All the child CSA cases are heard at the subordinate courts and sentencing is left at the hands of the judges from the high court as

they have the jurisdiction to pass judgement of such cases. The modern justice system in this research is used to refer to the all court, police and other legal dealings prescribed by the constitution of Zambia when dealing with child sexual abuse

Traditional legal system

Traditional legal system is a complex term, it is very hard to come up with a worldly concerted definition of traditional justice system as the mechanism used to provide rule of law and access to justice vary from society to society (United Nation Women, p. 6). For the purpose of this research, I refer to the family as a ‘traditional justice system’ because it does sit as adjudicator and dispense justice, yet there is no visible role played by the state in its work” (Matakala, 2012, p.12). For the most part of this type of justice system, there are no case records kept, just witnesses who are fellow family members or community members. So even if it operates in the same realm as the modern legal system, its evaluation and monitoring mechanism from the state is very minimal or non-existent as the state do not ask for records when families dispense justice in such matters.

The difference between these two sets of justice is that, the modern legal justice system seeks to punish the perpetrator by confining them in prison for rehabilitation according to the set rules and regulations while the traditional legal system seeks to restore and rehabilitate the broken relationships. According to UNICEF (2009, p.44) this “restoration focuses on restoring the victim, the perpetrator and the surrounding society to a preexisting or desired balance”.

1.7 Importance of the study

This research study is important as it provides researchers and other interested parties with an insight of the views that the families of sexually abused children have on the legal justice system and the traditional justice system when it comes to justice and conflict resolution. Research in this field has been limited and literature is scarce on this topic. As such, this research might provide a starting point for researchers who would like to carry out more research on the experiences that families have with the formal legal justice system.

Secondly, this research adds to the existing knowledge base on the lived experiences of families in their pursuit of justice. The knowledge base include factors that influence families for choosing one form of justice over the other.

1.8 Limitations

Literature on this topic is hard to find on southern Africa, more especially on Zambia. This is because very few research has been conducted on CSA. Even among the little research that exist, most of the data is inclined to causes of child sexual abuse and the post exposure experiences with very few glimpses touching the “effectiveness of the modern justice system when dealing with CSA”. This makes this study “the effectiveness of the justice system from a family perspective” a very novel undertaking in this field.

Since CSA is a very sensitive subject the courts take longer to pass judgement on some cases and some 2 participants in this research still had their cases in court. As such, I did not have enough time to make several follow ups on the cases to find out how they unfolded as some cases take several months up to a couple of years to be concluded

1.9 Structure of the Thesis

This thesis has been organised into seven chapters. Chapter one provides an introduction to the study, statement of the problem, research purpose, research questions, key concepts and definitions, importance of the study and limitations. Chapter two presents the background for the study, the study site, profile of Zambia. Chapter three present the theoretical perspectives and review of literature. Chapter four presents the research methodology and design, and the description of the informants. Then chapter five presents the main findings of the research. Chapter six presents the discussion of the research findings. Chapter seven provides a conclusion, recommendations based on the research findings and policy implications

CHAPTER 2: CONTEXT: THE SITUATION IN ZAMBIA AND LUSAKA

Zambia is a landlocked country with a population of 16.9 million (CSO, 2018). It is located on the central plateau of the southern African region, with a land area of 752,612 square kilometers. Formerly known as Northern Rhodesia under the British rule, The Republic of Zambia got her independence on the 24th of October, 1964. Zambia is bordered by Tanzania, Democratic Republic of Congo, Angola, Namibia, Botswana, Zimbabwe, Mozambique and Malawi (Zambia Country Analysis, 2015).

Like many other developing nations, Zambia is a country affected by so many social problems that stem from social, political and economic. Even with a sizeable and mostly perceived manageable population, the country is still engulfed by high poverty levels, HIV/AIDS and a poor education system. These three main, social problems are somehow directly or indirectly related to child sexual abuse. A look at these problems will help the reader understand how these problems might be connected to Child Sexual Abuse.

2.1 Poverty

Zambia happens to be one of the most urbanized countries in the sub Saharan Africa with 44 percent of its population living in urban areas (world population review, 2018). The capital city of Zambia, Lusaka has not been spared as it is densely populated with over 2.5 million people but with few amenities to cater for the growing population. Lack of proper social amenities has been attributed to poverty (Mwewa, 2015, p. 27).

Poverty is one of the pressing social problems in Zambia. According to the Zambia living conditions monitoring survey report (2010, p. 183), it indicates that 60 percent of the population is poor with 42 percent living in absolute poverty. From this background, it's easy to see that poverty characterizes many families especially those living in shanty compounds.

With so many people in urban areas and little resources to fend from, it's easy to see why the majority of men and youth are not employed. This leaves them unable to support their families hence resort to unlawful activities such as drugs, alcohol (Central statistics office, 2012) and sex

with minors. “Thus, from such a scenario, it is not difficult to establish how poverty may lead guardians to technically withdraw matters from court once the offender offer material things or promise marriage”. (Mwewa, 2015, 27) Some families opt to get money as they see child sexual abuse not only as unlawful act but also as an opportunity to get out of poverty.

Furthermore, poverty also affects people’s ability to access justice by creating barriers to legal representation, particularly for the indigent and women (Bowd, 2009, 3).

2.2 Education

The education system in Zambia is characterised by low enrolments, low progression, and high dropout rates. This is exacerbated by the poor performance and poor attendance as most of the children, in one way or the other engage themselves in some economic activities that would help them generate some income and supplement the family income. Children are also made to take care of the sick family members as opposed to being in school learning (ZNESAR, 2005, 8).

Due to high prevalence rate of HIV and other opportunistic diseases, families find themselves in situations where the breadwinner is sick or has died. In such cases, young children who are supposed to be in school are made to take care of the sick at home. This is true in families where the breadwinners are sick or have died. “Children, young as they are, who are supposed to be in school, look after the sick in their homes or take on the tasks of others who are taking care of the sick such as cleaning, carrying water and wood, and looking after siblings”. (Mwanza 2015, 103)

Long distances to school are the order of the day, coupled with poor learning environments. Some learners go to school on empty stomachs which makes them unable to fully concentrate and achieve their full learning potential. Most schools, especially in rural areas lack qualified teachers. There is also an issue of wide gender gaps because of choices parents have to make on who goes to school. This mostly affects the education of girls as parents more often prefer to send male children to school as opposed to girls whom they believe will fall pregnant and dropout or fail the examinations and dropout anyway (ZNESAR, 2005, 8). This leads to high illiteracy levels.

High illiteracy levels affects people’s access to the economy and this means low income and lack of proper knowledge to fully understand the justice system and its language. According to Bowd

(2009, 2), Lack of basic understanding of the law makes people ignorant over civil and human rights and this affects their access to the legal justice system when a CSA occurs.

Further, the effects of the global economic crisis may threaten child survival and development, entrench chronic poverty, and create long-term harm for the poorest (UNICEF Zambia, 2017). When there is a global crunch, mostly its economies in the peripherals that suffer the downturn. Since Zambia is an underdeveloped country, its economy hugely depends on the sale of raw materials. A global crunch means less demand for these materials or selling at a very low price. This affects the government's income and in turn the government is forced to cut on some programs that would improve children's lives. Because of this, programs such as social protection of children, building of new schools, child abuse sensitization, and research in this field may lack investment from the government.

2.3 HIV/AIDS

HIV/AIDS is still a huge problem in Zambia with a national average prevalence of 20% in the 15-45 year old age group. The prevalence stands at 29% in urban and 14% in rural areas. More recent data, has however shown that the HIV infection rate among young adults is decreasing. However, HIV and AIDS-related diseases are still prominent, with the number of households experiencing chronic illness and death rising. For instance, in 1998, in the rural areas, 17% of households had experienced an HIV/AIDS-related death while in urban households it was 12% (Zambia situational Analysis, 2005, 8).

HIV/AIDS relates to child sexual abuse in a number of ways. One of the ways is the perception some people have on the disease. There is a general myth that sleeping with a child who is HIV negative can cure you from HIV AIDS. This myth is perpetuated by Witchdoctors who advice their clients to do such and in turn, a lot of men target children with the view of curing themselves of HIV/AIDS (Jere, 2003).

Apart from the detrimental health effects HIV/AIDS has on its victims, HIV/AIDs tends to have other social ripple effects on the children. According to Mwanza, (2015, 103) she states that "when a parent/ breadwinner is ill, children do not regularly attend school because their labour is needed to assist in paying medical expenses or because families can no longer afford to pay school fees".

This in a way deprives the children of the necessary information and knowledge that the school can instill in them on how to protect and take care of themselves in society hence rendering them vulnerable to social vices such as Child sexual abuse.

2.4 Children Social Protection in Zambia

Child protection is an important aspect of every society because children are the future of any nation. Zambia despite having ratified the international instruments related to child protection has lagged behind in domesticating these ratifications so that they become enforceable. (UNICEF, 2017). For this reason coupled with limited government resources, Zambia has failed to domesticate the Child's rights commission ratification that would ensure full protection of children's rights at all cost (CHIN, 2008). In turn, this has left the children vulnerable to the vices that society throws at them.

Some NGOs have come into the picture to try and provide where the government is failing. But their coverage also is not very extensive because of limited resources at their disposal. According to Dunn (2007, p. 3) in Zambia, there are only 3 to 4 Child in Crisis Centres/One Stop Centres that deal with abuse perpetrated against children. This is not enough especially in a country where 53% of the population are children below the age of 17 (ZCSO, 2011). Also, NGOs have specific program area and target groups. This means children that fall outside their target group are left helpless. For instance Some NGOs have orphans as their target group, meaning the poor children that have parents will not be enrolled in the programs the NGOs are offering. As such there is need for the government to provide social protection as it is the only entity, if properly planned, has the capacity to provide social protection coverage to all the children in the country.

Currently, the mechanism to protect the rights of the child is not strong enough. For instance, on paper, if there is a Child sexual abuse case within a home, the government is supposed to place the child in a "safe home" as investigations are being carried out, but in reality the child is sent back to the same home where it all happened. This is a violation of children's rights as their safety is not prioritized. Kankasa (2006, p. 7) has argued that "the rights of the child in conflict with the law continue to be violated because domestic legislative provisions are not sufficient to guarantee the protection and promotion of human rights".

Further, Dunn (2007, p. 4) has argued that “there is some role confusion between the NGO, police and DSW (District Social Worker) over who makes decisions regarding the protection of the child. There are no formal case conferences, no at risk register, and few court orders applied for get a place of safety”. In most of these cases it’s the NGOs and the police who get to make the decisions regarding where the child should be placed. “ Also no use of court orders to protect a child where the perpetrator is on bail or if criminal conviction is not secured on a particular man but there is evidence of sexual abuse by someone (Ibid: 4)”.

2.5. Dealing with Child Sexual Abuse in Zambia- The Ideal Process

2.5.1 Actors in the process

In an ideal situation, when a child is sexually abused, the ideal set of events is that doctors treat the injuries, therapists counsel the child, social services works with the family, police arrest the offender, and attorneys prosecute the case. (LERCA, 1997:1).

2.5.2 The social worker

The role of a social worker is very important in a child abuse case as social workers are perceived as experts in the area of child abuse. This is because, unlike other professions, they work with abused children more often (Anderson et al, 2002, p. 368). The social worker has 3 roles in a child sexual abuse a case. Firstly, the social worker works with the victim by educating the child on their ability to participate in the courtroom process. Secondly, when working with the family, they provide therapy and moral support where needed. They also help the family and the victim to understand the court processes. Last but not least, social workers work with the legal aspect of the case where they are asked to provide information regarding the nature of the abuse and the probable impact it has on children (ibid, p. 368).

Furthermore, social workers facilitate the process from the time a case is reported to the time of the last hearing in court. A social worker provide information regarding each victim and victims’ family status and their ability to care for the child. When a case is first presented at the police or hospital a social worker should record his or her account of the case. After the victim and family have been interviewed by the police, the social worker also interviews the victim and family so as to have his or her account of the incident. Other services a social worker provides include; psycho-

social support and care, moral support to the family and also link the victim and family to other support systems that can help them through the process. For instance if the offender is a family member, a social worker can help the victim find a safe home where he/she can be taken care of.

The social worker may also listen to a child's expressed wishes, discuss the child's wishes and any issues that the child requests that the court should consider and address any additional factors that are necessary for the court to consider to protect the best interests of the child (CWIG, 2013:6).

2.5.3 The Police

The role of law enforcement in child abuse cases is to investigate, to determine if a violation of criminal law occurred, identify and apprehend the offender, and file appropriate criminal charges (LERCA, 1997). Law enforcement becomes involved in one of two ways: by a referral from a school, a physician, or an agency such as social services, or by a direct call for service from a parent, a child, or a neighbor.

When a case is first reported and depending on the physical damage the child has suffered, if the child is in pain, the police are mandated to refer the child to the medical practitioners who carry out the necessary medical examinations and gives treatment to the child. From here, the family are referred back to the police so that they can give a statement of what transpired from their perspective. The police also collect a statement from the child. They let the child narrate what transpired and collect data that is vital to the investigation process. If the offender is a known person, the police have a job to apprehend the suspect. When the statements have been collected, a docket is opened, the police will question the suspect in view of finding out more as they wait for more evidence from the medical doctors. When the evidence finally arrives, the police are expected to submit all the evidence they have gathered together with the medical report to the magistrate court which then sets a day for appearance in court of the suspect to plead guilty or not guilty so that the case goes to trial or not. Law enforcement officers need to be careful their investigation might traumatize a child.

2.5.4 The family: Role of the family in the investigations

According to Child Welfare information Gateway, the role of care givers and parents of the victims is "providing a healing environment for children who have experienced abuse or neglect. (CWIG, 2013, p.2). A healing environment means provision of moral support, care and comfort which a child needs. Other than that, the family has a role to play in the investigations. A family is supposed

to report the child abuse suspicion to the police. If the child is hurt badly and is bleeding. The child is supposed to be taken to the hospital for medical attention and then later the case is reported to the police. At the police, the family is expected to give an account of what transpired on the material day. For instance, the families are supposed to narrate to the police officer handling the case, the very details of when it happened, where it happened and how it happened and how they got to know about it. The family, if they know the perpetrator are then required to give the name of the perpetrator. As the family narrates, the police officer records the details of the story (Weiss and Berg, 1982, 514).

2.6 Summary

A lot of families are experiencing child sexual abuse in Lusaka. As such, some families are faced with the challenge of having to choose between the traditional justice system and the modern legal justice system. Issues relating to poverty, culture, and legal factors influence families' decisions. I chose Lusaka city because it is one of the highly urbanized cities in the sub Saharan Africa but with limited resources to cater for the population.

For that reason, families are faced with poverty, poor education system and engulfed by HIV/AIDS. With all these factors in play, Lusaka presents a good study area because of its uniqueness as shown from the social economic characteristics it possesses which I consider vital for my study.

CHAPTER 3: LITERATURE REVIEW

This chapter presents relevant studies to help discuss the findings of the “family perception of the effectiveness of the legal system in dealing with child sexual abuse cases in Lusaka”. A number of factors are highlighted in this chapter that may influence the family to perceive the justice system in a way that they do. Further the literature shows factors that may influence the family to choose one form of justice over the other. These factors include, compensation, restorative traditional model, shame, adversarial court system, blame game and community pressure and corrupt Justice System. As these factors influence families perception and their choices of mode of justice to pursue.

3.1 Compensation

In societies where poverty affects 61 percent of the population, compensation has been seen as one of the reasons why families withdraw the cases from courts. Nansasi (2005, p. 42), argues that many cases that do not make it to court because “parents preferred compensation from the offenders and that laws were also either weak or poorly implemented”. This assertion has been noted by Matakala who indicates that the focus of traditional justice system is not the child but rather the family of the victim, “it is the family that is wronged and seen as the victim. This is because it is the family’s name that is tarnished by the wrong; and the family may lose out on lobola or bride wealth should the child not be married due to the abuse” (Matakala, 2012, p. 14). From this, one can easily see that the victim’s family focus is monetary gain from the perpetrator and not the wellbeing of the victim

In some societies where tradition is very vital for instance, Egypt, India and Swaziland, virginity is a treasured to the point where virginity test are carried out when one is about to get married. In such societies, compensation is seen to be valued highly as it is perceived as a way of appeasing the victim’s family for the virginity which they have lost. The restoration and reconciliation of the involved parties is made possible by compensation as it acts as a replacement for the lost virginity (Matakala, 2012, p. 14).

A study which was conducted in 2010 in Uganda, revealed that parents or guardians where charging perpetrators large sums of money as compensation. Parents saw a child sexual abuse as

a means to generate wealth and as such the children had lost confidence in them (Phiri, 2015). With poverty affecting 60 percent of the population in Zambia (Demographic Health survey 2013-2014, p. 2), it's easy to see why some families would opt to take the offer the perpetrator offers so as to finance their pressing needs such as food and other basic necessities.

The idea of compensation is not novel when it comes to child sexual abuse. Some countries in the world such as England, New Zealand offer compensation to the victims of child sexual abuse. This compensation is statutory. To bring it closer to the African context, countries such as Tanzania and Uganda have followed suit by allowing statutory compensation to the victims. (Thomson and Simmonds 2012, 12)

This construct helps us understand why families choose one form of justice over the other. Since the formal legal system is more inclined to providing punishment for the act committed, the traditional justice system offers more than punishment as compensation is also key component in the proceedings.

3.2 Shame

According to Gordon Wheeler (1997, 224) "Shame is the affect which is the source of many complex and disturbing inner states: depression, alienation, self-doubt, isolating loneliness, paranoid and schizoid phenomena, compulsive disorders, splitting of the self, perfectionism, a deep sense of inferiority, inadequacy or failure". It resonates into people feeling bad about themselves as shame on its own is an entrance to the self.

Sexual abuse cases are viewed differently in different places. In communities where a child sexual abuse is viewed shameful and looked down upon. The writers thoughts are that Victims find it hard to cope with the CSA knowing that most of the community members know about it and are talking about it. Some victims do not want to stand in front of the court where they become the centre of attention and as such they want to withdraw the cases from the police and have them dealt with from home using the traditional justice system, where the sitting is mainly between the family of the victim and the family of the perpetrator.

A victim of child sexual abuse narrated how hard it is telling your story in court, "standing in court, people laughing at you, but you don't know why" (The Guardian, 2013). A study done by Clark (2011, p. 181) found that some victims felt shame for standing in front of the court and telling their

stories “it was that classic thing where I felt really ashamed and really embarrassed and I thought everyone was going to think it was my fault”. As such some Victims feel the need to withdraw the cases from the police and sort them out using the traditional justice system. It is this kind of pressure that some victims chose one model of justice over the other. Mwewa, points out that some “victims would not recommend others to “go through the same hell” as it was not worth it (Mwewa, 2015, p. 20).

3.3 Adversarial court system

Research has shown that a justice system which has court processes and procedures that are coercive in nature only adds trauma to the victims (Mwewa, 2015, p.19). These processes and procedures include long waiting time and cross examinations. A study carried out in Zambia, which had 100 participants, reported that 90% of them experienced anxiety with only 10% reporting low anxiety. Out of the 100 participants, 92% said the courts were unfriendly with only 8% reporting that the courts were friendly. The trauma generated from having to recall the incident in front of the people. Furthermore, coming face to face with the suspect added to the trauma. (Mwewa, 2015, p 19). Long waiting periods means the child has to recall the same ordeal a number of times which affects the quality of the evidence. Long waiting procedure leads to suspect being put on bail awaiting their cases. Nansasi argues that “Bailing out criminals or suspects is a disturbing concern presenting suspects are released before investigations are still going on, they interfere with evidence, sometimes they run away or intimidating the families of the victims so as they drop the case” (Nansasi, 2005, p. 68-69).

There is also the physical and emotional fears that victim have to overcome in order to disclose abuse in courts by recalling the experience. Other stressors the victims go through include “facing the accused and recounting embarrassing and frightening incidents in public”. Furthermore Mwewa notes that “the presence of other people may produce withdrawal or avoidance symptoms in some children (Mwewa, 2015, p. 20).

3.4 Restorative traditional system.

The traditional, justice system in Zambia, is restorative in nature as opposed to the formal legal system which is focused on punishment. This is because for the traditional justice system, the goal is not entirely to punish the victim but to try by all means to restore the relationship that has been broken.

In as much as the wrong doing in question is condemned, focus points to finding a solution to restore the broken relationship. The goal here maybe to punish with forgiveness as opposed to the legal justice system which “punishes to blame”. Matakala (2014, p. 14), argues that “this type of restorative justice is very appropriate to the needs of poor people and tends to rebuild community relations, as opposed to the formal judiciary which is largely adversarial”

Having said that, Zambia, even though having a modern justice system on paper, most of the social relationships are still influenced by the traditional justice system and other religious practices such as Christianity. In Zambia, the “predominant religion is a blend of traditional beliefs and Christianity; Christianity is the official national religion” (Magagula, 2009) and according to Chiyeka (2014), Zambia was declared a Christian Nation in 1996 . As such the Christian values are more prominent and in some way closely related to the traditional system of justice as both advocate for restoration and forgiveness. To be a good Christian for example, you have to be forgiving. There is a saying in Zambia, which is a Christian saying. “mulungu azakabaona” which means “god will judge them”. So even in matters that require the law, people will forgive and expect God to carry out the judgment on their behalf. In my thoughts, I think, this could explain why some families do not take cases to court and sort them out using the traditional justice system

3.5 The blame Game and Community Pressure

The blame game happens when the members of the community blame the victim for the having been found in such a situation. This is in an attempt to discredit what the victim has said about the abuse in an attempt to protect the perpetrator. This is mostly common when the perpetrator is a family member or an important member of the community.

Taylor (2013, p. 116), highlights how the police acknowledged pressure within the family, “Police believe that victims withdraw complaints of sexual assault because of pressure from family in

intra-familial (i.e., incest) cases”. This influence can also be external from the community. Banda (2016, p. 165) notes a case where a pastor sexually abused a child, a meeting was convened to discuss the matter at church but instead, they all blamed the victim for trying to tarnish the image of the pastor. This could explain why some victims do not come forward with their sexual abuse cases because they want to avoid creating enemies in the communities they live. Even the cases that are already in court, the victim’s family may decide to withdraw them after being pressured. Some victim’s family do not want to be seen as the reason why a perpetrator was sent to jail. This perpetrator could be a breadwinner or an influential member of the society. .

My thoughts are that when the child sexual abuse case is in court, some family members of the Perpetrator will approach the victim’s family in their homes and pressure them to withdraw cases from the court. Phiri, (2017) in her interviews with sexually abused children they expressed concern over the bail system in Zambia as the reason why perpetrators would threaten the victims to withdraw the cases from court “But if they are released on bail, they could threaten the victim to withdraw the case and probably abuse the victim more”. If the perpetrator is jailed then the blame will be put on the victim’s family. As such, some families are not ready to bear that burden, so they are forced to give in so as to create peace in the community. So the victim’s family would rather have the case sorted out using the traditional justice system to avoid the community or the suspect’s family from putting the blame on them.

3.6 Corrupt Justice System

Corruption can happen at every level in the formal justice system chain. It happens in police stations, prosecutors’ offices, the judiciary and in prisons (Huber, 2014). And when it happens, Corruption creates apathy towards the formal justice system. People do not trust the legal system if they think it only favors the people with money. People with money have the resources to help themselves achieve the justice they want while poor families do not have these resources.

For instance, a 2014 survey conducted by AFRO/Barometer in conjunction with RuralNet Association reported that 30 percent of Zambians regarded the judiciary system as corrupt hence the withdrawal of their trust in the system. The survey also showed that the number of Zambians who trust the judiciary had reduced from 62 percent in 2012 compared to only 59 percent in 2014. These figures are showing less Zambian have contact with the justice system. The report indicated

that “People do not take their cases to court because majority of them think that it is costly. Many of them think that lawyers are expensive and the court costs are expensive” (LusakaTimes.com).

Lack of fair judgement was highlighted as the main reason behind the apathy towards the justice system. Furthermore, the report has shown that “only 50 percent of people in urban areas trust the Judiciary, while the percentage in rural areas stands at 65” (LusakaTimes.com).

These figures shows huge disparities between those people accessing the justice and those that do not and this could further explain why some families opt to use the informal justice system as it allows them to adjudicate justice.

CHAPTER 4: THEORETICAL PERSPECTIVES

The theoretical perspectives provides the looking glass through which a phenomenon can be explained. Middle range theories will be used to interpret why families choose to pick one form of justice system over the other when faced with a child sexual abuse case. Furthermore, procedural justice theory will be discussed to explain the views of the families on the legal system. I will first give a rationale on why I have selected these theories.

4.1 Grounded Theory

Grounded theory was developed by Glaser and Strauss in the 1960’s and it can be described as a research method where the theory is developed from the data itself which makes it an inductive approach; meaning that there is a shift from more specific to more general (Boodhoo and Rajshree, 2009, 3). Narratives focus on individual life stories that can be either in written or oral and they allow the understanding of patterns, culture and behaviour (ibid, 3). On that note, in this research families experiences with the legal system when dealing with child sexual abuse are studied so as to understand what views the families hold on the justice system and traditional justice system.

Also, grounded theory can be looked at as a method consisting of flexible methodological strategies which becomes the end results of such type of an inquiry. Grounded theory has been used by researchers to mean the method of inquiry in terms of data collection and most importantly as means of data analysis (Charmaz, 2003).

The methodological strategies of grounded theory are aimed to construct middle-level theories directly from data analysis. The inductive theoretical thrust of these methods is central to their logic. The resulting analyses build their power on strong empirical foundations. These analyses provide focused, abstract, conceptual theories that explain the studied empirical phenomena (Chamarz, 2003).

Banda notes that in grounded theory, the researcher does not start with the theory, instead, the researcher starts with an area of study where the theory emerges from the data collected (Banda, 2016, 79). Banda further highlights that grounded theory in a way involves retrospectively formulating new hypothesis to fit the data (ibid,79). Grounded theory acts as an umbrella theory to the Middle range theories.

4.1.1 Middle Range Theories

Middle-Range Theories are “theories derived from specific scientific findings and focuses on the interrelation of two or more concepts applied to a very specific social process or problem” (Hammond et al, 2015). Robert K. Merton (1910-2003) who was a functional theory sociologist proposed for the use of smaller but more specifically precise theories when trying to explain smaller and more specific social phenomena (ibid, 2015).

As such, Middle Range Theories are used to interpret a phenomenon by way of “social constructs”. These constructs are built on facts from phenomenon under study. These constructs provide a perspective on which a particular phenomenon can be interpreted. With middle range theory, according to Tony Ward & Richard J. Siegert (2002, p.321), “the initial goal has been to construct a loosely associated set of constructs with which to interpret or explain empirical phenomena. Ultimately, however, the aim is to develop a rich, comprehensive, and integrated theory”. In this study a number of constructs have been proposed in order to understand how the families view the justice system and the reason behind their choice on whether to use the formal justice system or the traditional justice system when dealing with CSA. As such, Middle range theories, will be used to explain the perceptions of the families using single factors thought to be particularly important to the phenomenon under study. These are the same factors that have been

discussed in the Literature Review which include: compensation, restorative traditional model, shame, adversarial court system, blame game and community pressure and corrupt justice system.

4.2 Procedural Justice Theory.

John Thibault, Laurens Walker and their colleagues were the first proprietors of procedural justice in their psychological study in the 1970s. The first time they used Procedural justice was in reference to social psychological consequences of procedural variation with much attention being put on the procedure effects of fair judgements (Lind et al, 1988).

Procedural justice theory does not in any way substitute the relevance of distributive justice or the importance of objective justice but rather it takes into consideration the importance of whether the procedure conducted is fair and just. It further notes that people's perceptions of the justice system are not entirely based on the outcome of the justice procedure but through the processes through which justice was arrived at (Clark, 2011, p.38).

4.3 Rationale for this choice.

Child sexual abuse involves the family in a number of ways. Apart from the role that the family plays in providing care for the child. The family is also involved in the legal aspect of the case, sometimes as observers and sometimes as witnesses in court. This means the family plays a part from the time when the case is reported to the police, until the last proceedings in court. This makes the family have opinions about the legal procedures based on their experiences with the justice system regardless if they results turned out different than they expected. According to Lind and colleagues, "[n]umerous studies, conducted in natural settings as well as in the laboratory, have made it clear that the voice effect enhances procedural fairness even when the individual making the fairness judgment has no direct control over the decision itself" (Lind et al, 1990, 952). This simply means that as long as people felt that they were well represented and information regarding their cases was given to them throughout the legal processes they had to go through, they would feel that the justice system is fair regardless of the outcome.

Procedural justice theory allows people to give their own perception of the justice system. Since this paper studies the family perceptions of the effectiveness of the legal system in dealing with child sexual abuse case. It heavily relies on the families experiences with the justice system. This

theory gives the families that room to express their lived experiences with the justice system. Emphasis here is not on the outcome of the justice proceedings but rather how the families view the processes that led to the outcome. As Clark Puts it, this theory “consider understandings of what underlies just and fair processing, but also to question the kinds of processes that both allow for and inhibit the achievement of these constructs. Procedural fairness traverses various system and institutional approaches and instead examines personal understandings and experiences of the processes that underlie responses” (Clark, 2011,39).

4.4 Components of procedural justice.

According to Clark, the procedural justice theory has four components which is control over the process and outcome and the social aspects of the processes which include communication, voice, conduct and respectful interactions (Clark, 2011, 153). Trustworthiness, neutrality

Control. This is the control over the process and outcome. This is the need that families have to feel like they are part of the process from the onset to the last part of the process. Families want to feel like they are involved in the process at all times as that makes them feel like they have control over the process and outcome. The social aspects of procedures such as communication, conduct and respectful interactions:

Communication this means the communication that is needed for the ones seeking justice. How readily available is this information and how it can easily be accessed by the families seeking justice.

Conduct. This is based on the fact that families want to feel that the justice system acknowledges their position as victims. The families want to feel like they are believed over what happened and are being represented correctly.

Other scholars have argued for the use of middle range theories to explain the families’ view of the justice system.

CHAPTER 5: RESEARCH METHODOLOGY

5.1 Introduction

This chapter provides a description of the methodological and research design guiding the study. In the first part I description that inform my philosophical position is given which informs my methodology on data collection and analysis when I explored the family perceptions on the effectiveness of the legal system in dealing with child sexual abuse in Lusaka, Zambia. Thereafter I give a justification for methodology selection, research design and my philosophical position in order to give a comprehensive understanding of the phenomena under study. Furthermore, this chapter will provide a presentation of the sample, criteria for selection, methods of sampling, negotiating access to sources of data, data collection, ethical concerns, analysis, and the methodological challenges that emerged in the process of this study.

5.2 Phenomenological approach

Phenomenology is basically an approach that studies the lived experience or the life world (Lavery, 2003, p. 22). The main proponent of Phenomenological approach is a German philosopher, Edmund Husserl who “sought to develop a new philosophical method which would lend absolute certainty to a disintegrating civilization” (Eagleton, 1983, p. 54).

Since my study is on the effectiveness of the legal system in dealing with child sexual abuse from the perspective of the family. So this research is basically trying to get the families lived experiences with the modern legal justice system. Lavery states that what phenomenological approach tries to do is emphasize on the world as lived by a person, and that the world or reality should not be considered as separate from the person (Lavery, 2003, 22). As such the research focuses on what the families narrates based on their experience with the modern legal system when they had a child sexual abuse case.

The most basic inquiry made is "What is this experience like?" and this is a way of trying to uncover meanings from the lived experiences(Lavery, 2003, p.22).as such, I ask families how their experience was like from the time the case is reported to the last hearing in court. The focus is to try to understand their experiences as lived. There is rich data in their experiences as it includes some things that we would normally take for granted or those things that we normally consider as

common sense. As Lavery puts it “the study of these phenomena’s intends to return and re-examine those experiences that are taken for granted or considered common in order to uncover new or forgotten meanings” (Lavery, 2003, p. 22)

The families might have gone through experiences that could have looked normal or situations that could be taken for granted, it’s the purpose of this research to uncover meanings through re-examination of their experiences through interviews. By using Phenomenological approach, aspiring for the truth becomes possible as people base their narrations on the lived experiences and the experiences gives an insight into reality. “Husserl saw this method as a way of reaching true meaning through penetrating deeper and deeper into reality” (Lavery, 2003, p.23).

Husserl proposed that phenomena should be studied as it appeared through consciousness. He was for the idea that objects and minds take occurrence within experience therefore eliminating the notion of thinking of mind/body dualism as separate entities (Lavery, 2003, p.23). Through interviews, the participant’s recall their experience as it happened using their minds, this allows for phenomenon to be studied as it appeared to them. So studying the families’ perception of the justice system helps the researcher study families’ experiences as experienced as both the justice system and minds of the participants takes occurrence through experience.

When conducting interviews, there is need to direct the participants towards the topic of study by way of asking questions that are relevant and would help the families to remember their experiences. “Husserl saw intentionality as a process where the mind is directed toward objects of study. Conscious awareness was the starting point in building one’s knowledge of reality. By intentionally directing one’s focus, Husserl proposed one could develop a description of particular realities” (Lavery 2003, p.23). This could be done by reminding the participants about a subject, that creates conscious awareness where the participants can give the researcher a description of their experiences,

The philosophical viewpoint of phenomenology has been used as an approach to guide the choice of research design and analysis. The main concern of phenomenology is to study personal lived experiences of the participants in the ‘social world’ (Bryman 2012, 30). From this background, it is safe to argue that phenomenological approach is only concerned with the subjective experiences of the participants and their experiences, and in doing so, the main point is to search for a ‘common understanding and the meaning of common practices’ (Crotty 1998, 83). In a quest to find meaning,

this approach emphasizes on organizing data into themes emerging from the data itself, and hence in the end it does not allow researchers to make generalization from the research findings (Lester 1999, 2).

Having explored the phenomenological approach, I aimed at getting the subjective personal lived experiences of families seeking justice. Having worked in the same community as a social worker two years prior to the research as a social worker with sexually abused children and families for Padiatric Centre for Excellence, I have as much as possible tried to reduce my influence on data by 'bracketing' my knowledge about the challenges faced by families in their pursuit for justice. The following section outlines how the research unfolded. It starts with a synopsis of the research paradigm, then a description of the locating of the research participants, followed by the data-gathering methods, where after data-storage methods are outlined. Thereafter follows an explanation of the explication of the data (comprising several stages)

5.3 Methodological approach and research design

I identified a phenomenological methodology as the best means for this type of study. This is because Phenomenologists, unlike positivists, believe that the researcher cannot be entirely detached from his/her own presuppositions and that the researcher should not pretend otherwise (Hammersley, 2000).

Based on the nature of this research I employed a qualitative approach to the data collection. This is because qualitative methods emphasises the need to collect information that is in-depth in nature when trying to understand the 'meaning' people attach to a social phenomenon under study (Creswell 2014, 4). One main strength of qualitative research is the one given by Silverman stressed that, the main strength of qualitative research is its ability to use "naturally occurring data to find the sequences ("how") in which participants' meaning ("what") are deployed". It's for this reason that I employed personal interviews with the families of the sexually abused children.

The goal of this process is to explore what the participants really experienced, from the inside out (Laverty, 2003, p.29). Since the goal is to understand the families lived experiences with the modern legal justice system based on their narratives. The other reason for this choice was that it

involves the capture of very detailed information which would not be possible to capture with other methods such as quantitative methods. Qualitative method therefore becomes an important point of take-off when using open ended questions as seen from the interviews I used. I gathered information from a small sample of eight participants which an acceptable number. De Graaf and Huberts states that in a case where there is no idea number of cases, a number of between 4 and 10 cases might be enough because if the number goes beyond 10 then the complexity and volume of data becomes difficult to handle (GJalt De Graaf and Huberts, 2008, p.642)

An explorative design was used for data collect and analyse data. I used open ended questions to help me inquire into the families experiences with the legal justice system and their narratives on how effective or ineffective it is. The rationale for using explorative research design, is that it allows for detailed information to be accessed from the participants which would otherwise not be given if another technique is used.

5.4 Selection and sampling of informants

For a participant to be eligible to take part in this research, the selection had to be based on a criteria and the criterion was that; 1) the family had a child who had been sexually abused, 2) the case was reported at the police station 3) the case was in court, 4) the Participant had to be an adult (above 18 years of age) representing the family, 5) the family living in Lusaka catchment area.

Purposive sampling was used to select the sample from the population. Bryman defines Purposive sampling as “a non-probability form of sampling where the researcher does not seek to sample research participants on a random basis. The goal of purposive sampling is to sample cases/ participants in a strategic way, so that those sampled are relevant to the research questions that are being posed” (Bryman 2012, 418).

Purposive sampling was used to recruit the 8 participants I used in this study and this was done with the help of key informants from the Zambia Society for child protection and Chawama police post as they had access to the contact details of the families of the victims. Initially 15 families were contacted but due to the sensitivity of the topic under study some families were not willing to talk to a researcher about this sensitive topic. It's for this reason that I had to make good use of the interviews I had with the 8 participants.

At this point it is also important to note that the assumption is that in a qualitative research, concerns about external validity and the ability to generalise do not emerge as large as they are in quantitative research (Bryman 2012, 203). Like I stated in the earlier parts, I am careful to make generalisations of all families' experiences with the law and their choice to pursue the cases using the legal justice system or the traditional justice system based on the results of this study. It is also equally important to bear in mind that however, the results apply to some families in the community from those studied.

Invitations were sent and appointments were made with the 15 families by the professional social workers working with Zambia Society for Child Protection. 15 families were contacted, 11 expressed interest in taking part in the research but only 8 families showed up for the interviews hence only 8 families got recruited for the interviews.

5.5 Negotiating access to informants

To get access to the target group, the introductory letter from the programme coordinator of International Social Welfare and Health Policy (MIS) at OsloMet University (formerly HiOA) was presented to the Coordinator of the Zambia Society for Child Protection when I travelled to Zambia. I was told that they were also willing to work with me on the project and provide me with the necessary tools I needed.

After that I had also sent in an application to the officer in charge of Chawama police post as they work in collaboration with Zambia Society for Child Protection elaborating the aim of the project, the research design, and attached the copy from school. I was granted permission to be attached to the organisation during my research process.

Getting a go ahead from the Zambia Society for Child Protection was one thing, getting access to potential participants another thing as it was not as easy as I thought as getting admission from the relevant authorities did not mean I had access to the eligible participants for my research as well. Soon as I had permission from the Agency, I had to go in the field to meet the field social workers and find out the types of cases they were dealing with. The field workers keep records of the cases they deal with and from their data base, I looked for cases that have been to court and others that had not gone to court. Together with the Fieldworkers, we contacted the families with

invitational letters, where we explained the research I was doing and if they would like to take part in it.

Participants

It should not go without mention that the participants are those who had their cases go through the Zambia Society for Child Protection which is an agency that provides assistance to the sexually abused children. They provide a social worker to every child abuse case, who can help the victim and victim's family to access, timely medication from the hospital, justice and emotional support to the family. The organisation has the trust of the community so when I was introduced as part of the organisation, it was comforting to the families as they knew they were not talking to a complete stranger.

The rationale for choosing families who's had experience with the justice system is to make sure I got the lived experiences of these participants as it would be first hand data of their experiences and challenges in their pursuit of justice and the dynamics within the family when there is a child abuse case in the family. I interviewed 8 participants in total.

Data collection

The research question was answered with qualitative data obtained using semi structured interviews with 8 families (participants were either mother, or aunt to the victims in the city of Lusaka. The inclusion criteria requires the family to have experienced a child abuse case and the case was once in court. The interviews are supported by secondary data collection which meant looking at already published documents that are relevant to this study.

Interviews

Semi-structured interviews were conducted during August and September 2017 and they lasted between 40 to 60 minutes. The interviewees had to complete some background information about their level of education, employment status. Their familiarity with the legal system, how they decided to take the case to the police, what they expected from the police officers. The decision making process in the family and how they decided to pursue this case using with either the legal or traditional justice system. After that the step-by-step procedure of how their cases unveiled as the case was taken to court, if the courts managed to keep them informed at all times about the court dates, what support system they received from the formal justice system. How

the lawyers treated the victim and the family will also be of importance and these interviews will be recorded and then later transcribed.

This strategy allows for a more open conversation between the researcher and the participant due to the open ended questions. Further, interviews are particularly useful for getting the story behind a participant's experiences. The interviewer can pursue in-depth information around the topic. Interviews may be useful as follow-up to certain respondents to questionnaires, e.g., to further investigate their responses (McNamara, 1999). A third reason for the choice of this method was that it has flexibility as a method of data collection.

During the interviews, English was used as it is the official language in Zambia and two other commonly spoken Zambian languages (Nyanja and Bemba) out of the 73 plus dialects of Zambian local languages. This was so because I am fluent in the two languages and the informants were comfortable too using these languages. In order to capture the whole process of the interviews, I recorded all the interviews on a recording device. I had to delete the recordings after transcribing the recordings.

Site for the interviews.

When I contacted the participants, I provided suggestion of where we could meet for the interviews and if they had some suggestion too on where they would be more comfortable. 6 participants agreed to meet at the office of Zambia society for Child protection. The other two participants, suggested to meet at their place of residence as one had a small child to take care of so the interviews were conducted in her home while the other one felt more comfortable to talk about a sensitive topic like this one at her own place of residence.

5.6. Ethical concerns

In order to ensure that no harm of whatsoever was put on the participants, I had to ensure that I followed the ethical standards during the entire interview process. As stated by Bryman (2012, 135) Harm in social research stipulates a number of issues which include "physical harm to participants' development; loss of self-esteem; stress; and inducing subjects to perform reprehensible acts"

In order to avoid harm on my participants, I had to seek Ethical approval from the NSD Data Protection Official in Norway (http://www.nsd.uib.no/personvern/en/notification_duty). Also I had to seek Research Ethical clearance from the Zambia Research Development Centre (<http://www.zrdc.org/index.php>) before conducting my research. Ethical considerations are a vital part of this research since I was collecting sensitive information from families who have vested emotions in their experience of child abuse and getting ethical clearance entails my research is within the confines of what is acceptable when collecting sensitive information. Participation was off course be voluntary, and I assured the participants of confidentiality. Participants could also withdraw from the research when they felt the need to do without giving reason and they could also request the interview to be deleted from the record

Informed consent

The notion behind informed consent is provision of appropriate information to enable people to make informed decisions about participation in a research project, and as such, during the research process, I ensured that the participants were informed prior to the commencement of the study about the nature of the research. I was aware that my research topic would involve direct contact and conversation with the families rather than observation. Miller and Boulton argues that informed consent shows respect for autonomy and the right to self-determination of the participants in a research (Miller and Boulton 2007, 1).

However, my first step was to ask the participants if they know how to read or not. For those that could not read and write. I had to translate the information sheet into the Zambian language they preferred. Three out of the seven Participants did not want to sign the consent form but still insisted they wanted to take part in the research. But what happens when people agree to participate but do not want to sign the written consent form? Then oral consent maybe more appropriate than written consent (Gordon, 2000, 235). Oral consent is acceptable from research participants who are illiterate and, therefore, cannot read or sign informed consent forms. In three of the seven cases, the informed consent process required me to provide information to the participants about the research in an understandable form and, secondly, that a literate witness is available to sign on

behalf of the participant after the participant had given oral consent. Oral consent was also audio-recorded and this recording witnessed as further confirmation.

Cohen (2011, 80) argues that after informing and making sure that the participants have understood the research study, those who were interested to take part in the research were asked to sign an informed consent voluntarily before the interviews could commence. For those that were able to sign, they put their signature on two copies were signed. I took a copy and the other copy remained with the participants. Then I wrote names of those who signed the consent forms on a separate paper. Furthermore, I made mention that if they had any questions or issues about the research that need clarification, then they should not hesitate but contact either the supervisor or me through the contact details provided. (Appendix 2).

I could see the participant's eagerness to take part in the research, though a bit sceptical when they came in, I realised they were looking forward to take part in the interview. I also made mention that if they felt like stopping the interview, then they could do so without hesitation as I bared in mind that this topic was very personal and sensitive to them.

Confidentiality

Due to the sensitivity of this topic, Confidentiality was of prime concern to the research. I made sure that the participants were assured before recruitment that confidentiality was going to be observed before and after the presentation of the final report (Appendix2). Thus, during the process I have made sure that confidentiality of informant's information and participation in the study was protected. I made sure I prevented anyone outside of the project from connecting individual subjects with their responses. I took several steps such as making sure that I provided anonymity of information collected from research participants by not collecting the identifying information of individual subjects (e.g., name, address, Email address, etc.), so as to avoid the possibility of linking individual responses with participants' identities. I kept the locker voice recorders I used for the research under lock and key.

I also made sure my Data Collection Instruments such as, Questionnaires, Interview notes, Field notes and tape recorders did not contain information that could readily identify participants (i.e., identifying information) Instead study codes were used using alphabetical letters from A-H.

5.7 Document review

When building up my thesis, I have used several sources which I proved relevant for this study. This was done through review of published documents, This includes documents from HiOA online library, Google scholar, Google. Official documents from Zambia were also used as a means of data collection concerning what was on the ground and other documents so as to understand what others have done on the topic. Statistics from official documents were used as they informed the background of my research study.

5.8 Data Analysis

When analyzing my data, I will use Thematic Analysis. Simply defined, Thematic analysis is:

“A term used in connection with the analysis of qualitative data to refer to the extraction of key themes in one`s data.”(Bryman 2012:717).

Thematic analysis in qualitative data analysis is one of the most common ways of analyzing data Boyatzis has argued that “thematic analysis is not just a method but a process that can be used with a lot of qualitative methods that allows for the translation of information” (1995, p. 4). Since am conducting semi-structured interviews, this way of analyzing data would suit me best since it is based on identifying themes and codes. According to Boyatzis, “a theme is a pattern found in the information that at minimum describes and organizes the possible observation and at maximum interprets aspects of the phenomenon” (Boyatzis, 1995, p. 4). As such, thematic analysis stands out as different from other approaches, such as narrative analysis – critical discourse analysis – and grounded theory that follows more strict rules on how the analysis should be done. Braun has highlighted that thematic analysis gives more flexibility on how to do the analysis (Braun, 2006, 2). When trying to find a theme there are some points I will look for in the data I will collect such as: Repetitions; Indigenous typologies or categories; Metaphors and analogies; Transitions; Similarities and differences; Linguistic connectors; Missing data and Theory-related material (Bryman 2012:580).

Using thematic analysis, I was able to analyse data from the families of sexually abused children through their narration of the cases from the time it happened to the time the cases where in court. All the narrations where from the families perspective.

During the analysis I was also theoretically informed with the theoretical perspective described in chapter 3: middle range theories and procedural justice theory. I did not only rely on the data I collected from the interviews with the participants, but also from the theories. “This form of thematic analysis tends to provide less a rich description of the data overall, and more a detailed analysis of some aspect of the data” (Braun and Clarke 2006, 12). I followed the following process when analysing my data using thematic analysis:

- 1. Data familiarization:** during this stage, data was organised. Data such as field notes and recordings of interviews from families of sexually abused children and went through the transcripts several times to make sure it's in accordance. (I used letters A-H to represent families).
- 2. Code formation:** when I was done with transcribing, I organised it in a way that to make it easy to create codes which had emerged from the transcripts.
- 3. Identifying Theme:** At this stage, I organised my codes into specific categories of which two main categories were identified: 1). Factors that influence families to choose one form of justice and 2). The families' view of the modern justice system.
- 4. Refining the themes:** As a way of refining my themes, I sorted out my themes at this stage. Went through them to check for repetitions, differences and similarities that emerged.
- 5. Defining and naming themes:** this represents a stage where themes for my analysis were defined.
- 6. Reporting:** this marks the final stage where I had to go through the themes which were used in the data presentation and discussion part of this thesis

CHAPTER 6: PRESENTATION OF FINDINGS.

6.1 Introduction

This chapter presents the findings of the study on the effectiveness of the legal system in dealing with child sexual abuse cases in Lusaka, Zambia.

From the data, the two categories that emerged were the factors influencing families to either use the formal or traditional justice system and how families view the justice system. Under the factors influencing families decision when choosing the mode of justice, several subthemes emerged. These subthemes include, compensation, restorative traditional model, shame, adversarial court system, blame game and community pressure and corrupt Justice System. As these factors influence families perception and their choices of mode of justice to pursue

This chapter starts by describing the information about participants. Then I present the experiences of the families from the time they found out about the case, how they reported at the hospital, and police station all the way through to the last hearing in court. Then lastly, I will present how the families view the justice system.

During participants' narrations, they reported how they were met with challenges as well as successes. A detailed look at these narrations will help us understand the effectiveness of the legal system in dealing with child sexual abuse-family perspective.

6.2 Descriptive information of the participants

Table 1. Summary of the descriptive information of the participants.

Participants	age	Type of families	Level of Education (1-12 years)	Tertiary Education	Number of children who have been abused	Victim's age	Occupation
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A	7	Separation	8		1	5	1	Street vendor
B	5	Married	9		1	3	1	Nothing
C	1	Seperated	12	Certificate in Business management	1	6	1	Business woman
D	4	Seperated/Sin gle Mother	9		1		6	Street vendor
E	5	Married	7		1	3	1	House wife
F	3	Married	11		1			House wife
G	2	Widowed	6		1			Street vendor
H	2	Married	7		1		4	Street vendor

6.3 Profile of participants

The participants that took part in the interviews were either married, separated, or widowed. What is interesting is that out of the 8 families that took part in the research, all of them were women. 4 are married, 3 are separated while 1 is widowed. All the 8 families are from poor backgrounds and live in shanty compounds that surround the city of Lusaka. 4 out of the 8 participants said they earn their living through street vending, 1 reported to be a business woman with the remaining 3 being fulltime housewives.

6.3 FACTORS INFLUENCING FAMILIES TO CHOOSE ONE FORM OF JUSTICE OVER THE OTHER.

Choosing whether to take the case to court or not is a norm which is always met with conflicting values and views. Zambia being a dualistic nation which allows both the legal law and traditional law to operate synonymously, makes it sometimes hard to draw a distinction what should be dealt with by either the informal system of justice or formal justice system. According to the Zambian tradition, the motive after every conflict is to bring the families involved to peace. But in as much some families believe in peace making, some families prefer to use the formal justice system.

Some families who used the traditional system of justice method in this research gave reasons why they chose one method of justice over the other. They cited both the internal and external pressure and challenges as some of the reasons for this choice

6.3.1 Compensation,

Seven families out of the eight that took part in the research reported having been asked to withdraw the cases from the police by offering them money. The families reported that the perpetrators families offered them money in order to withdraw the case. The families reported that the perpetrators family followed them to the house where they live to ask them to withdraw the cases. Six families reported that they refused to take the offer while one family reported that they accepted to take the offer as justice was their main priority. One family reported that the mother to the perpetrator did not want them to take the case to court, they wanted us to settle this matter traditionally as a family. *“They said we should sit down and discuss and they will give me something depending on how we discuss but I refused” (H, 2017).* There was no set figure for compensation as the families reported that the perpetrators offered different amounts of money.

Two families conceded that it was not easy to go through the process. Both families reported that there was a lot of confusion with the cases...with one family saying that...*“it was a bit more confusion because those people wanted to come a d have a family discussion with us (A, 2017).* The family further reported that the perpetrator did not want them to proceed with the case in court *“they didn’t want to go further with the court proceedings” (A, 2017).* The family reported

that they refused to deal with the case using the traditional way of conflict resolution but wanted rather to pursue the case using the legal justice system “*so we refused that we could not sit and talk with the perpetrators family and do it the traditional style because the victim is a very small girl*” (A, 2017). We told them that we are going to wait for the court and if the court says you can pay us then that’s when we are going to accept the money (A, 2017)

The family also reported of complications that rose from having different interest in the cases. The family wanting vying for justice while the father wanted the money. This reached a point where the victim’s father went behind the families back and everyone else and decided to meet with the family of the perpetrator. This was because when the perpetrators first offered money, the family had refused. This is because the family of the perpetrator had offered money and the victim’s father wanted to get the money instead of getting justice so that’s how come there where *conflicts within the family as one side wanted money more that justice and the other side wanted justice more than money* (D, 2017). When we started he was sat down by other family members to know why he showed disinterest in the case and why he was not showing up for court dates, they asked him maybe he did that because he had received some payments from the perpetrators family, that’s when he got scared and started showing a bit of interest just to cover up his tracks (D, 2017).

6.3.2 Restorative traditional model,

Peace between the families.

The 2 families that used that used the traditional form of justice reported peace as the reason for choosing the traditional justice system. They believed using the formal justice system would invite blame of them from the perpetrators family so in order to create peace between the families and to avoid being blamed for sending the perpetrator to prison, using the traditional justice system seemed like a good idea.

They explained that they chose the traditional method because it would help bring about peace. “*so if he went to jail then his entire family would end up blaming me for that so to get that out of the way I decided that I should sit down with them and sort this out traditionally without having to go to court* (E, 2017). and on top of that, I did not want to be blamed for being the one to refuse to discuss the case.

Expensive and corrupt system

Both families felt it was a waste of time to resolve the child sexual abuse cases using the legal justice system. They explained that people have a negative perception of the law because they feel it's a waste of time going to the police or knowing the police will ask for money either for transport or other logistics. *"The police don't help, and that destroys communities"* (C, 2017). As such families felt the restorative justice is free to access if you are the victim unlike the formal justice system where the police will ask for money for victims to access justice.

6.3.3 Shame

One family explained how they feared the community would shame them if they discovered the child sexual abuse case. The family explained that if people in the community learnt about the abuse, then they will start pointing fingers at the victims and shaming the family. One family explained how they felt shame in the community with a sexual abuse case. They explained how the community look at them and the victim differently when they discover that she was involved in a sexual abuse case *"I don't want people to be looking at me in court saying look at that girl who was defiled, so I don't want that"* (C, 2017).

The victim explained that child sexual abuse cases are viewed differently in the community and people look at the victim like she is a problem child for letting herself get raped. The victim family reported how she was ready to avoid the justice system because she feared a lot of people would find out about the abuse if she used the formal justice system so she wanted the case withdrawn. The family also explained how one police officer tried to advise them to use the justice system but the family insisted that the victim does not want to take the case to court so it was withdrawn, *"we told them that the victim doesn't want to go to court or the police station or anything to do with the law"* (C, 2017).

6.3.4 Adversarial court system,

The families reported having faced challenges both at the police station and the courts. The court system is thought to be adversarial of the factors affecting families when accessing the justice. The families reported of the justice system having long waiting periods, too much interviews and adjournments of cases.

Long waiting time

Four victims reported their cases having been in court. They told that their cases were both in the hands of the legal system. Of the four families, one family reported having had their case heard in the magistrate court which hears cases for child abuse, but for the main judgment of the cases, the cases are referred to the high court which has the mandate to pass judgement according to the Zambian constitution. *Then the magistrate said this case should go to high court because magistrate courts don't pass sentences for rape or defilement but rather the high court does. The court will later on tell you the date when you should go to high court. It was the policeman working with our case that used to give us updates on the case proceedings. That's how come we came back home from the court (A, 2017).*

One family reported that their case took long to go to court with the family beginning to wonder if their case was going to go to the court or not. *"Before going to court, the case took too long and we started wondering why the case was taking so long so went to the police station to ask why it was taking long (D, 2017).*

Since then, I go every now and then to check if they have any new information and they keep telling me come tomorrow, when I go there again, they keep saying come tomorrow again just like that (D, 2017). The family further reported that the court kept saying they are not ready to pass the judgement and that kept going on for a long time. *The case happened in 2016 February and this is 2017 October and nothing has happened regarding my case. (D, 2017)*

The family claimed the court took long with the case and in the end allowing the suspect to escape from the police custody. The family reported that the court could not jail him in his absence. The family expressed dissatisfaction in the court system as they failed to give him judgement or sentence when they had him in custody and worse more now when he is not even in their custody. *They keep saying they don't know where he is and that they should look for him first (D, 2017)* after further follow ups the family was told by the police that they don't know where the perpetrator is and the person who had signed bond for him moved to a different location and switched off their phones.

One family reported that their case was sorted out in less than a week. The evidence was gathered, court date set and judgement passed in less than a week. This stands out as the only case among the eight participants in which it followed the stipulation according to the Zambian constitution in which child sexual abuse are supposed to be dealt with in a timely manner. *At the court they gave us a day*

after he was arrested on when we were supposed to show up at the courts they arrested him like on a Tuesday and on a Thursday, they said we should be in court. The police said we need to start off together with them when going to court (F, 2017).

One family reported that the court even communicated with them on how long the perpetrator was going to be jailed for. The family explained how they were left in awe as the cases was processed within the least possible time, “they even gave the day and year in which they are going to release him from jail” (F, 2017). After the case was done, the family further reported that the police where very helpful as they were the ones that organized transport for us to return home..... *”judgement was passed, we decided to go home and then the same police officer handling our case also provided transport for us to return back home (F, 2017).*

Judgement for child sexual abuse can range from a couple of months to 15 years if found guilty,, the family explained that the perpetrator was given 3 years as jail sentence. *“On the same day they passed the judgment and the perpetrator was given a three year jail sentence (F, 2017)”*.

Too much cross examinations

One family explained how they were interviewed so many times that they did not want to be interviewed anymore. The family explained that the interviews where adding to the trauma the victim was going already through. They expressed having been interviewed on numerous occasions by the police, family members, the hospital, and other stake holders and that made the victim become exasperated and overwhelmed with interviews that she didn’t want to be interviewed anymore, *“I have done enough interviews at the police and the Hospital and I no longer want to stand in court and on my part..... I do not want to deal with this case anymore from today” (C, 2017*

6.3.5 Blame game and community pressure

When asked on why the families chose the traditional system over the legal justice system, the families reported pressure was one of the reasons they decided to use the traditional justice system. They narrated how the perpetrators family kept on pressuring them to withdraw the case from court. Since the victims’ family and the perpetrators family live in the same community so they reported it was hard not to concede to their demands. *“The perpetrators family kept coming*

to our house asking us to withdraw the case from the courts. They said they can pay us some money so that the case doesn't go any further” (E, 2017)

Also the other family expressed the same pressure to withdraw the case from court as they also reported pressure from the perpetrators family as the cause for the case withdrawal. *“We wanted to take it to court until when the family started coming to us and saying that we should sit down and discuss this as a family (C, 2017)”*

Guilty

The other family also reported of not wanting to bear the guilty of being the one responsible of sending another person to jail. *So we asked other family members and they said they didn't want to bear the guilty when the perpetrators start blaming them in the future on why their parents were sent to jail because of them.* The family further explained how they asked around in the community and the community seemed to have shared their view. *We asked around for further advice and most people we talked to said since the owner of the case (victim) says we should let him (the perpetrator) free, then we should do what they ask for (C, 2017).*

Intimidation

One family reported having felt intimidated when the offender's family started threatening them to withdraw the case. *“They kept coming to us saying that we should sit down and discuss”.* The family explained how they ended up deciding to solve this case the traditional system *“It because they seemed scary every time they came to our place and I was afraid” (E, 2017).* *So I agreed to meet them because they would never stop coming here.*

6.3.6 Corrupt Justice System

Three Families reported instances where they felt they experienced corruption when seeking justice with one family reporting an instance of corruption where the police officers she reported the case to asked her for money before he could help her with her case *“At the police, they told me they will help me. I told them I have no husband so I don't have money to pay you. So I took out the last 50kwacha I had and gave it to the police officer. So they went to the perpetrators place and found the perpetrator still together with the victim in the same house so they arrested both the victim and the perpetrator and put both of them in police custody at the police station (G, 2017).*

Another family reported having experienced one corruption incident by the police. The family explained being asked to pay 700 kwacha for transport to the police when transport is actually free as it is provided by the police service. The family further stated that they had to call the people in the higher police service to report the corrupt police officers who had asked for money, *“they asked us to look for 700 kwacha which they can use for transport to go and pick up the suspect”* (C, 2017).

When the family called the central police head office, the office explained that they had vehicles that are allocated to child sexual abuse cases and they are free. *I even called the central police and they told me that the police has their own cars, so why are they asking for money for them to do their job* (C, 2017).

One family also explained the justice system only helps those families with money while others with no more are not helped at all *“Because you will find that some people are being helped while others are not and you tend to wonder why not the others, are those being helped special”* (E, 2017)

The family also expressed dissatisfaction in the basic services that the police should provide. They gave an example of transport. *“the government gives them (Police) transport to help the victims but we don’t understand why they ask for transport money from the victims* (C, 2017). The family further explained that its because of that that people are hiding a lot of cases because they know they won’t get any help from the police. *“Most of the people that go to the police, their cases do not go anywhere”* said one family (C, 2017) and as such the general population gets discouraged like that

6.3.7 Incompetent justice system

Both families reported having had bad experience with the legal justice system. One family claimed the courts adjourned their case for a lot of months. While the other family said the police where hiding information from them. *I really had a bad experience with the legal justs system, because they kept adjourning my case. All the time I went there they keep adjourning the case* (D, 2017).

One family reported that the the first day they went to court, they were told first told in which court the case will be in. then the family was told that the judge judge was not around. Also the one

family reported how they went to the court three times and the judge was no there all the three times. When the judge was finally there, the court finally heard the case. The family further explained that the court proceedings went on as usual and every witness was called upon to tell their story and the judge explained to the family that the only thing remaining was judgment. The family also reported that that's *when the judge said only the judgement is remaining and the court will communicate with the family when that will be (D, 2017)*

One family reported how the case took about 2 years and still justice had not been executed, *"the case took about 2 years in total. I remember at the end of the case, they kept telling me they had adjourned the case but finally when the day came for them to pass judgement they told me that the judgment was not that day,"* then again the family was told to go the following day as the court said judgement would be made, but when *"I went there the following day, I was told that the judgment could not be made because the perpetrator had escaped the police custody. I was sho disappointed and shocked by those happenings (D, 2017).*

The family further reported how how the wanted the perpetrator jailed as it was not his first time to carry out such an act. He was a second offender. *As for me, I wanted him to be jailed for a good number of years because that was not the first time for him to do something like that but the police kept hiding information of my case from me (D, 2017).* The family explained how they thought the police were going to help. Further, the family reported how they did not get any help, they gave the reason was because the police and court *"kept sitting on my case" (D, 2017).*

6.3.7.1 Justice

The three families reported that they chose to pursue their cases using the legal justice system because they wanted justice for the victims. *"mmmmmmmm... ..I think it Was it beneficial to report to the law, personally I think it was a good thing to report to the police because they really helped us with the case? So it was better to report it than to just stay quiet (F, 2017")*.

"Mmmuuuh when it comes to that, all my family members said that this case was supposed to be taken to court. These family members where my brother, my mother and the father to the victim. They all wanted to take the case to the police (H, 2017).

6.3.7.2 Punishment

One family explained that they wanted to teach the perpetrator the law “mmm *When you take the perpetrator to court, It's for the perpetrator to know the law properly so that they should never repeat the act to anyone (B, 2017).* The family further explained that the case is still in court “*we went to court twice. The case is still going on” (B, 2017).* ...*but what we really want as the family of the victim is to go to court and discuss this matter from the court so am not going to accept anything you offer us and if the law says its allowed for you to pay us for this case that's when we are going to accept the money because I want other people to also that what you did was not good (A, 2017)*

One family reported how it was not entirely their decision to take the case to court as there was also pressure from the police. The family said discussing it with the perpetrators family was out of the question as the case had gathered up interest from other parties “*Pressure was coming from the police, they said the case was in the hands of the police and the court, and we should not think about discussing this case between the two families, a family of the perpetrators and the family of the victims. They told us that they are going to arrest us instead if we decided to settle this case traditionally (F, 2017).*

6.3.7.3 To avoid re-occurrence

One family reported that they are only keen on getting justice. The family explained how they are waiting for the call from the police officer dealing with their cases to tell them that the case is in court “*So am waiting for the call from the police to tell me they have taken the case to court because am willing to be there to see to it that he goes to jail so that it doesn't repeat this mistake ever again.* The family further stated that Because child abuse happens a lot in in their community and mothers are not taking it up to themselves to take the case to court and she hopes that her case will serve as an example to other people or families going through the same..... I “*hope I can make a difference and these parents can use my case as an example (G, 2017).*

One of the family reported that they used the formal justice system in order to instill behavioral change in the perpetrator. Hoping that he would change after the punishment “*Because when you let him go like that, he will go on and abuse another childand atleast if he goes to the police, maybe he will stop so atleast when he is behind bars something like this is not going to happen to someone else from him (H, 2017)*

One family reported that there was no other way they could have handled the case than to use the legal justice system, *“there was no other way of doing this. This is the only way I thought I can get help for the case I had (D, 2017).* The family said they wanted to pursue this case using the legal justice system because they wanted to punish the perpetrators. *“In my line of thinking, I thought we should pursue this case through the court system because I wanted the court to jail him and punish him for him to learn that what he did was not right”.* The family reported that they understood that punishing him was not within their powers but rather in the hands of the law. That’s not something i could do within my own powers and the courts could help me achieve that. Because that was not the case he had, he had done something like that before.

6.4 Decision making in the family

The families reported that they had a decision to make on whether to take the case to court or solve it using the traditional justice system. The family reported that all this depended on the decision making in within the family because its those decisions that determined the fate of the case. Only 2 families reported to having sat down discuss what had happened and the way forward they are going to take. One family stated that the decision was made as a whole.

The family explained that their decision was in union and not only one person decided on this case. It was easy deciding because we all wanted the same thing. *We all sat down as family. Me and my sisters and discussed how we were going to do about the situation and we all decided that we should report the case to the police and sort it out in court so that court punish the perpetrator. (B, 2017)* We don’t have parents, so mostly the decisions are made by ourselves (B, 2017). *“I listen to all of them because in the past they have given me advice regarding other things and their advice was good that’s why I listen to them....so we sat down together and made the decision (H, 2017)”*

The family reported that making a decision alone is not good because once the decision turns out to be bad then then family is going to look at you in a different way *Making a decision alone is bad, how is the family going to look at you if you make the decision alone. They will think you are*

selfish and what note so that's why we want all of us to sit down together and make a decision together(B, 2017)

One family narrated that the decision made around this time of the case where entirely made by the uncle to the victim, the participant narrated that the uncle made the decision because he was the one financially and morally responsible for the wellbeing of the victim, “ *he has been the one sponsoring her all this time, he has stayed with her for a lot of times too and also because he is the eldest in the family so most decisions regarding the family wellbeing are left to him (F, 2017)*. So he is the one that decide that we take this case to court and have the perpetrator jailed (F, 2017). One family out of the eight families reported that the decision was made by herself after being advised by some community members. The participant explained having a brother but since the case was so sudden, she did not inform him. also, the participant said, “*I did not get his view as it happened to random and it was people in my community where I stay that advised me to go the police to seek help (G, 2017)*. The participant explained that it was people who are not even related to her that helped her make the decision but they know about child abuse cases and they told the participant that the police would help her.

One family reported that the decision was not entirely easy to make because the perpetrators family came to ask for Forgiveness, “*Yes..... his relatives came to ask for forgiveness. Then I told them I can't forgive him because the case has already been taken to court and awaiting day of trial so it's not in my hands (B, 2017)*. When asked about the decision making in the family, both families that decided to use the traditional justice system had the decisions made by women. One family is a female headed home and she made the decision not to go to court. “*As the key person in the family, I make the decisions in the family*”. The family said she made the decisions because she is the most active in the family as she is the breadwinner. She further explained that “*when I hear something happened, I make sure I follow it up without hesitation*” (C, 2017).

In the other family, the female made the decision not to take the case to court. The female told about how she made the decision in the absence of her husband. So in this case, “*I was the one that made the decision, my husband just followed along with the decision. I don't have sisters or brothers so the decision was entirely mine*” (E, 2017). She also stated how she had the meeting with the perpetrators family in the absence of her husband “*he was not home, so when he came*

back, he just found that I had already made that decision and we had already held the meeting with the perpetrators family (E, 2017).

Two families reported that decisions to take the case to court was made by the males in the family. One family reported that the uncle was the one who made the decision for the case to go to court.”*It was the uncle of the child who made the decision for the case to be taken to court so as to seek justice” (D, 2017).* The family explained that it was like that because he is a man. Two families reported that it was the uncles who had the mandate to decide on such cases as traditionally had the power to do so “*My brother made all the decision making regarding this case and he was the one advising to pursue this case using the courts to so that we could get justice. He was there all there time, at the police, during court dates. The father of the child was not interested even in the courts date (D, 2017).* So he is the head of the family and “*as a woman, am supposed to be the tail. So as a man, since we don’t have parents he is the one that oversees the whole family and looks after us (D, 2017)*

6.5 FAMILIES VIEW OF THE JUSTICE SYSTEM

6.5.1 Police

The families reported that 3 families reported that the police where helpful towards their cases when it came to collecting statements and arresting the perpetrator with the families saying that “*the police really helped us a lot because they managed to arrest that person and putting him in cells and when we later went to the police, we still found the perpetrator in custody (B, 2017).*

At the police, one family explained that it went well “So generally I feel that everything went well at the police station”. *When I went there, the police gave me the court date and told me which day I was supposed to be at the court. Then I was happy that the case was in court because before the case went to court I thought he was going to be set free (B, 2017)*

Out of the eight families, two families reported that they are very satisfied with the experience they had with the legal system. One family is yet to make view of their experience as they did not want to comment yet as their case is still with the police and yet to be taken to court.

the two families that had their cases in court reported about their satisfaction with the legal system with one family stating that

Yes am very satisfied and happy because they managed to arrest him. I was thinking they were going to release him but they did not. Because he was up to no good. He wanted to destroy and kill my daughter (B, 2017)

Withholding information

Two families reported some form of corruption in the way the legal system handled their cases. One family claimed that the police officer dealing their case was not very open with the information “*the police officer dealing with our case was not straight forward*”, he was not trying to do thing the lawful way. What he did was not good. He never helped us in any good way. Instead of them helping us, it seemed like we were now forcing them to help us with our case. *And we feel like maybe the police got paid by the perpetrators so that they could not work on the case (A, 2017).*

.....and the police told us that they had already communicated on the court date with us which was not true because they had not communicated. The family said that the police had called the father of the victim about the court dates but when I asked him he said that not true as they had not been in contact with him too (D, 2017). The family also claimed of lack of openness with information concerning the case. The family reported that. When the results came, they did not see the results because the police did not open the results to show them. They just said the where going to send the results together with the other documents to court and that the family should return on a further date to check if the court date has been set (D, 2017). “*The police did not do their job properly, they were hiding important information from us and that’s not good*”

6.5.2 Court

The families of the two cases that went to court expressed happiness with by the court proceedings with one family stating that the court asked them questions in a friendly way “*.....yes they asked me questions and I gave a statement and they asked me questions in a friendly way*” (B, 2017). The family reported that it was their first time to be in court so everything seemed new to them “*it was my first time being in court and as such, everything was new to me*” (B, 2017)

The participant also conceded to the fact that she did not hear the full court proceedings as she had a small baby who kept crying and babies are not allowed in court so for the first part of the proceedings, she was outside nursing the baby, *“I did not hear what was being discussed because I had a baby who was crying and babies are not allowed in court. When my turn came (B, 2017)”*.

6.5.2.1 Not Child friendly Court System

One out of the eight families reported that the court was very unfriendly to the victim. The family explained that the language in court was not as friendly as she thought it would be and because of that she felt intimidated. The family stated that *“I feel like in court, they should maybe be patient with the children when getting testimonies. You know that in court, the environment looks scary and overwhelming to a simple child. So when the courts asks questions, “the child fails to explain themselves properly or they will entirely not talk so the courts needs to change their approach...mmmmhhh.... because children will be getting scared like that (H, 2017)”*.

The family further reported that the court should be nice to the children, *“they should bring a home kind of setup where the children will feel at ease as if they are at home. The court should also be able to treat these children like they are their own children and not make them feel unease” (H, 2017).....i think that’s all I can say about that*

“For me personally, I am happy with the result of the case, we went to court and got the justice I wanted but I don’t know about the perpetrators family, I know they must be feeling sad for losing their son to jail so personally am happy for myself but for them I don’t know how they must be feeling (F, 2017)”. The family further reported that their case would be used as an example to other who break the law and abuse children, however, *“I was happier for the fact that he will be used as an example for others. Since now people know that you can get jailed from such acts so they will not do what they want to do knowing they will get jail time (F, 2017)”*.

6.5.2.2 Corruption

The families felt that the justice system is corrupt and made the families feel that they would not get help if they did not have money. One family also explained the justice system only helps those families with money while others with no more are not helped at all *“Because you will find that some people are being helped while others are not and you tend to wonder why not the others, are those being helped special” (E, 2017)*

Two families out of eight wanted to use the formal justice system but reported that the formal justice system failed to give them justice because the justice system is incompetent. Families that wanted justice but the system failed them expressed disappointment in the legal justice system with one family stating “*be honest, am not happy with the law, am dissatisfied because I did not get to hear the judgment of this case by the law*” the family explained that unless they get a statement from the high court saying they have passed the judgement that’s when the family will be satisfied. *Because I refused everything (money) the perpetrators tried to throw at me. So those children (perpetrators) cannot just destroy my child just like that and get away with it*”, “*walking around in our community and we see them like nothing happened (A, 2017)*. Further the family explained how the act left the girl traumatized “*she is not happy*” because she was traumatized from the experience, because “*now she is not free, she easily gets scared*” and still complains of body stomach pains. So to us the entire process did not go well at all (A, 2017).

One family reported how displeased they were with the legal justice system as they had exhausted all their income from their trading to help them get justice “*I am really disappointed with the court system, I feel like I just wasted my money and time on this case. All the money I made from trading, because I sell things at the market, all of it went to this case and at the end I did not benefit in any way*”. I did not find meaning in this case either from the police or the court so” *am really disappointed*” (D, 2017).

One family reported that they cannot advice anyone to go to court because they personally felt they did not get any kind of help from using the legal justice system so they could not advice anyone else to use it” *I can just advice someone to go to the hospital, atleast their the victim will be given attention and all the preventative medicine they need (D, 2017)*.

CHAPTER 7. DISCUSSION OF FINDINGS

This chapter discusses the findings of the study in relation to the literature review and the theoretical perspective presented in chapter three and four. In addition, other studies found to be relevant to this research are included as well to help me discuss my findings. I have chosen the same themes and categories as used in the findings to discuss my findings. These themes include, compensation, shame, adversarial court system, restorative traditional system, the blame game/community Pressure, Corrupt justice system and Justice.

7.1 FACTORS INFLUENCING PEOPLE’S CHOICES OF JUSTICE

7.1.1 Compensation

From the findings, I can conclude that, the prospect of compensation was found to be one of the factors influencing the family’s decision and their choice for the mode of justice they want to pursue. With high poverty levels in Zambia, as highlighted in chapter 3 under compensation, one can see why a lot of poor families may view a child sexual abuse as a “get out of poverty card” where they can use the money generated from this to buy the basic needs that the family needs. One participant reported “*the family of the perpetrator had offered money and he (Father to the victim) wanted to get the money instead of getting justice*” (D, 2017). ...with another family saying that....”*it was a bit more confusion because those people wanted to come and have a family discussion with us (A, 2017).*

Unlike in countries like Uganda and Tanzania, where their statute allows for compensation to be paid mandatory to the victims of defilement and sexual offences (Thompson and Simmonds, 2012, p.11). In Zambia, the law does not have the provision that allows for the government or perpetrator to pay the victim compensation. Even when other countries like Rwanda allow for victims to request for reimbursement of all medical expenses incurred as part of the sentence (Ibid, 11), the Zambian government only punishes the offenders (Ibid: 8). The Zambian government believes a stricter punishment will persuade the-to-be offenders not to commit the crime.

According to (The Laws of Zambia, section 138), the Sexual Offences, perpetrators attracts a minimum of fourteen years imprisonment if found guilty of defilement.

My thoughts are, since the formal justice courts only offers stricter jail sentences, the perpetrators will do everything they can to avoid the stiff sentence and that is by offering money to the poor families seeking justice or sometimes it's the victim's family that threatens to report the perpetrator and have him jailed if they are not compensated for the crime.

Matakala (2012) highlights how the Child sexual abuse in the traditional courts is compensation oriented. In the traditional justice system, CSA is viewed as a criminal wrong. It is known as deflowering, "to deflower is to 'pick the flower' off its tree or bush, thereby taking away something valuable. It is not as vile as defiling" which is 'to make unclean' (Matakala, 2012, 13). Matakala, further reports that this kind of civil wrongdoing attracts compensation of 60 units which is equivalent to 3 US dollars. Form this, one can see that traditionally compensation is presumed key to dealing with child sexual abuse cases.

From the two justice system, it's easy to see the different measuring rods that are used to describe the same crime. The traditional justice reduces child sexual abuse as barely a civil wrongdoing (Matakala 2012, 13) with the formal justice viewing it as a criminal offense attracting a hefty punishment of 14 years (Laws of Zambia, Section 138).

My thoughts are, some families might not feel the heftiness of the CSA. To some, it might be seen as any other wrong committed against the child and as such, compensation of a couple of thousands kwachas is not seen as a bad thing for a crime which is traditionally considered as "deflowering". This might explain why some families would report the crime to the police, get the medical report and use it to threaten the perpetrators family to give them money and if they are not paid, then they will take the matter to court which will attract 14 years sentence.

My inference are consistent with the findings made by Access to Justice Study s reported in Matakala (2012, p.18). This study found that compensation was preferred because it was considered as lucrative compared to the justice system that only punishes the perpetrator with no compensation to the victim. The study found that when you deal with the case using customary or informally, "the family of the victim is able to receive compensation for the harm caused to the abused child". For this reason, many poor people prefer not to report the case to the Police but rather deal with it in a manner that has a rewarding end.

The findings are also in line with the findings made by Nansasi Grace (2010) in Uganda, revealed Parents of victims chose to use the traditional form of justice through local courts because they wanted material gains from families of suspects due to poverty and lastly to avoid prolonged disputes. Hence defilement cases end up being settled at Local Courts level yet it is illegal in the Uganda laws.

7.1.2. Shame

It's also reasonable to conclude that families withdrew cases from the court because of shame. This Shame in relation to the child sexual abuse was experienced in two ways, first by the victim and secondly by the victim's family. Sexual abuse on the victim does not only affect the victim but also invites the family into thee shame. The whole family gets drawn into the misfortune of the victim.

According to Gilbert and Andrews (1998, 12), shame goes way beyond internal experiences as notions of shame become socially shared information about ones situation or standing in society, from this notion its clear to see that child sexual abuse will put the family and victim in the position of shame when the information about the abuse reaches the rest of the community.

Shame brings about stigma, and stigmatization involves negative feelings and thoughts where one begins to feel bad and blame themselves because of CSA (Finkelhor & Browne, 1985). The family might have felt blamed by everyone in the community for not doing enough to protect their child as communities will look at them as bad parents or careless and this made them feel unloved. Emphasizing the importance of this feeling as a factor impeding taking the case to court is in line with the findings made by Banda (2016, 158) where the parents of the victims felt unloved by the community because of the child sexual abuse. Banda further found that the gossip and scorn from the community made the mothers to feel that their children where wrong for having sex with the offender.”

The victim on the other hand blamed herself for letting herself get abused. The participant explained how standing in court and everyone looking at you and saying there goes the girl that was raped. The victim tried to avoid the formal justice system because of shame and this is in line with what Jin-song (2008) says about shame “the nature of shame is to hide and sublimate and

alienate the self” (Jin-Song 2008, 31). As such the victim’s family and the victim and try to hide themselves from the society they live in.

A study on the interaction between the victim and the perpetrator has shown that shame conflict figures permanently to the point where any form of exposure triggers shame in the victims (Nathanson, 1989). The fact that the victims will be subjected to either of traditional justice system or formal justice system will trigger shame in them as they feel they will be exposed to the community vices such as gossip or finger pointing. “That is so much pressure that one cannot bare it” explained one victim. The victim asked for the case to be withdrawn because she feared how people would look at her different if they all knew she has been sexually abused.

She explained how she will not stand in court and she did not want the case to go further, because the less people knew about it, the better it was for me. My findings are consistent with the finding reported in Matakala (2012, p.18) where embarrassment and shame were highlighted as reasons why people don’t take the cases to court but rather use the justice system to sort them. “When the community becomes aware of a case of child sexual abuse, the family of the victim feels embarrassed. To avoid the shame, many families opt to keep the abuse a secret within the confines of the home or family”. To my understanding, the confines of the home in this case means using the traditional justice system to deal with the case.

In a traditional justice set up, very people are allowed to attend the proceedings of the child abuse case which usually are the relatives to the victim and the perpetrator’s family members, this means a small crowd and since the victim might prefer a small crowd to having to stand in court with a lot of strangers,, the traditional justice system might be seen as the better option of the two.

My view is that shame weighs more than humiliation or embarrassment in the communities where gossiping is part of the general culture. In communities where survival is hugely dependent on human social interaction, people try by all means not to indulge in acts that would bring shame to themselves or the family. So when a child sexual abuse occurs in a family and the blame is heaped on the family, shame becomes inevitable and affects the way that family will interact with other community members and this might force the family to move elsewhere for a fresh start.

Similarly, Grace Nansasi 2005 has found similar results in a study on which she explores the challenges faced in the control of girl child defilement. In her research families reported of trying

to avoid embarrassment and shame from the community they live in, so instead using the formal justice system, they opted for traditional form of justice (Grace, 2005, 37)

7.1.3 Restorative justice system

The study found that the families find the traditional justice system to be restorative. According to Borrito and Freeman (2016, p. 11), restorative justice is ‘any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party’ (United Nations 2002). Basic Principles on the use of Restorative Justice Programmes in Criminal Matters Article 1 (3) as explained in chapter 3, seeks to restore broken relationships in communities between the family of the victim and the perpetrator. According to Julich (2003, 4), she highlights that restorative justice can help facilitate dialogue, lament the wrong and help victims to heal and move forward.

One family highlighted that they chose to use the traditional justice system to create “peace”. According to Louw (1998, p.437) peace can be the only way to bring about reconciliation between the offender and the offended. One family explained they wanted peace because the perpetrator was the breadwinner in the family and brother-in-law to the victim. He was the one responsible for the victim’s education and wellbeing. “On top of that Perpetrators children would cry in my face that I wanted to send their dad to jail these are my nephews and nieces so I really felt bad for them so I decided to withdraw the case from the police and have it sorted out between the two families.

In the Zambian traditional system, when there is a child sexual abuse, it is the family that is offended so as discussion of reconciliation transpire, they mostly focus on how the relationships between the two families can be restored. Though acknowledged, little attention is paid to the actual victim of the case which is the child. A case as complex as this one puts families in very difficult position where they have to make very difficult choices between “seek justice and anguish in poverty” or use the traditional justice system and let the perpetrator scot-free. This type of Dilemma characterizes most child sexual abuse that happens within homes and as Matakala (2012, 17) puts it “Because the perpetrator is often a close relative or family friend, the family prefers to sit, hear, and settle cases of child sexual abuse, as opposed to reporting them to the Police”.

The reasons for choosing the traditional justice over the formal the formal legal justice was because of poverty, with one family choosing to be compensated, while the other family was fearful of losing a breadwinner.

This shows that the traditional justice system is not victim centered rather, it is perpetrator oriented. Research done by Julich about child sexual abuse in New Zealand reported that the Restorative Justice was perceived as offender oriented model of criminal justice (Julich, 2006, p.) This is because they try to find a way to make the perpetrator avoid jail because traditional justice system is restorative in nature as already mentioned in chapter 3. Little or no attention is paid to the victim as the perpetrators family only focuses on finding a way the case can be discussed without involving the police and court system.

Restorative justice has come under some scrutiny from survivors. In Julich research, survivors also spoke of the ability of offenders to manipulate bystanders. Julich further highlights how we shouldn't underestimate the cleanness of abusers, sometimes when the abuser is well spoken, this can compromise the process of traditional justice system. 'What if he's one of those that goes along [to a restorative justice conference] and says all the right stuff?' She also thought that the offender might be resistant to accepting accountability and responsibility (Julich, 2006, p.)

This study found that the perpetrators offered apologies to the victim's family. According to Pilossoph (2016), "an apology that includes validation makes the other person feel like he or she is being heard". This gives the victim's family the validation and it's this validation that makes the family feel like they are being believed and that's the validation that they seek. This is because there is a feeling of self-blame from the victim's side and to hear an apology from the Perpetrators side takes some of the burden off as feelings of being believed dwell in.

These findings are line with the findings on in Bolitho and Karen, (2016, p.8), where a study was carried out in Australia which tried to compare the South Australian Family conferencing model over many years. This study tried to compare the formal justice system to traditional restorative justice system and the findings where that the traditional restorative justice system dealt with the cases more quickly through conferencing than court. Further, the study found out that perpetrators where willing to stay away from the victims and the perpetrators offered apologies.

7.1.4 The blame game/Community Pressure

Community pressure reports on situations where the family to the victim gets pressured to make decisions regarding child sexual abuse.

This study found that community pressure exists in communities regarding Child Sexual Abuse and this affects families' decision on whether to use the formal or traditional justice system. The families reported feeling pressured to withdraw the case, while others reported having felt threatened because of the persistence of the family of the perpetrator. Community pressure happens when the perpetrators family, relatives, friends or other interested parties in the community approach the victim's family to ask for forgiveness or pose threats with hope of having the case withdrawn from court.

One family reported that the decision was not entirely easy to make because the perpetrators family came to ask for forgiveness, *"Yes... his relatives came to ask for forgiveness. Then I told them I can't forgive him because the case has already been taken to court and awaiting day of trial so it's not in my hands (B, 2017).*

"They said we should sit down and discuss and they will give me something depending on how we discuss but I refused" (H, 2017).

"The perpetrators family kept coming to our house asking us to withdraw the case from the police. I ended up deciding that we should sit down and talk about this case. It was because they seemed scary every time they came to our place and I was afraid" (E, 2017).

"if you send my father to jail, then who is going to take care of us" and when mother has a baby then who is going to take care of the baby?"(C, 2017).

As such, some families would be courageous enough to stand by their decision of seeking justice through the legal system while some families are not ready to bear that burden of blame, so they are forced to give in so as to create peace in the community. So the victim's family would rather have the case sorted out using the traditional justice system to avoid the community or the suspect's family from putting the blame on them.

What might be seen as community pressure or blame game, may not be seen as such in the eyes of the perpetrators family because of the long cultural enshrined way of dealing with child sexual abuse where its viewed to be ok to approach the victim's family with hope to bring restoration between the two families. It's also important to note that some families do not view dealing with cases using the traditional justice system as "undermining the formal justice system, but rather supplementing an overburdened police and prosecution system"(Mistry, 2000, 1). To some families, the restorative justice system is just another way of sorting CSA cases. This would somehow explain why the family of perpetrators would visit the victim's family house to try to find a way of sorting the case without having to involve the police and justice system.

One family reported having been pressure so much to the point where withdrawing the case was the only way they could bring peace within themselves and within the community. The family felt the pressure was too much as the victim's family went to their home and threatened them, for fear of their safety, they had to withdraw the case from court and use the informal justice system. As mentioned in the themes in chapter 3 under Blame game/Community Pressure, an example of a case where the pastor defiled a girl, the community stuck together to pressure the family into feeling that what happened to their daughter was basically their fault. The blame, according to Finkelhor (1985, 532) makes the victims "experience a greater sense of betrayal than those who are supported" and on the family, the feeling of being blamed is emphasized by Banda (2016, 159) in his research where he found that blame made mothers to the victims feel like they have failed as parents because of their inability to protect their children from the act.

Bragg (2003, 10), notes that threats to cause fear, intimidation might damage the self-esteem of the family and the victim and that would cause self-doubt and make the families succumb to community pressure. This represents the happenings for most cases where the perpetrator is an important community figure or someone who is well spoken and respected in the community.

Opinions of the researcher are that, when families are pressured or threatened to withdraw the cases, the decisions are not always easy to make. One thing is sending the perpetrator to jail, but other things include, if the child abuse happened within the family by a breadwinner, families' decisions to pursue this through the justice system are affected. One might be sending a breadwinner to jail hence risking the whole family to poverty. Those are the pro and cons I think families weigh before choosing between the traditional and legal justice system.

7.1.5 Adversarial Justice System

Adjournment of court cases and long waiting periods characterised the Zambian court system and from the findings:

From the findings, conclusions are that the court system is adversarial in nature. This is shown through adjournment of cases which led to families feeling of dissatisfaction. According to Stein (2003, p. 503) reports that "delay and expense, have created a deep-seated desire to keep out of court" for any common thinking man. Delays in court are synonymous with the Zambian justice system

The "decision to grant or refuse an adjournment lies in the discretion of the trial judge," (Doogue, 2012). Based on this, the courts might argue that adjournment of cases might provide the courts with more time to review the evidence so as to give judgement based on merit. To the families seeking justice, adjournments sends a different message the families expecting justice to be executed in the least possible time.

In as much as the courts try to balance the rights of all those involved in the case, the rights and welfare of the children should be paramount and if that is observed then justice is executed in the shortest possible time.

Dissatisfaction is a feeling that arises when the justice system is not properly executed. Long waiting periods has ripple effects of the families seeking justice such as strained finances, emotional, and physical harm. The Standing Senate Committee on Legal and Constitutional Affairs report notes that "delaying justice, is denying justice" (*SSCLCA Report, 2017*).

2 families also reported the cases taking so long than usual at the court. *Since then, I go every now and then to check if they any new information and they keep telling me come tomorrow, when I go there again, they keep saying come tomorrow again just like that*(D, 2017).

One family reported that the court kept saying they are not ready to pass the he judgement and that kept going on for a long time. *The case happened in 2016 February and this is 2017 October and nothing has happened regarding my case.* (D, 2017)

The family claimed the court took long with the case and in the end allowing the suspect to escape from the police custody. The family reported that the court could not jail him in his absentia. The family expressed dissatisfaction in the court system failed to give them justice and sentence the perpetrator when they had him in custody. The family further expressed worry that the perpetrator will not be found to answer his case. *They keep saying they don't know where he is and that they should look for him first (D, 2017)* after further follow ups the family was told by the police that they don't know where the perpetrator is and the person who had signed bond for him moved to a different location and switched off their phones.

One family reported that the court were reluctant to work on their cases and in the end up making them feel like they were forcing the court to do their job. The family reported that *"at the court I feel like they were not trying to deal with the case because they were asking for things so that they delay the case (A, 2017).*

The families feel that the court system is also friendly in the way it collects testimony from the victims. Families reported that the court system was very unfriendly to the victim. The family stated that *"I feel like in court, they should maybe be patient with the children when getting testimonies. You know that in court, the environment looks scary and overwhelming to a simple child. So when the courts asks questions, "the child fails to explain themselves properly or they will entirely not talk so the courts needs to change their approach...mmmmhhh.... because children will be getting scared like that (H, 2017).* According to Weiss and Berg, Children will mostly be "reluctant to repeat the details of the sexual abuse and often give stories that are inconsistent or unclear" (1982, 515). As such, the court system should be considerate of the victims' inability to express themselves articulately but instead the opposite happens. Weiss and Berg has stated that the courts often react to the inability to child to express themselves properly with impatience, hostility, or blame, which causes more trauma to the child (Weiss and Berg, 1982, 515).

These findings are consistent with the findings made by the Access to justice Study. The study found that adjournments of cases was common in CSA cases. The study found that some cases even took up to 4 years and this becomes costly for families that are poor to travel long distances to access the court and in the long run, these families give up and stop showing up in court sexual abuse case (like all other cases) to go on for about four years, "on a cause whose end is neither in

sight nor overtly beneficial. It is also time consuming, and thus many give up midway” (Matakala, 2012, p. 18).

Also Nansasi Grace found that court delays deprived families off justice. The cases took too long, with some taking years to be processed (Grace, 2005, 75). A lot of adjournments makes people give up on child abuse cases as they lose hope and faith in the system. What makes it worse is when the perpetrator is released on bail. This makes the families feel like the system is not on their side.

7.1.6 Corruption

Corruption has become a widely used term by people from all walks of life in Zambia. Like other social problems faced by Zambia, corruption is a multifaceted concept because scholars, journalist and the public at large perceive it most commonly as bribe but in reality takes different forms and can be applied differently in different contexts.

Several definitions of corruption have been brought fourth but the one mostly inclined to this thesis is the one that involves the state officials. According to Mussie (2016), this corruption is seen as “a form of secret social exchange through which those in power (political or administrative) take personal advantage, of one type or another, of the influence they exercise in virtue of their mandate or their function”.

According to Mussie (2016), the forms of corruption that are more prominent include, bribery, embezzlement, fraud, extortion and favoritism

Families reported that, the found the justice system to be corrupt. The justice system is corrupt because it asks for money from the victim. One participant reported that the police officers asked for “transport money” from her for him to go and arrest the perpetrator. The participant explained that this behavior makes poor people shun away from the justice system as it is costly to access justice.

“At the police, they told me they will help me. I told them I have no husband so I don’t have money to pay you. So I took out the last 50kwacha (5 US dollars) I had and gave it to the police officer. So they went to the perpetrators place and found the perpetrator still together with the victim in

the same house so they arrested both the victim and the perpetrator and put both of them in police custody at the police station (G, 2017)

“They asked us to look for k700 (70 US Dollars) which they can use for transport to go and pick up the suspect” (C, 2017).

The police officers ask for a bribe in form of “transport money” from the victims so that they can go and arrest the perpetrator when by law they are not supposed to collect any form of payment from the victims or perpetrator. According to the laws of Zambia, the police officers are not supposed to ask for transport money as the government has provided vehicles to the Police department which are supposed to drive victims to the hospital for medical attention and help arrest perpetrators when need arises

Corruption can be looked at in two ways. You can get justice through corruption and secondly corruption can hinder people from getting justice.

For Instance, in this traditional profile of families, corruption hindered the family from getting justice as they explained to the police officer that they were poor and could not afford to pay the amount the police officials were asking for. Huber (2014), notes that the “during criminal proceedings victims and victims’ families may have to pay bribes to move a case forward with the police or prosecution” If corruption would start with the police force before the case even goes to court, what price would a poor family have to pay for cases that take a long time to reach a verdict? This means the price for getting justice goes way up and poor families cannot afford it. This could be the reason why some families quit halfway through the court proceedings as they cannot afford it.

On the other hand, the people that can actually afford to pay off the corrupt official will be able to get justice and in most cases have the results tilted in their favor. Corruption is sometimes called a soothing hand as corrupt official will work on the case based on the motivation that they will get money off it. And mostly try to tilt the situation in favor of the one paying them money. Kinsansa et al (2011) in a research carried out in urban Tanzania on the community concerns on child abuse, found that offenders who could afford to pay off corrupt official managed to evade jail. A corrupt justice system gives room for a perpetrator to tilt the ruling in his or her favor. In cases where the perpetrator has the financial capability to pay off corrupt officials, chances are, he will not be jailed

or the justice system will keep ad journeying the case until the victim's family gives up. This is because, the more the case gets dragged on, the more it becomes expensive to foot travelling costs for the victim's family. This means if they are in informal employment where the income is hand to mouth, it means no money for the family on that day as they have to spend the day in court.

This becomes a trade-off that the victims' family has to make between seeking justice, and surviving. And most cases they will seek the later. This scenario shows how corruption can hinder a family from accessing justice.

Both families reported some form of corruption in which the police handled their cases by way of hiding information from them. One family claimed that the police officer dealing their case was not very open with the information "*the police officer dealing with our case was not straight forward*", he was not trying to do thing the lawful way. What he did was not good. He never helped us in any good way. Instead of them helping us, it seemed like we were now forcing them to help us with our case. *And we feel like maybe the police got paid by the perpetrators so that they could not work on the case (A, 2017).*

One family reported an incident where the police lied of having given them information as mandated by the law. "*Before going to court, the case too long.....so went to the police station to ask why and the police told us that they had already communicated on the court date with us which was not true because they had not communicated (D,2017).*" Of which was not true as the family claimed the police did not make any attempt to contact them.

These findings are consistency with the findings made by Grace (2005, 37) of which she reports "People have lost confidence in police since most suspects is released before they are taken to court. Besides it takes to long for a case to be heard in courts of law which is also demoralizing". She further reported intimidation, dissatisfaction, letting of suspects to run away, and defilement files getting lost at the police station as some of the challenges faced by families. Grace further notes that there is a general outcry from the public about the mal practices that exist at police stations which has hindered a lot of child sexual abuse from progressing to a point where the victims and their families get justice (Grace, 2005, 35).

Research has also shown that corruption affects people's perception of the justice system. A bad perception of the justice system means very few people will access it as people do not have faith

in it. A 2014 survey conducted by AFRO/Barometer in conjunction with RuralNet Association reported that 30 percent of Zambians regarded the judiciary system as corrupt hence the withdrawal of their trust in the system. In Urban areas, the percentage of people that don't trust the system is 50% (Lusakatimes.com). This includes the Lusaka city where my research was conducted

Corruption hinders people from accessing justice. As highlighted in chapter 3, the (TimesOfZambia.com) reported that "People do not take their cases to court because majority of them think that it is costly. Many of them think that lawyers are expensive and the court costs are expensive" (LusakaTimes.com).

7.1.7 Incompetent justice system

Two families reported having had bad experience with the court system. One family claimed the courts adjourned their case for a lot of months. While the other family said the police were hiding information from them. *I really had a bad experience with the legal justice system, because they kept adjourning my case. All the time I went there they keep adjourning the case (D, 2017).*

Incompetence in the justice system might come from a poor working justice system. Poor in the sense that, different departments of the justice system are not working in tandem with what the constitution stipulates. Child sexual abuse cases according to the Zambian constitution should be dealt with aptness

An incompetent justice system can be as a result of legal abuse. According to Peak (2016) "legal abuse refers to abuses associated with both civil and criminal legal action. Abuse can originate from any part of the legal system, ranging from abuse by law enforcement, incompetent, careless or corrupt attorneys and misconduct from the judiciary itself" (Peak, 2016).

Legal abuse is responsible not only for injustice, but also causes harm to physical and psychological and social health (Peak, 2016). For instance, on the day of hearing, one family was told that the judge was not around". *Also, one family reported how they went to the court three times and the judge was not there all the three times (D, 2017). This shows how families can be disappointed if they go to court on a number of occasions without finding the judge.* As Weiss and Berg (1982, 515) put it "the last minute postponements of the court trial, coupled with the child's general anxiety may cause more unnecessary stress on the victim and the family

After 2 years of continuous court adjournment, the family reported that, “Finally when I went there, I was told that the judgment could not be made because the perpetrator had escaped the police custody. I was so disappointed and shocked by those happenings (D, 2017).

The adjournment of cases, and the judge being absent from hearing the cases made the family feel like the justice system was incompetent with their operations. The family felt that the courts had ample time to do the right thing but they did not.

The family also explained how important information pertaining to court dates, the status of the case was not shared with them. Information according to Álvaro Herrero and Gaspar López (2010, 7) is important as it helps restore people's trust in the judicial system. As mentioned in the theme “corrupt justice system”, there is already lack of trust in the Zambian judicial system by the public so provision of information and transparency can help reverse this lack of trust, right information may help people feel very close to the justice system. The family further reported how they wanted the perpetrator jailed as it was not his first time to carry out such an act. He was a second offender. *As for me, I wanted him to be jailed for a good number of years because that was not the first time for him to do something like that but the police kept hiding information of my case from me (D, 2017).*

The family explained how they thought the police were going to help. Further, the family reported how they did not get any help, they gave the reason was because the police and court “*kept sitting on my case*” (D, 2017). Sitting on my case in my translation could mean the lack of the legal justice system to work on the case in a shortest possible time without giving plausible reasons. One family further reported apathy towards the formal justice system is caused by the procedures in the justice system by highlighting that “Most of these cases fail when you take them to court or police, that’s why we do not even report them. When they happen, we just look at them and say oh ok, it happened. Because even when you take the cases to the police, they don’t help so what’s the point?” (E, 2017). Nishalke has argued that “when apathy happens, complacency follows” (Nishalke, 2010). In my interpretation, this means the families know that the justice system is incompetent and they feel there is nothing they can do to change it.

One family reported that after having been failed by the incompetent formal justice system, the victim’s father went behind the families back and everyone else and decided to meet with the family of the perpetrator. This is because the family of the perpetrator had offered money and the

victim's father wanted to get the money instead of getting justice so that's how come there where *conflicts within the family as one side wanted money more than justice and the other side wanted justice more than money (D, 2017)*. Poverty as explained earlier makes people make choices that they would not otherwise make if they were in a better financial position. Only in this case it's the incompetent justice system that that deprives the people of the same justice the formal justice system is generally thought to stand for.

This research has reported delays in the judicial system. These delays are a significant problem as many child sexual abuse cases take an overly long time to be processed. According to (SSCLCA Report, 2017, 1). "Lengthy trials and multiple adjournments are particularly hard on victims and their families, as well as on accused persons". On the family and victim, the hardships from a delayed cases can take a toll on their finances to cover travelling expenses and psychological as well. On the perpetrator, the stress can be made worse when the trial stretches for months without clear days when it will be finalized. "Article 18(1) of the Zambian Constitution requires that an accused person be afforded a fair hearing within a reasonable time", and when cases take too long to be heard the rights of the perpetrator are bleached and when that happens, the courts might end the proceedings of the case without a trial that is based on merit

7.2 FAMILIES' VIEWS OF THE LEGAL SYSTEM.

All the families reported the cases as stipulated by the laws of Zambia, - reported to the police, at the police, major significances between these 8 families began to surface. 6 families deciding to go ahead with the cases using the formal legal justice system. While, 2 families withdraw their cases and decided to use the traditional justice system .of the 6 families that proceeded with the formal justice system, 4 got the justice they wanted while 2 families felt they are deprived of the justice as their pursuit for justice proved futile.

When families take the cases to court, they expect to get justice and this justice should be fair. According to Omondi, justice is considered fair if it grants equal opportunities and liberties to the parties involved in a dispute. And in a situation here there are people who are disadvantaged then

procedural justice should do more than grant liberties and opportunities but distribute available resources to ensure equality (Omondi, 2014, p. 31).

All these factors fall under the justice processes from which justice is achieved. According to procedural justice theory as mentioned in chapter 4, people's perception of the justice system are not entirely based on outcomes but through the processes through which justice was arrived at. Research has shown that "members of minority group are extremely sensitive to the respect they perceive and the procedures employed when they come into contact with criminal justice" (Sherman, 2002, p. 26).

Families explained that their pursuit for justice was met with the challenges within the justice system and other external factors driven by culture. Some families felt some of the challenges within the justice system makes it hard for people to pursue justice.

The families reported that they do not view the legal justice system as being effective in dealing with the child sexual abuse cases. Reasons being the corruption, long case processing time, adjournments of cases and lack of information.

For a fair justice procedure to be attained. There has to be some service guideline in the formal justice system should exercise trustworthiness, neutrality and transparency. If it does not fulfil these criteria then the justice system can be considered ineffective and inefficient.

7.2.1 Trustworthiness.

Sherman writes that the procedural justice that is shown in the way legal officials treat the citizens will affect the citizen's trust and how much the citizens feel they are respected (Sherman, 2002, p.26). From this assertion, one can say that trustworthiness of the formal justice system by the public has to be earned through the actions of legal agents and the overall justice system. The officials employed to render justice services to the public have to exercise trustworthiness in their work. When families take the cases to court it means they feel they can trust the justice system to give them fair justice. Families reported Corruption, long waiting time and adjournment of cases as characterizing the justice system in Zambia. The families reported that they did not feel like the professionals in this field did their jobs on merit when it comes to handling CSA. "That's why people have a negative perception of the law because they feel it's a sheer waste of time knowing the police will ask for money either for transport or other logistics"(C, 2017).

7.2.2 Respect/Voice.

According to Tyler (2008, p 30), the “Legal authorities, whether police officers, court clerks, or judges, represent the state and communicate important messages to people about their status in society”.

For the formal justice system to be considered fair, the families should be granted their rights and liberties which include access to accurate information about the proceedings of the case and their outcomes (Ibid. 30). Families reported that the police official handling their case did not communicate with family about the court dates. One family reported not having been told when the case was going to be heard in court even though the courts had communicated with the police officer to let the family know on when the hearing was going to take place. “*..but the police kept hiding information of my case from me*” (D, 2017).

This is in line with the findings reported by Sherman where the victims were not given sufficient information about the status of their cases which also made them feel like their full rights were not exercised (Sherman, 2002, p.24).

7.2.3 Neutrality

People take their cases to court because they believe, they believe the judges to be neutral and principled when it comes to making decision about the case based on written guidelines and rules. Their decisions are supposed to be based on the merit of the case and not personal opinions (Tyler, 2008).

This means any act that a legal practitioner will take is not stipulated by law will influence the family view the justice system as not neutral. So the fact that police officers asked for money from the victims in order to work on the cases already compromised the neutrality principle. This is because whoever offers more money is what the police officers are going to side with and not only does that influence the outcome of a case, but also defeats the purpose for which the formal justice system stands for.

Because of corruption, long case processing time. And lack of providing accurate information makes the criminal justice very unpredictable and as Sherman puts it “criminal justice is no longer automatic, it must be earned everyday with each encounter between citizens and legal agents (Sherman, 2002, 26).

7.3 Summing up the Discussion

Compensation was given as one of the reasons why families use the traditional form of justice as they suggested its lucrative compared to the modern legal system. The families also reported that blame and community pressure makes families to choose the traditional form of justice over the formal justice system so that they can keep peace between the two conflicting families. Furthermore the families reported that shame also influences people not to report child abuse cases and if they do, standing in court is hard as the community look at you differently when they know you child has been sexually abused. The families reported the formal legal justice system to be corrupt.

The families felt that most of the corruption occurred at the police. The forms of corruption most reported by the families included polices officers asking to be bribed before they do their work. Also lack of information characterized the family experiences with the police. Some families felt the police did not give them all the necessary information regarding court dates and informing the families on the status of their cases. Some families reported the court system to be incompetent as they were not consistent with their works. Families claimed the courts has long waiting periods and adjournment of cases. Also, the families reported that the adversarial court system is characterized by long case processing time and adjournment of cases.

All the factors mentioned in the above paragraph affected the way families view the justice system. The families reported that there is lack of trustworthy, respect, voice and neutrality by legal practitioners.

7.4 Conclusion

Zambia has seen a rapid increase in the number of child sexual abuse, some scholars have attributed this increase to the better reporting mechanisms that have been put in place while other have blamed the culture and traditional practices. In as much as the genesis of child sexual abuse is important to study, the handling of child abuse cases is equally important to look at

The constitution of Zambia allows for customary law/informal justice system to operate side by side with the formal justice system as long as it is in tandem with the Zambian constitution. As

such, the CSA Cases which the Zambian law states should be dealt with exclusively by the courts of law are still being dealt with by the informal justice system. The challenge is that there is lack of clear cut stipulations on how child sexual abuse should be dealt with when using traditional justice system as this system is mostly believed to be perpetrators oriented as opposed to the victim. In as much Child sexual abuse is a criminal offense, and a legal matter, some communities still use the informal justice system to deal with such cases. Henceforth, the aim of this study was to explore the effectiveness of the legal system in dealing with child sexual abuse cases from the Family Perspective.

7.4.1 The study found out that corruption at the police

Just like in many African states, corruption is rampant in all walks of life, from state owned institutions to private owned institutions. This research found that corruption exists in the legal justice system, more especially at the police where families reported of having been asked by some police officers to give them transport money (of which free transport is already provided by the state) in order to arrest perpetrators. This is bribe which is a form of corruption. This poses a challenge to families seeking justice that has little or no information on how the system works. One family reported of having been asked to give the police k700 (almost 650kr) to use to go and arrest the perpetrator. Since the family knew that the state already provides free transport, they reported the corrupt police officers to the higher authorities of which the police ended up apologizing to the family. In instances where families do not fully understand the workings of the legal system, a lot of money is extorted from them or worse more denied proper justice because they cannot provide the bribe required by some corrupt police officers.

7.4.2 The study found that the families had experienced long waiting periods and adjournment of cases.

The study showed that the courts are characterized by long waiting time for cases to be fully dealt with. On the 6 cases that were chosen to use the legal justice system. Only one case was dealt with aptness while the remaining cases claimed that the justice system takes too long. With one case taking a week to be handled while some took over 2 years. Some families claimed their cases

was adjourned to the point where when they finally decided to pass the judgement after 2 years, the perpetrator was nowhere to be found as he had escaped from the police custody. The family also explained how dissatisfied they were with the formal justice system as it was not efficient enough in dealing with cases.

Families also reported that the language in court was not child friendly in that they did not fully understand the court processes. Further proposing that the court should be child friendly where it should have a home like kind of setup where children should not feel scared but rather express themselves freely.

7.4.3 The study found out that shame is still a big part of the community and keeps people out of the court system.

The study found out that shame is still a big part of the community. One family explained how the victim refused to stand in court because she felt ashamed. She felt if she stands in front of the court then everyone will be laughing at her and pointing fingers and she did not want to be the center of attention. This is because shame creates feelings of embarrassment, low self-esteem, being unwanted or being unloved. As such shame makes people withdraw from the community and isolate themselves. The victim explained how people will look at her differently if they found out she had been sexually abused and such, she asked her family to withdraw the case from the court and have it dealt with using the traditional justice system as it provided a better platform as the matter would only be discussed between the two involved families.

7.4.4 Study suggested that the prospect of compensation was the reason they chose the informal justice system.

Compensation was given as one of the reasons why the case was withdrawn from the court. After the case was adjourned a number of times, one family reported how the father of the victim went behind the back of everyone and had a discussion with the perpetrator's family where money was offered. From that time on, the husband became reluctant to pursue the case using the formal justice system. Had the case been dealt with in a reasonable amount of time, such could be avoided and the victim could have gotten justice for being abused. This is a story shared by many others who feel the justice system takes too long to the point where the perpetrators escape that's why

some chose the traditional justice system as it assures the victim's family some form of compensation in form of money, or a chicken or goat if it is in the rural areas.

7.4.5 Community pressure was also given as one reason why family chose the traditional system over the formal justice system.

Aside from shame, the study found out that families withdraw the cases from court because of community pressure. Some families felt that the perpetrators relatives, friends and family influenced them to make the decision to withdraw the case. The families explained how the perpetrators family showed up at their home and threatened to withdraw the case from the police. "They insulted us and made a lot of noise". So in the end we had to withdraw the case, we did not want them to blame us for sending their perpetrator to jail. We were scared and we did not know what to do next. Community pressure forces people to withdraw cases from the court. Families need to feel safe if they are to pursue justice. Their pursuit for justice should not threaten their existence or survival in society. If threatened, some families will withdraw their cases from court which they would have otherwise not done had they felt protected by the system. This shows there is lack of trust in the system that is supposed to protect people at all cost.

7.5 TYPES OF FAMILIES

After looking through the data, I realised that the data formed three categories of families and for the purpose of this research I grouped these families into three categories these categories are “Traditional families” “Justice Deprived families” and “modern families” I grouped these families into these categories because the narrations from their experiences with the justice system brought about cases that either went to court, some cases where sorted using traditional system while the other cases where those families that tried to seek justice but the legal system failed them. From this background, Traditional families entails those families that chose to deal with their cases using the traditional system of justice while modern families means those families that dealt with their cases using the legal justice system and lastly the deprived families to mean those families that tried to get justice through the legal justice system but where faced with challenges that hindered them from doing so. From the 8 families that participated in this research, 4 families used the formal legal system to deal with their child abuse cases. 2 families used the traditional system while the remaining two families tried to use the legal justice system but where hindered by the justice system challenges.

7.5.1 Modern Families

Modern families in this research form a profile of families that despite challenges, managed to get their cases in court. This is an interesting profile of families as it gives lived experiences of family’s view of the justice system from the time they reported the case to the last hearing in court. This family also provides the dynamics in the decision making in the family, who made decisions regarding whether the case should be pursued using the traditional system or the legal justice system. This profile of families tries to give an insight of how it is to pursue justice and the challenges met by families in their pursuit for justice. This category comprised of 3 families that decided to resolve their case sing this system.

7.5.2 Traditional Families

This a profile of families that resorted to using the traditional system of conflict resolution. This is a category of families that reported the cases to the police and the hospital for medical examination of the victims but due to external and internal family pressure and challenges along the way, they decided to use the traditional justice system to resolve the child abuse case. Out of the 8 families

that took part in this research, 2 families emerged to have used the traditional justice system of conflict resolution when it comes to child sexual abuse cases.

7.5.3 Justice Deprived Families

This is the category of families that tried to pursue their cases using the legal justice system but they faced a number of challenges in their pursuit. For both cases the families explained how they tried to follow the formal legal system as advised by the police. That is first reporting the case to the police, then going to the hospital then taking the case to court. In their pursuit for justice, the 2 families first reported the cases to the police, then both were referred to hospital to get medical attention for the victims by the police. Then families explained how they later went back to the police to give statements of what had transpired so that the police can use that as part of evidence when they take the case to court. The families explained having followed the guidelines of the formal justice system but did not get the justice they wanted.

7.6 Recommendations

During the interviews, the families proposed a number of alterations which can help to improve the effectiveness of the legal justice system.

- I. Families called on the police officers to be neutral and exercise transparency when dealing with child abuse case.
- II. The families suggested that the police dealing with the case should adequately share information such as court dates, and tell the victims which court their case will be heard from.
- III. The families suggested that the court should be able to inform them in time if the case will be adjourned unlike being told right there at the court when they have already used money on transport.
- IV. The families also suggested that if the cases take too long, it gives the perpetrators family a chance to raise money and bribe the legal system so such cases have to be dealt with quickly.

- V. The family called for stiff punishment against the perpetrators as it would serve a lesson to the-to-be offenders. The current sentence is 15years imprisonment if found guilty.
- VI. Families called for child friendly courts which should be similar to a home setup where children feel comfortable enough to express themselves without having to feeling anxiety or intimidated.
- VII. The families also suggested that the language in court should be user friendly so that the families seeking justice understand every stage of the court process to avoid misinformation as some explained how they only understood half of the court proceedings.
- VIII. The families suggested that bail should not be granted to the suspects as some use this opportunity to run away
- IX. The police should stop asking for bribes and do their job accordingly

From the results of the thesis and from the families experience with the justice system, I agree with the suggestions made by the families, just to add on, I would also recommend that;

- I. There is need for the government to draw the line on who should exclusively deal with child sexual abuse.
- II. There is need for a transparency department focusing on child sexual abuse where families could easily report their grievances or malpractices experienced when pursuing justice
- III. Every child abuse case should be handed to a social worker as paid of the legal aid team to carry out their own assessment of the family social economic status and living arrangements in order to find a better way of helping the family.
- IV. Restraining orders should be given to the perpetrators family from meeting the victim's family as this would stop the two families from carrying out informal negotiations regarding the case.
- V. Is CSA cases are to be allowed to be dealt with using the traditional justice system, then there is need for proper monitoring and documentation from the state. Records have to be kept on what was discussed. There should be a legal representative to give oath of the meeting and proceedings of the meeting.

- VI. The traditional justice system and the formal justice system have to reach an agreement on what kind of punishment is suitable to be awarded to the offenders. The two forms of justice should have similar or same punishment for Child Sexual abuse.

7.8 Policy Implications

The findings from this study might have some bearing on the implementation of government policies. On that note, the results might influence planners and policy makers to make alterations to the existing policies or form new policies that would have a better reach to the needs of the families and victims of child sexual abuse. For instance, the study found that some police officers ask for transport money from the victims' family of which the Police under the Victim Support Unity already provides the transport for free.

This is something that can be looked into by policy makers. Policy makers should view child sexual abuse way beyond the victim and the perpetrator. They could also look at the impact child sexual abuse has on the families and the challenges the families go through in their pursuit for justice. The long waiting times, adjournments of court cases, and some other inconsistencies could be the things policy analysts could try to look at.

Further the policy makers could look at child abuse from the cultural perspective and try to understand why some families chose to sort out their cases using the traditional justice system and use that information to bridge the gap between traditional justice system and formal justice system in order to come up with a system that works and harmonizes the two systems to work in one accord. Finally, Policy makers could draw a line 'if a child sexual abuse is a criminal case and should be dealt with exclusively by the courts? or is it a civil case which should be dealt by the traditional justice system?'

Lastly but not least the policy makers could look at the re-education of all professionals dealing with child sexual abuse in order to build competence within this professional fora. There is should

be tremendous desire to protect the rights of the children by learning from the experiences of the families in their pursuit for justice.

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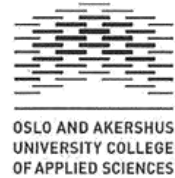
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APPENDIX 1: FIELD WORK LETTER



Global Alliance for Health
The University Teaching Hospital
Department of Paediatrics and Child Health
P.O Box 50440, Ridgeway.
Nationalist Road, Lusaka.

REGARDING RABSON KAMUSEKANI PIRI FIELD WORK IN CONNECTION WITH HIS MASTER'S THESIS AT THE OSLO AND AKERSHUS UNIVERSITY COLLEGE OF APPLIED SCIENCES, NORWAY

This is to confirm that Rabson Kamusekani Piri (born 18.10.1988) is a fulltime student enrolled in the Master's Programme in International Health Policy and Social Welfare at the Faculty of Social Sciences at the Oslo and Akershus University College of Social Sciences in Oslo, Norway. Rabson is now working towards completing all of the course subjects in this degree and will now start on collecting data for completion of his master's thesis, which is due on in May 2017. This master's thesis is 50ects credits where students write around 80 to 90 pages. The theme of Rabson's thesis is "A study of the effectiveness of the legal system in dealing with cases associated with child sexual abuse in Zambia."

We wish Rabson the very best with his fieldwork and thank you and your organization for help in assisting him.

Please take contact with me if you need additional information or clarification.

Kind regards,

Stuart Deakin
Executive officer, Master's Programme in International Social Welfare and Health Policy
Faculty of Social Sciences
Oslo University College
Oslo, Norway
Telephone: 0047 22453659
Email: Stuart.Deakin@hioa.no



APPENDIX 2: VICTIM'S FAMILY INVITATION FOR PARTICIPATION IN RESEARCH PROJECT

APPENDIX 3: INFORMED CONSENT

Research Participation Consent Form

My name is Rabson Kamusekani Phiri, and doing my Masters in International Social Welfare and Health Policy at Oslo and Akershus University (Oslo, Norway). I am carrying out research on the “Effectiveness of the Legal system in Dealing with Child Sexual Abuse in Lusaka Zambia for the purpose of my Master Thesis. The aim of this research is to gain understanding of the families’ experiences with the formal justice system and the views family members hold about the legal system. As such I would like to interview you in order to get your views on the justice system. During our conversation (interview), I will ask you some questions about your past experiences with the modern legal justice system in relation to child sexual abuse.

Participation in this study is voluntary so you may decline to answer any of the questions if you so wish. The interview will take about 40 to 60minutes and if you would like to stop the interview at any time, please tell me and we will end our interview immediately. With your permission, the interview will be tape recorded to facilitate collection of information, and later transcribed for analysis. Please note that the recordings will be stored in a secure place. All recordings will be destroyed upon transcription. There are no risks to you in this study. Your name, or any other personal identifying information, will not appear in the final paper resulting from this study.

Your participation in this study is for academic purposes only. However, if need arises, the study might be viewed relevant by policy makers and other parties but be rest assured that your information for taking part in this research will not be known by anyone during the publication of the results. The thesis is likely be published. If you would like a copy of the study, please provide me with your address and I will send you a copy in the future. If you have any questions about this study, please contact my supervisor, Associate Professor Rune Halvorsen (PhD) at rune.halvorsen@hioa.no.

Thank you for your consideration. I will give you a copy of this form to take with you. If you agree

to participate in this research project, please sign

Consent to participate

I agree to participate in the conversation (interview) for this project. [circle one]: Yes No

I agree to be audio taped during this conversation (interview). [circle one]: Yes No :

Participant's signature Date

Participant's name printed

Researcher

Rabson Kamusekani Phiri

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APENDIX 4: INTERVIEW GUIDE: Interview with family representative (mother/father/Guardian) with child who has been exposed to sexual abuse

1.0. Biographic data

Tell me a little about yourself, (are you married and live with your partner? Age? Place of residence? If not: Do you live with any children related to you (Brother/nephew/daughter/niece or son)?

2.0. Overall experience with the case

How did you first hear about the sexual abuse? How did you learn about the abuse? What happened next?

So what happened next, did you report the case?

3.0. Experiences with the legal system

3.1. Police

1. So who reported the case to the police?
2. What did the police tell you about the case?
3. Did they police explain the step by step process of the legal procedure?
4. How much contact did you have with the police?
5. Do you feel you did the right thing by taking the case to the police and why?

3.2. Court

1. How was your experience with the court?
2. Did they communicate on the court dates and other court procedures?
3. So what happened inside the courtroom?
4. Did you get any help from lawyers or anyone else regarding the case? follow-up or consultations from the lawyers?)

2.3 Medical staff

1. Did you have contact with the medical profession handling your case?
2. If you did, did you discuss anything concerning the child abuse case?
3. What kind of information did the medical professional discuss with you regarding the case?
4. Was it the medical professional that availed the results of the medical investigations to you? If not, where you referred to someone else instead?
5. What other information did the medical professional discuss with you?

4.0. The Reason for choice between legal and traditional system

4.1. Legal System

1. How come you decided to solve the child sexual abuse case using the formal justice system (police, court)?
2. Did you make that decision yourself or did you discuss it with other family members?
3. If you discussed it with someone, what did they think about using the legal system?
4. Were you advised by someone to take the cases to court?
5. Was it hard to make that decision of taking the case to court? (why)
6. Did you have any hesitations about it in the first place? (Explain why and what hesitations you had).
7. What was the time period from the onset on the case to the last hearing in court?

4.2. Traditional system

1. How come you decided to solve the child sexual abuse case traditionally rather than using the formal justice system?
2. Did you make that decision by yourself? Or did you discuss it first with someone else like your (Husband/Wife/Father/Mother/Brother/Son/Uncle)? Did you need permission from anybody?
3. Was there a meeting called for and what happened during the meeting?
4. Did anyone encourage you to solve this case traditionally?
5. Did you reach settlement with the perpetrators family before or after the legal processes were over?
6. What was the time period in which you solved the case traditionally?
7. How did you reach the agreement?

5.0. The decision making process in the family

1. Who do you feel handles the child abuse cases in the family and why?
2. How come you feel they are the ones responsible for handling such cases?
3. Was that a difficult experience to give such kind of responsibility to that person?
4. Why do you feel it's important to put such cases in their hands?

6.0. Reflections on own position and recommendations for the future

1. Do you think the legal justice system did enough to help in your situation?
2. Do you think it was worth it solving the case traditionally or through the legal justice system?
3. Would you recommend going through the legal justice system to other families who are experiencing a child abuse case? (Why / why not).
4. Do you have any recommendations to what could make the legal justice system easier to access and use for families experiencing child abuse cases?

5. Is there anything you would have done differently today?

7.0. Concluding Remarks.

Is there anything else concerning or about child sexual abuse that you would like to add or share

Thank you for your time