

THE ADEQUACY OF THE CHILDREN'S PROTECTION AND ADOPTION ACT CHAPTER 5:06 IN PROTECTING CHILDREN FROM ABUSE IN ZIMBABWE.

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ABSTRACT

The study sought to establish the adequacy of the Children's Protection and Adoption Act Chapter 5:06 in protecting children from abuse. The representative sample consisted of thirty (30) officials who held positions of managerial in the various government line ministries and non-governmental organizations operating in Harare Metropolitan Province, which could also influence policy formulation and implementation in the various government line ministries and non-governmental organizations that operate in the child sector field. A qualitative research descriptive survey design was employed to guide the methodology. Data was collected using the interview schedule guide. Qualitative data analysis with descriptive statistics was used in the presentation, interpretation and analysis of data. The results showed that the Children's Protection and Adoption Act Chapter 5:06's adequacy in protecting children from abuse had almost ninety (90%) percent of the participants in agreement that the Act was a good document on paper but lacked value when it came to the real situation on the ground. Another finding was that there was lack of coordination amongst stakeholders in the child sector as each organization tended to compete with the other in fighting to protect children from abuse. Activities of all stakeholders needed to be well coordinated to avoid issues to do with duplication of roles and competition that tends to dilute the best interest practices for children from abuse. Recommendations made include the allocation of all arresting and prosecution powers to be

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vested in the Ministry that administers the Act, so as to avoid duplication of roles amongst various stakeholders in protecting children from abuse.

Key words: Child Abuse, Act, Adequacy, and Child.

Background to the study

Abuse of children has been on the increase for the past five years (2005-2009). Statistics from the Zimbabwe Republic Police, Victim Friendly Courts, Department of Social Welfare and Non-Governmental Organisations that work in the child sector have shown that, if drastic measures in terms of stiffer sentences being put into force and awareness campaigns done to concentrate members of the public about child abuse, this may assist in reducing these figures. Statistics recorded by the Zimbabwe Republic Police Victim Friendly Unit Section alone from 2005 to 2009 indicated an increase from 633 cases to 2370 cases nationally showing a percentage increase of 374%. From the statistics gathered from the Zimbabwe Republic Police, the most dominant form of abuse was sexual abuse which had 198%, whilst physical abuse had 102%, neglect abuse had 60% and child labour had 14%. Of all these forms of abuse cases that had been reported to police, only 45% of them had been finalised at the court with the alleged abusers getting jail sentences, paying fines or doing community service work. Reasons for the uncompleted cases varied from each case where in some the accused person will no longer be located after getting bail or was never arrested and at times complainants with their guardians cannot be located as they had changed their lodging places without informing the police. Non-governmental organisations records showed that in 2005, they had 1200 cases of abuse which increased to 6570 cases in 2009 thereby showing a percentage increase of 547.5% over the five year period. Such an increase has been attributed to a lot of lobbying and advocacy work that has been carried out by the police, victim friendly courts, non-governmental organisations and other government departments in educating children on the different forms of abuse and how perpetrators can be identified before an abuse is committed. The National Coordinator of Victim Friendly Courts Mr Magonga Idine in The Sunday Mail (14/06/2009) said that *'more cases of child abuse came to light after vigorous awareness campaigns in schools and public places in 2006 whereupon on October 19, 2006 a petition document was presented to the then Speaker of the House of Assembly, J.L.NKOMO thanking the government on the stiffer sentences on those*

would abusers of children under the Criminal Law (Codification Reform) Act Chapter 9:23 effective from the 1st of June 2006. Anyone who was going to be convicted on rape, aggravated indecent assault would either attract a minimum of twenty years up to life imprisonment in jail.'

There were also factors that were noted during the campaigns that could have also contributed to such high figures. The socio-economic environment from 2005 to 2009 deteriorated to an extent those women who by virtue of culture are supposed to remain home and look after children ended up getting involved in the economic participation by going to work and feed the children. This situation exposed children to great risk of abuse from relatives and strangers within the various communities. Child headed families and the impact of HIV and AIDS to families where both parents died leaving young children to look after the other resulted in some of the children indulging in sexual relationships that exposed them to abuse in return for food on the table.

In contrast to the above, there is a growing concern that society feels that some attitudes of some of the stakeholders in the child sector field might have contributed to this increase in the abuse of children. Also there was a feeling that the legislation in place, i.e. Children's Protection and Adoption Act Chapter 5:06 is not adequately from children from abuse at all. Given that the Zimbabwe Republic Police adopted the Victim Friendly Unit Concept in 1995, with the aim of assisting the quick process of investigating child abuse cases brought to their attention by providing a friendly environment, the society felt that they were being let down. The Children's Protection and Adoption Act Chapter 5:06 is a piece of legislation that should protect children at length but it appears there is no proper implementation of this Act by the government and all other stakeholders in the child sector. Coordination in dealing with stakeholders appears to have lacked thus leaving a void where abusers took advantage to abuse children without being put to book.

It is against this background, that the researcher deemed it necessary to carry out an in-depth study into the Adequacy of the Children's Protection and Adoption Act Chapter 5:06 in protecting children from abuse. The researcher looked at several documents such as the United Nations Charter, Zimbabwean Constitution, and Acts of Parliament in Zimbabwe that have been gazetted as laws as well as Statutory Instruments available. From these documents, the researcher made a critical analysis of them and identified the extent to which institutional and

policy arrangements enabled the Ministry of Health and Child Welfare to administer the Children's Protection and Adoption Act Chapter 5:06 in protecting children from abuse.

Statement of the problem

The current institutional and policy arrangements in Zimbabwe do not adequately enable the Ministry of Health and Child Welfare to fully utilise the Children's Protection and Adoption Act Chapter 5:06 from abuse. The above background has prompted the researcher to establish the extent of adequacy to which the existing institutional and policy arrangements enable the Ministry of Health and Child Welfare to protect children from abuse within Zimbabwe. Given the fact that the Zimbabwean government adopted the zero tolerance to all forms of child abuse with the aim of protecting children as future leaders, a lot of questions have been raised over the effectiveness of the Children's Protection and Adoption Act Chapter 5:06 in protecting children from abuse.

Research Questions

- Does the Children's Protection and Adoption Act Chapter 5:06 adequately protect children from abuse?
- To what extent does the current policy and institutional arrangements assist in protecting children from abuse?
- What issues and concerns are raised by key stakeholders on the adequacy of the Act in protecting children from abuse?
- What should be done to improve the Act so that it adequately protects children from abuse?

Literature Review

According to the Zimbabwe Constitution, a child is defined as any person who is below the age of (18) eighteen years. It has also been known as the legal age of majority where children are separated from adults by virtue of responsibilities that they can personally undertake on their own. The Children's Protection and Adoption Act Chapter 5:06 under Section 2 define a Child as a person under the age of (16) sixteen years and include an infant. The Act provides for the protection, welfare and supervision of children and juveniles, the establishment of juvenile courts

and the registration of institutes concerned with children. In large measure the Act has all the provisions on paper that are relevant to the effective protection of children from abuse in Zimbabwe but it is relevantly silent on the right of children to express themselves in child protection proceedings. Although Part II, sections 5 and 6 suggest that a child may have a legal representative in court, the Act is explicit neither about the scope of this representation nor the mandate of the legal representative. The juvenile courts – established and tasked by the Act with inquiry into whether a child is in need of care and, if such be the case, inquiry into and determination of the appropriate order to be made – are not required by the statute to take the child's views into account and may, in fact, hold such inquiry in the absence of the child.

The law most explicitly calls for representation of the child's best interests and consideration of the child's views in adoption proceedings. Part VII of the Children's Protection and Adoption Act Chapter 5:06 mandate that the court shall appoint a probation officer to act as guardian *ad litem* of the concerned minor, with the duty of safeguarding the interests of the minor before the court. The court, before making an adoption order, shall be satisfied that the order if made will be for the welfare of the minor, due consideration being for this purpose given to the wishes of the minor, having regard to the age and understanding of the minor. The language of the statute indicates that the paramount consideration will thus be the child's welfare, with his/her wishes as one consideration for the court in making that determination.

Respect for the views of the child – as required by Article 12 of the Convention on the Rights of Children (CRC) – is covered by section 20 of the Lancaster House Constitution (1979), which provided that no person shall be hindered in the enjoyment of his freedom of expression – that is, freedom to hold opinions. However, because of the cultural and societal attitudes and concepts of parental discipline, children are not always awarded the freedom to express these views freely. Zimbabwe ratified both the Convention on the Rights of the Child (CRC) and the African Charter . Children's Protection and Adoption Act Chapter 5:06 also provides protection for children who are defined as children in need of care as a child or person:-

- (a) who is destitute or has been abandoned; or
- (b) both of whose parents are dead or cannot be traced and who has no legal guardian; or
- (c) whose legal guardian or parents do not exercise proper control and care over him; or

Prevalence of child abuse and child labour in Zimbabwe

Various media authorities have indicated that cases of child abuse amongst children have risen to alarming levels over the past decades. However accurate figures are not easy to get as there is speculation that most of the cases go unreported to the police, courts, hence undocumented for record purposes. In 1999, a situation analysis and assessment conducted by the United Nations Children's Fund (UNICEF) in Zimbabwe revealed over (11 000) eleven thousand cases of child abuse being perpetrated on children by adults. The same report asserts that the actual number of child abuse cases was much higher, only those cases considered being trivial like fondling of private parts, indecent assault, or indecent exposure are rarely reported.

In support of this view, *Growing Up in Zimbabwe*, another publication by UNICEF (1999) estimated that the ratio of reported cases at one to five (1:5) against the unreported cases. This prevailing scenario has pointed to the fact that though the government legislation of Children's Protection and Adoption Act Chapter 5:06 is in place, its adequacy in protecting children from abuse is brought into disrepute. Legislation that entails stiffer sentences for perpetrators of child abusers will assist in all the efforts that are being done to protect children from abuse (Taylor and Stewart, 1991).

Over the past few years, the number of children living on the streets has continued to rise and there are reports of children involved in commercial sexual exploitation. The traditional practice of offering a young girl as payment to settle inter-family feuds continues to occur in Zimbabwe, as does early marriage of young girls. Zimbabwe is considered a source and transit country for a small number of children trafficked for forced labor and sexual exploitation. Within Zimbabwe, a small number of children are reportedly trafficked internally to southern border towns for commercial sexual exploitation. The child labor situation is compounded by the HIV/AIDS epidemic, which in Zimbabwe, has left close to 1 million children orphaned, reliant on informal work to supplement lost family income, and has forced others to work as caregivers for sick adults. As a result of the epidemic, Zimbabwe is currently experiencing an increase in child-headed households.

Stakeholders Contribution to Child Protection

The fight for child protection is not entirely a wholly government thing alone, but it calls for a collective responsibility to all those concerned and involved in the day to day welfare of children. Key stakeholders such as Save the Children Norway, Child Protection Society, Justice for Children Trust, Family Support Trust Clinic, Zimbabwe National Council for the Welfare of Children and many other organisations sprout throughout the country, all play an important role to protect children from abuse. The government on its own cannot adequately have resources available that can cater for children, but stakeholders such as the above mentioned NGO's and others come into the fore by providing resources in terms of places of safety whereby a child has been abused by a close relative. These non-governmental organisations as they conduct their work, they stand guided by the Children's Protection and Adoption Act, which spells out what a child is and how children are supposed to be handled. While the meaning and use of the term NGO have been much debated, this paper makes use of the most commonly accepted understanding of NGOs: as independent development actors existing apart from governments and corporations, operating on a non-profit or not-for-profit basis with an emphasis on voluntarism, and pursuing a mandate of providing development services, undertaking communal development work or advocating on development issues. NGOs can be classified in many ways: on the types of activities they undertake, on their size, on their sectoral focus, or on their sources of funding (Clark, 1991). Of particular note to the present research study is the distinction between NGOs of different geographic origins, specifically between NGOs from the North and NGOs from the South. Throughout the last several decades, NGOs originating in the North have grown from a small number of post-war relief organisations to a major industry of large, multi-national organisations with relief and development mandates both at home and abroad. Many of these NGOs are operational, meaning that they run their own development projects nationally and internationally. Such groups, originating in the North, but with mandates throughout the South, will be called international NGOs, or INGOS. This subset includes some of the best-known NGOs at work today: CARE, Oxfam, and Save the Children. Such NGOs have made a major contribution to human development across the South, particularly in the fields of health and nutrition, child protection, education and the environment (Alkire, 2002). They have also played a crucial role in ensuring human security for millions of people during emergency relief situations.

In Zimbabwe, most local NGOs undertake development work in multiple regions of the country and many have prioritised the creation of their own regional or provincial offices with which they can share decision-making and programming responsibilities. The low cost and relative ease of travel and communications within Zimbabwe is one factor which contributes to this phenomenon. Good roads traverse the country and its telecommunications infrastructure is one of the best on the continent. A number of local NGOs have achieved nation-wide representation, with offices in all Zimbabwe's provinces. In countries like Tanzania, where travel is costly and difficult, it is international NGOs which have developed a nation-wide presence. Their human, transport and financial resources make it possible for them to reach communities from the Great Lakes region to the Indian Ocean. Whether served by local or international NGOs, millions of African people, many in isolated rural communities, now have access to effective social development programs which help to protect them from various forms of insecurity. Child protection activities in Zimbabwe being spearheaded by NGO's have come in handy towards the government's objectives and goals of attaining a zero tolerance to any form of abuse against children (Moyo, 2000). The NGO's operating in the child sector calls for stiffer sentences to any perpetrator of abuse against children has been loud and clear to an extent that the central government in 2006 through the Criminal Law (Codification and Reform Act) Chapter 9:23 increased the sentence for any child abuser especially sexual abuse (rape) to a minimum of twenty (20) years up a maximum of life imprisonment. This position was welcomed by most NGO's in the child sector who still continue to put pressure on the government to impose capital punishment as in murder cases to those abusers. It is evident that the roles of NGO's in the child sector have been handy in deterring those potential abusers as each day campaigns are being done in every corner of the country with the intention of protecting children. The set of the victim friendly courts across has been successful with the assistance of NGO's in terms of equipment procurement to be used in those respective courts (www.victimfriendlycourts.org.zw).

Role of Counselling

Counselling involves an interpersonal relationship between someone actively seeking help and someone willing to give help who is capable of or trained to help in a setting that permits help to be given and received (Cormier and Hackney, 1993). Counselling is best for children as they require someone who can spare time and being professional to help them from the abuse they

might be enduring. It is a pity that all forms of abuse perpetrated against children can easily be divulged in a counselling session where the child might be getting the necessary psycho-social support. To understand the correct form of protection that children might be in need of at any time requires counselling to take place.

Counselling can also be used as a child protection strategy where a lot of information regarding prevention from abuse of children. Preventing and responding to violence, exploitation and abuse is essential to ensuring children's rights to survival, development and well-being. The vision and approach of UNICEF is to create a protective environment, where girls and boys are free from violence, exploitation, and unnecessary separation from family; and where laws, services, behaviours and practices minimize children's vulnerability, address known risk factors, and strengthen children's own resilience. This approach is human rights-based, and emphasizes prevention as well as the accountability of governments. It enhances aid effectiveness by supporting sustained national capacity for child protection. Finally, it reflects children's own roles and resilience as agents of change and actors in strengthening the protective environment (UNICEF, 2008)

Research Design

Descriptive survey research design was used. The design has been used successfully in similar and related circumstances by a lot of researchers, these include Clark and Kolstoe (1995), Craig and Garrity (1994), Long (1994) and Schroeder (1991) among others. Wortman and Loftus (1988) define a descriptive survey design as an attempt to estimate the opinions, characteristics or behaviours of a particular population by investigation of a representative sample. It is the ability of the descriptive survey to enable the researcher to use a representative sample that it was chosen. Descriptive survey design enabled the researcher to explore the behavioural, cognitive and affective domains of respondents (Wortman and Loftus, 1988).

Population

The population to the study was seventy (70). These included thirty (30) officials from the Ministry of Health and Child Welfare, twenty (20) non-governmental organisations working with children, ten (10) Zimbabwe Republic Police Victim Friendly Unit officers from the Ministry of

Home Affairs and ten (10) officials from the Ministry of Justice and Legal Affairs within the greater Harare Metropolitan Province.

Sampling and sample

Purposive sampling technique was used to select the research participants. A total of thirty participants were used in the gathering of data.

Research Instruments

Interview schedule was used.

Results

- There is duplication of roles by the various line government ministries and non-governmental organisations in the child sector.
- Lack of resources to boost the capacity building of various stakeholders so that they can effectively play their part in protecting children from abuse.
- Coordination amongst various stakeholders is lacking, thus it has left loopholes for abusers to continue abusing children willy-nilly. There is no win-win situation for children in the eyes of stakeholders involved.
- There are contradictions when it comes to execution of roles by line ministries officials in the handling of children from abuse as provided in the Act under Sections 15 and 19 between police officers, probation officers and magistrates.

Discussion

The discussion follows the study that was carried out by the researcher in the Harare Metropolitan Province entitled ‘Adequacy of the Children’s Protection and Adoption Act Chapter 5:06 in protecting children from abuse’. A total of thirty (30) respondents took part in the study. Research results on the adequacy of the Act revealed that whilst the document is good on paper, it has not been implemented to the satisfaction of the interest of children. There is clear evidence that whilst the Act tries to empower various line ministries to play a part in the protection of children, there is no statutory instrument that clearly spells out each stakeholder roles so as to avoid duplication of roles as well as contradictions on the execution of the Act in

safeguarding children. This situation has also left room for abusers to continue abusing children without being detected early by the law enforcement agents. A closer analysis of section 15 and 19 reveals clear duplication of roles, contradictions on execution roles and conflict of interest exhibited by each stakeholder involved in the child sector.

One of the findings of the research study was that there was a lot of duplication of roles amongst the key stakeholders in the child sector. The Act provides also this aspect of duplication of roles between police officers and probation officers under Section 15 and 19. The researcher discovered that such a setting would leave more room for abusers to continue abusing more children as police officers claim that they are the only ones as enshrined in the Zimbabwean Constitution with arresting powers in as far administering all the Acts. Whilst probation officers might claim a stake, their chances of succeeding are reduced though the Act empowers them to contribute towards the protection of children from abuse. Furthermore, there are contradictions when it comes to execution from both the police and probation officers in removing children and placing them to places of safety. This set up exposed further the vulnerability of children to abuse.

Conclusion

There are loopholes in the current policy management and existing institutional arrangement in the administration of the Children's Protection and Adoption Act Chapter 5:06. No coordination amongst all the stakeholders in the handling of issues that protects children from abuse as these stakeholders tends to be in competition with each other, thus exposing children to further abuse and trauma. All the stakeholders involved in the protection of children from abuse do not know each other's boundary of operation, thus they end up creating confusion in front of children who are supposed to be beneficiaries.

Recommendations

- Government through the Ministry of Health and Child Welfare should come with a conceptual framework that shows boundaries of each stakeholder in the child sector who claim to be protecting children from abuse, so as to avoid duplication of work that ends up confusing and exposing the child.

- Capacity building of all stakeholders in the child sector should be prioritised in terms of human resources and financial resources.
- There should a directory of all stakeholders in the child sector that cements connectivity and collaboration amongst organisations in terms of activities that needs to be done for children to attain a zero tolerance to all forms of abuse.

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