

Psychological Concerns Surrounding Sexually Abused Children with Intellectual Disability in Court: Case of Gwanda Urban

Melody V Gumbo

Great Zimbabwe University, Masvingo, P O Box, Zimbabwe

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ABSTRACT

The study adopted a qualitative approach using case study design to research on the psychological concerns surrounding sexually abused children with intellectual disability in court: case of Gwanda Urban. Purposive sampling was the main strategy used. The method sampled cases of children with court experiences after sexual abuse from Gwanda Urban. Projective tests like draw a person test were used to measure the children's ability to narrate a story and it was noted that it depends with the level of disability hence the research findings recommends that involvement of a psychologist will help in making this assessment rather than generalizing that all children with intellectual disabilities are not competent witnesses in court. There is need to advocate for law to adequately protect children living with intellectual disability by clearly recognizing their competence to testify and also provide accommodations to enable effective testimony. Not ensuring that this is put in place there is a high risk that the community may perceive it like those who rape intellectually disabled children can do so with impunity. Above all other recommendations the study concluded that children with intellectual disabilities have psychological concerns despite the fact that they can or cannot testify in court.

Keywords: Abused, Children, Courts, Intellectual disability, Psychological concerns

INTRODUCTION

Research Questions

What are the researcher's experiences in working and interacting with children have really prompted her to study on this topic. There are quite a number of studies that has been carried out concerning children living with intellectual disabilities, and their families, at school and only a few have been done on the issue of justice delivery and the need for psychological interventions in Zimbabwe.

The type of studies that are being carried out at both national and international levels seem to mainly focus on the rate of incidence prevention, treatment and other medical models of therapy hence not dwelling much on other factors like the child's systems especially the Justice system as an important unit in providing protection, reasonable accommodation for the children living with intellectual disabilities after experiences of sexual abuse. Studies indicate that children with intellectual disabilities are four to ten times more likely to have acts of violence committed against them as compared to other children without the condition. Dick Sobsey, Associate Director of the JP Das Developmental Disabilities Centre and Director of the John Dossetor Health Ethics Centre, found that 80% out of 162 people with developmental and intellectual disabilities have been sexually assaulted many times.

It is believed by some that 20% of females and 10% of males are sexually abused in the US every year. The

percentage is even higher among people with disabilities. According to research, more than 90% of people with intellectual disabilities will experience some form of sexual abuse at some time in their lives. 49% will experience 10 or more abusive incidents. Studies done in Europe suggest that 68% of girls with intellectual disabilities and 30% of boys with intellectual disabilities will be sexually abused before their eighteenth birthday.

Increasing awareness activities of child sexual abuse over the last few decades has really facilitated an increased number of cases reported hence children have been admitted as court witnesses more frequently but there has been persistent wariness about the reliability of their testimony. Examining the interaction of legal rationales and paradigms of community physiology, it seems children are still frequently positioned as deficient and passive witness. (Motzkau 2007) This does not leave out children living with intellectual disability but puts more challenge and complex situations when abused and the case needs to be head in court. This is so mainly because of their varying levels of intelligent quotient (IQ) and cognitive ability. Traditionally children have been considered to be not very good or competent witnesses. For example one of the most notorious cases quoted as a warning tale about the dangers of children giving evidence in court are the Salem witch tries that go back as far as the 17th century. (Ceci and Bruck, 1995). The long standing notion to exclude children from giving evidence in court was echoed in frequent references to the Salem Witch trials and it was supported by contemporary paradigms of developmental Psychology. Because of the changing climate towards violence against children in the 20s it was then acknowledged that children can give evidence in court especially in Europe, England and Germany.

Children are said to be tomorrow's future but a child with disability is seen as hopeless and helpless (Desta 1995) Abosi and Ozoji (1985) asserts the notion that disability in many African context is said or associated with witchcraft, juju, sex linked factors, God/Supernatural forces. In addition to these socially constructed views or causes on disability the Zimbabwean's fragile economic and political environment is also leading to increased deprivation and exposing children to different types of abuse.

According to 2013 UNICEF report 600 000 children are living with a certain type of disability in Zimbabwe. This facilitates the researcher to appreciate that there need to study on this particular topic. From a cultural perspective there are so many factors and specific circumstances that have influenced the living conditions of persons with disabilities, not to mention people's attitudes towards them. History clearly indicates that disabilities. (Abosi 2002)

There is global evidence to suggest that Children with disabilities experience violence, abuse and exploration twice as often as children living without disabilities. Children with disabilities are more likely to be discriminated against are mostly vulnerable, but there is no reliable statistics in the country to say how many children living with mental or intellectual disabilities have been abused and their cases have gone through the justice delivery system.

Statistics of children sexually abused received at the Gweru Childline Drop-in Centre in 2014 came to 146 and of those 12 were children with intellectual disabilities and all the cases have been acquitted on the fact that the children were said to be not competent witnesses. No Psychological reports were done or used in the process of reaching the conclusions or judgments of cases.

It is against this background that this research aims to understand the problems which are likely to have that may need special or psychological interventions to ensure that their rights are realized and that the children enjoy equality of opportunity within the overall child protection system.

Statement of Problem

Statistics according to the UNICEF baseline survey of 2013 indicate that there are children with disabilities

in Zimbabwe but lack specific statistics on the number of children with intellectual disabilities who have been sexually abused. This indicates the need for streamlining disability issues so as to be able to ensure specific areas of child protection are ensured especially in the justice delivery system.

RESEARCH METHODOLOGY

Introduction

This study used the qualitative approach to find out and understand the psychological concerns for sexually abused children living with intellectual disability in court. The study adopted the descriptive survey research design. Convenient sampling method was used for the court interpreters, police officers, Case management officers and the school teachers for the children under study. The target population was the children living with intellectual disabilities who are survivors of sexual abuse whose cases had gone through the justice delivery system. Random sampling was done to select the children, one child in each of the 5 victim friendly units for Gwanda Urban police stations were selected randomly. Focus group discussions were done. The study adopted the concept of using personal interview guide, analyses of written documents, (court transcripts) and observation guide. The victim friendly units selected were also visited and completed cases/dockets of the targeted population were reviewed and first client in the register for the years 2019-2020 was chosen for personal interviews. These clients were interviewed using open ended questions to narrate their experiences after the sexual abuse event and the court processes together with their systems. Information was recorded for further analysis. The focus group guide questions were pre-tested at the magistrate court with 10 court interpreters. Two case files from the victim friendly police 2 stations were also analysed as another tool or source of information for the study. Data collected was analysed in themes and data obtained from different sources was gathered under these themes. Guidelines from specific psychological projective tests were also used to analyse data. Permission was sought from the university and courts to carry out the research. Consent forms were used for the children and their families to ascertain that there is a written agreement in participation in the study and also assure them privacy and confidentiality.

DATA PRESENTATION AND ANALYSIS

Focus Group Discussions with the Stakeholders

The total number of stakeholders who participated in the research is 28, of which 20 were females and 8 males. The difference by gender came by coincidence; therefore, the responses collected in this study had no gender bias whatsoever. Representatives from each sector were as follows: Health-4, Justice Delivery-5, Victim friendly police 12, School psychological services-3 and Department of Child Welfare and Probation services-4. These stakeholders were met during their monthly child protection meeting hence discussions were done in a big group though following the specific thematic areas and findings will be presented under each thematic area.

Health

The community health nurses, Rehabilitation Technician and victim friendly nurse all agreed children with intellectual disability experience a number of psychological problems after sexual abuse. The victim friendly nurse indicated that they see the child before the court trial formally and makes an informal follow to hear the outcome of the court hence they observe that the children suffer from serious psychological problems. It was noted that there is no specific guideline or a referral protocol of managing the psychological problems during the justice delivery process or even after. The nurses' role when dealing with

such cases is not different like when dealing with any other children. All the professionals did not know how best they could assist the survivor in this case the child with intellectual disability even if they note the abnormalities in the behaviour of the child. They felt that their part was mainly to do the medical examination and compile the report to show evidence in court through the investigating officer.

Justice Delivery System

Professionals from this Ministry of justice included the interpreter, prosecutors and the provincial magistrate. They indicated that it was really difficult to say the exact position on the competence of children living with intellectual disabilities as most of the perpetrators are discharged for quite a number reasons like the child may change location, family or caregiver will not attend the court and of those who attend a really few and some children breakdown during the session and court session is adjourned.

It was also noted that the professionals were not very sure it was linked to psychological problems or previous abuse experience as the same child will come back again after another abuse and the most of the perpetrators will testify that the children invited them into sexual activity showing that they were really interested. This brought up a hot debate that everyone in the group joined as some felt that these were the long term effects of sexual abuse and came up as behavioural problems while the other hand some believed that disabled people have high libido. "*Zvirema zvinoda varume*" some went to even say statements like these just to prove their points of view.

It also noted that there is no specific referral protocol for psychological intervention even after it has been noted that the clients are having psychological problems. There is no specialised counsellor or psychologist to provide psychosocial support for the children as they under go through the justice process like as it is done with other cases according the national protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe led by the Judicial Service Commission.

Policing

The victim friendly officers indicated that it was really rare and difficult to receive a case of sexual abuse of a child living with intellectual disability for quite a number of reasons like most of the children are stigmatised in the family and community as well and no one really takes them to be serious when reporting abuse, some have limited communication skills, do not have access to information about abuse and the reporting mechanisms for them to report are also not easily accessible.

The officers showed greatest concern over the issue of behaviour change during the process of justice delivery from statement recording, witnessing and thereafter. It was noted most if not all of these children end up with abnormal behaviours like sexualised behaviours, talks, run away from home, violent and refusal to go to school. Such cases have been reported and the police have been working the Department of Child Welfare and probation services but not much change has been noted.

The caregivers were mentioned to be the most used sources of recording information. The officers indicated that this allow free justice delivery since some caregivers may be bribed to influence the child and change their story or they be related to perpetrator for example father or mother. The chances of the other spouse to support the perpetrator are really high. The officers clearly indicated that it is really a task to interview a child living with disability as compared a child who is not. They felt that there was need to design a certain specific programme that would train officers so they be able to interact fruitfully with the children with intellectual disability.

Education

Representatives from the Ministry of Primary and Secondary Education indicated that there is a marked difference in behaviour. The examples given in behaviour change include refusal to go to school, loss of memory of basic concepts once mastered, hyperactivity, hypo activity, bully, visual and auditory hallucinations. The representatives indicated there are so many psychological problems that these children will experience depending on the child and the systems surrounding the child. It was also highlighted if the child fails to find support from the systems like the family and the school psychoses can be the end result. A live example of a case now loitering in the streets of Gwanda Urban was shared. All the stakeholders agreed that the case was once tried in the courts 4 years back. The client was said to a double orphan who was left in the custody of a paternal aunt and the husband to the aunt was the suspected perpetrator.

The aunt was in dilemma situation when the case was reported to the police. She only accompanied the child to do the medical examination which indicated that sexual abuse. Thereafter she was in a dilemma situation as she did not accompany the child for witnessing despite the subpoena she had signed. The child did not attend the court session mainly because she did not know the dates and the caregiver was to accompany since the client was a minor. The police also did not refer the case the custodians of children as they had fears that the case was not going to be tried and the child's competence to testify in court was already being doubted. This was mentioned and assumed that the child was reported to been saying anyone who touches him is raping her so she did not want anyone to touch her. More than 60 percent of the stakeholders agreed that they know the child and the case was reported to the police and never went through the whole process of justice delivery. Now the client is living in the street and she is even suspected to be of ill health (? HIV positive) despite being psychotic.

Psychosocial Support

Counsellors and social workers in the group indicated they interact with the children living with intellectual disability on very rare occasions and if so at any stage that is the initial or at a later stage after the medical or legal intervention. This interaction is mainly to provide supportive and educative counselling like in all other cases of sexual abuse. However the service providers indicated that they really find it difficult to provide psychosocial support to the children living with intellectual disability as most the time there will be communication breakdown. The professionals from this sector agreed that there is need for to be specially trained in order to understand the children and know when to the interventions have been effective. Ideas that there was no referral centre specifically for counselling in the district or province like in other areas or countries.

It was noted that the period of interaction with the directly was not more than twice as the will communication breakdown, instead the service providers agreed that they interact with the caregiver so that the caregiver will support the child. It was noted the concept of child participation was not applied in their interventions like when they are providing therapy to other children who does not have intellectual disability. The probation officer from the Department of Child Welfare and Protection services shared that their main mandate is to ensure all cases of children going through the courts have received pre and post trial counselling as a guideline under the case management model. Where referrals to other services are made, the Probation officer responsible for ensuring that these referrals are accepted by the receiving agency, and where necessary, advocating for timely, quality service delivery, where necessary. The Probation officer shared that it was a challenge on which organisation in the district that could take the issue of pre and post trial counselling. This was only tried when the case is a mild level of intellectual disability.

The Probation officer and other counsellors highlighted that there was a lot of pressure that it is very difficult to provide support to the child throughout the whole process of justice delivery and this means that

the child and the caregiver has to go alone to the courts and deal whatever comes their way.

Interview with the Children and the Caregivers Response and Response Rate

Five children participated in the research and they were 2 males and 3 females. The children were seen together with their caregivers though in separate sessions for confidentiality reasons. All the caregivers were females and 3 were single divorced mothers while 2 were married.

Interview Responses

All the children managed to say their real names and only 2 correctly stated their ages. Only one child is still in school despite that they are all of school going age.

All the children managed to submit their drawings of the draw a person test. All the drawings could be recognised as the children attempted to represent the human figure. Each child was given a chance to give a narration of the person they had drawn. Four children managed to comment on their drawings and only did not like commenting but wanted to continue drawing more pictures hence she was allowed to do so and the pictures were submitted and are going to be analysed for further managed of referral if need arises.

Fifty percent of the study population narrated their drawings relating to them as themselves the boys expressed themselves as very powerful and wanted to fight quite a number of people who were giving them bad names like they are not clever, “uri dudu”. One the children ended up using slang or colloquial language to describe that they were said to be mentally unstable and the child indicated that he was going to “fuck” the individual using slang sign

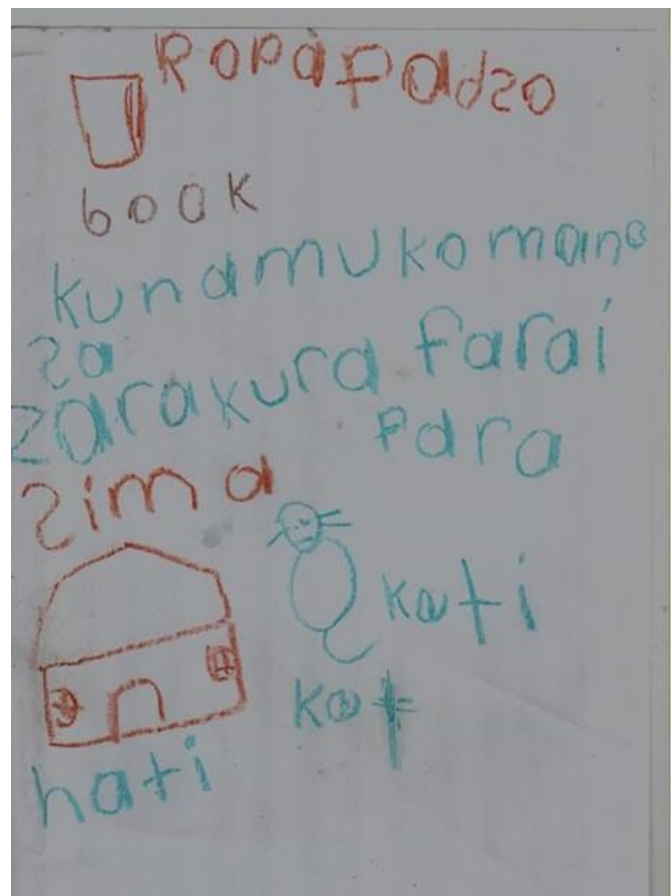
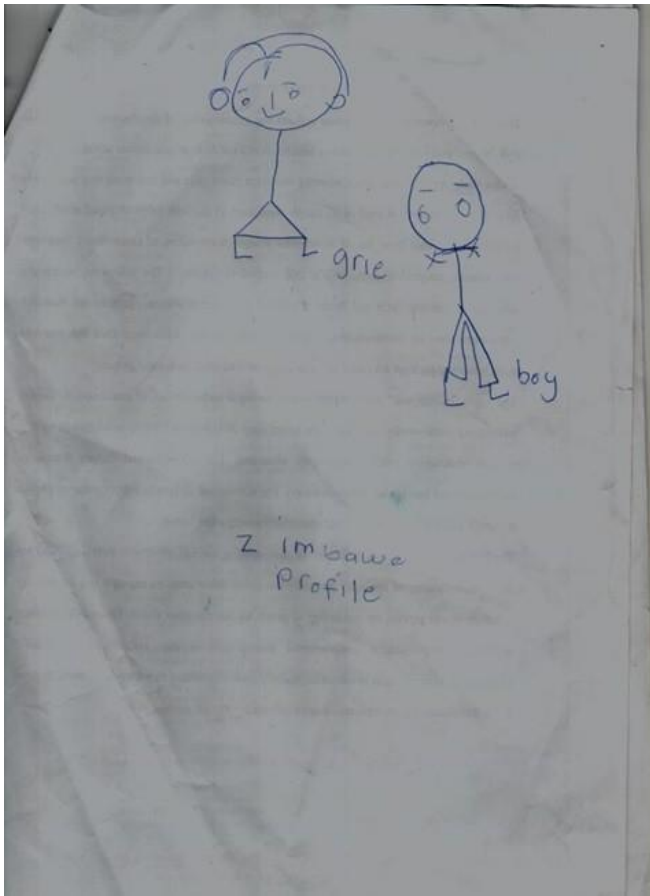
–finger and speech as well. The client sort of went into a state of trance talking to friends, teachers and people from his church. It was noted clearly that the child was experiencing emotional, sexual abuse and bullying in nearly all the environment except the Sunday school who was imitated as always praying for the child so he could graduate from the university.

The other two girls narrated their pictures but the other one continued adding detail to the picture like colouring, make up, hairdo, high heeled shoes and showing how much it was important for a woman to be smart and be always smiling. The research went a step further to probe who exactly taught the child all the skills. The child started crying and said it was her maternal uncle who wanted to marry but once injured her with urinating organ. The child went on to explain what really happen as it is though she did not have real names especially for the love making proces

that she made to participate and the sexual contact. It was noted that the child was abused for than four times and the case was discovered when the uncle physically abused the girl hence she emptied everything. The client indicated that this really makes her sad she is scared of HIV and pregnancy as the aunt told her.

All the children indicated they experience bitter feeling and anger especially towards the court “judge” as the children referred to him. Only 2 children really knew what the judge does and they have seen one during the court processes. The other 3 referred to the police, prosecutor and as well the magistrate as the judge. All the children did not really like them but preferred the nurse mainly because the nurse was nice and gave them assurance that they were good children. The children also liked the office next to the next which was referred to as the 116, the childhelp, childline. It was noted the children were referring to the Childline offices and they liked the offices because there were dolls and that’s were allowed to play and draw, write their stories and the people were nice as they were and gave them some sweets and biscuits.

Draw a Person Test- below are some the children’s drawings.



These are some of the drawings that were drawn by three different children aged 16 years, 15 years and 15years 4 months respectively. All the scores indicated that the children’s mental and chronological ages did not tally. The children had delayed milestones in quite a number of areas. It was noted that the children managed to follow simple instructions despite the real drawing but the concept was noted to be present for all the children. The child with the first drawing asked if she could colour the drawing and also draw her favourite drawings of which she was allowed to do so. She was then further asked to explain what she had drawn and she managed to come up with a sound story which could attach meaning from the presented drawings.

Also that some of the children could learn from copying, the last picture has a narration of course with a wrong spelling but the child tried copying from the papers on the table where it was written Zimbabwe profile. This shows that the child’s visual and motor perceptions are not very bad hence the child with support from a psychologist can be able to come with a sound testimony concerning what they had seen and experienced during abuse even through drawing.

Direct Observations

Observation guide scale: 1=inappropriate, 2=fluctuating and 3=appropriate

ADL	1	2	3	Comments
Dressing			*****	All clients were observed dressing and all are fully independent in area.
Feeding			*****	all independent

Facial Expressions	**	***		2 children had facial expressions of what was different from their spoken word for example when told to stop a certain behaviour that was exciting and they are not prepared and just laugh but not meaning to be happy. The other 3 had fluctuating being inappropriate and appropriate on other activities.
Type of speech		*****		Depending on the subject
Social Interactions	**	*	**	Some
Sleeping pattern	***	**	*	3 clients had serious problems with their sleeping patterns like they slept more during the day and will be up and disturbing others at night as the caregivers reflected. 2 other children had fluctuating patterns depending on the stability for example when the child is too anxious especially when they see the perpetrator, talk about the abuse or come across anything related to the abuse will be disturbed. Only one child was reported not to be having issues with her sleeping pattern.
Talking pattern		*****		It was noted that all the children had changed their talking pattern depending on quite a number of things like the theme of abuse would bring a lot of changes like pressured speech, slowed speech and uncoordinated speech in some of the children. Positive themes normalised the talking pattern in all the clients.

Table 4.1: ADL Direct Observation

DISCUSSION

The research findings from the study indicated that children with intellectual disabilities have developmental delays in learning and processing information. This makes them to be prone to abuse. All the tests used like the draw a person test and the interviews indicated that all the children's chronological age and mental age did not tally. Their drawings were all below their chronological age indicating the developmental in certain cognitive areas of the brain. This concurs well with World Health Organisation's report in 2014 which states that children living with intellectual disability come from the same community like any other children where sexual abuse is high. WHO explains that children with intellectual disability are more prone to abuse than their counterparts who do not have the same condition of disability and there is a need to put in place strategies to ensure that they are protected from abuse.

Lamb et al (2008) states that despite international treaties and legal conventions put in place by the duty bearers, the issue of abuse of children with intellectual disabilities is still said to need more intervention strategies especially to say that justice has been delivered for these children considering the issues of reasonable accommodation and many other important factors. This remains to be a true fact especially from the study conducted in Gwanda Urban. There was overwhelming evidence indicating that rape survivors with intellectual disabilities are frequently victimised twice or more that is during the commission of crime, second when the case goes for trial and also after the trial in the family or general community since confidentiality is mostly not kept for these children. This has been noted to send a wrong message to the community especially on all the cases that were under study whereby the perpetrators were acquitted mainly basing on the reasons that the witness was not competent enough to give evidence in court. One of the parents goes on to say during the interview session, "saka can we say there is justice for children with

intellectual disability kana ndezvenyu mumabhuku”. From this statement one can conclude that this parent was really disappointed and angry from the way their child’s case was handled which was in contrast with what he expected from the guidelines.

Golding (1992) reports that studies conducted in Sweden are treated the same like other children without intellectual disabilities especially when they are giving their testimonies in court. Golding clearly explains the importance of involving Psychologists in the handling of children with intellectual disabilities so that they are reasonably accommodated in the court systems and receive the necessary psychological support. This fact is really important and in this study it was noted that there is no meaningful involvement of the psychologist in process of witnessing for the child. The responses from all the professionals clearly indicated that there was none of them who could stand up confidently as say they know how to work with a child with intellectual disability as they would narrate the concept of holding the child’s hand throughout the whole process of justice delivery.

There are so many ideas, myths and misconceptions about children living with intellectual disability where by some ended up labeling them as having very high libido because of their disability. This shows how the community and professionals as well views these children and also how they react when the child is said to have been sexually abused. There is a noted information gap in the system of child protection and justice delivery for children with intellectual disabilities in Gwanda Urban.

Most professionals hold the perception that children with intellectual disability “matununu” meaning they are not able to talk remember events well and communicate them accurately. Disability is not just general but is classified according to levels like mild, moderate, severe and profound. Cognition has quite a number of areas and it depends if the area as well for the child to fail to explain his/her situation. Cognition involves areas like capacity to perceive, recall and communicate appropriate, relevant information clearly and correctly providing evidence according to legal standards. This drives the issue of accuracy and credibility in children living with intellectual disability when they are in court which concurs well with Cederborg et al (2008) and Henry and Gudjonsson (2007) when they were commented on previous studies done in Sweden and other countries concluding on the fact that intellectual disability is coupled with stereotyping and societal prejudices.

The researcher noted that children living with intellectual disability’s testimony in court are normally discounted at the outset mainly because most people base their judgments on the condition rather than the child as a living independent being. The justice process is starting to be complex from this point. The issue of post traumatic stress disorder was also noted from the Ministry of education, caregivers and others as well when they were describing the marked change of behaviour after the abuse and the court process. Colen et al (2006) agrees with this when he says that 75% of children with intellectual disabilities develop psychological problems that have long term effects on their daily living. This was noted in this study when more than 50% of the study population was noted to be out of school soon after abuse and were experiencing quite a number of post traumatic stress disorders.

Secondly the police interview process and the type of questions asked by the victim friendly officer, the prosecutor did not really take into account the condition of the child in the sense of reasonable accommodation. Msipa (2013) states that prosecutors, lawyers, police officers and magistrates lack training in working with witnesses with intellectual disabilities. This study has really proved this fact as most of the professionals described the children in even abusive languages like “matununu, vakangopusa, vanoda varume zvisingaiti”

All the stakeholders acknowledge that there are some psychological problems that these children experience directly and indirectly. This is mainly because some did not really know what these psychological problems were but the researcher identified them as they narrated them as behavioral problems like running away

from home, school, hallucinations both visual and auditory, sleeping problems and being aggressive when they were not initially doing that. In addition the client's body language was not correctly interpreted. For example during observations the researcher noted one all the clients except one had serious problems with eye contact, they never wanted to have eye contact with even their caregivers. Some theorists believe that children with intellectual disability or autism avoid eye contact not for cultural reasons but because they want to remain not interacting with the outside world but lock themselves in their own world. This facilitates me to conclude that this behaviour become progressive especially after a sexual abuse experience as noted from the interview on change of behaviour by the client.

CONCLUSION

Children with intellectual disability are frequently victimised sexually, psychologically and also physically. All the other types of abuse are experienced after sexual abuse and when the children are going through the justice system. It was highly noted that there is an information gap in nearly all the professionals dealing with the justice delivery in child protection in general. The research findings can facilitate the conclusion that children living with intellectual disability experience psychological problems that are perceived as part of them by community and some professionals would explain or treat them as being able consent for sexual relationships basing on the fact that people with disabilities have high libido. There is great need to involve the psychologist in the whole process of justice delivery.

Because of the intellectual disability condition the affected children have delayed development in a number of areas like cognition, language, gross and fine motor skills and many others. The study has shown that these differences contribute a lot for the children's way of witnessing in the court especially after a traumatic incident of sexual abuse.

It was also noted that the level of disability differs with each and every child, each individual child is unique in their own way and it is important for the service provider to have some basic information on how each child should be handled.

Goodman et al (2002) states that clinical observation and psychological theories suggest that children's memory performance may be really affected when the child's emotional status is disturbed. For motivational reasons and other psychological issues a child may block information to come out verbally hence affecting the witnessing process.

LIMITATIONS OF THE STUDY

There were a number of limitations to the research and modalities were put in place to avoid compromised results. Time for the research was short that is six months and a full year could have been ideal to have adequate coverage. The researcher therefore adopted the case study approach and concentrated on a smaller geographical coverage to do open more time with the few respondents. Financial resources were also not as much as the researcher could have wanted to reach certain places far from the Central Business District and this was covered up by ensuring that a representative sample was selected. In addition, due to COVID-19 cases which were rising in the course of the study the researcher found it difficult to have much of closure since the time for group discussions were shortened. Other court cases were put on hold since the pandemic was on pick.

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