Jurisprudence of Equality Training Program

International Association of Women Judges (IAWJ)

And

Zambian Association of Women Judges (ZAWJ)

Justice, Jurisprudence, Access and Accountability in Zambia (JJAAZ) Programme

Prosecutors’ Seminar

Ndozo Lodge

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Lusaka, Zambia

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This training manual would not exist without the generous financial support of the United Nations Trust Fund to Eliminate Violence Against Women through the Justice, Jurisprudence and Accountability in Zambia (JJAAZ) grant awarded to the International Association of Women Judges (IAWJ). The manual is based on a Training Manual originally compiled by Anne T. Goldstein – IAWJ Human Rights Education Director for the Training of Trainers course held at Kafue Gorge from 20th to 24th July, 2009. The original manual was periodically modified and adapted by Hon. Mrs. Justice Emelia P. Sunkutu – Lusaka High Court Judge, Hon. Mr. Justice Nigel Mutuna – Lusaka High Court Judge, Ms Joyce MacMillan – Advocate and Trainer from the Zambia Law Development Commission and IAWJ representatives – Anne Goldstein and Winta Menghis, for the training of Zambian Judges and Magistrates conducted in Ndola, Lusaka and Livingstone in 2010 and 2011.

The original author – Anne Goldstein further modified this manual to fit the needs of Zambian prosecutors with a view of focusing on key issues in the investigation and prosecution of gender based violence crimes. The manual was subsequently modified and adapted for the Training Seminars of prosecutors to be held in Lusaka from 26th to 29th March, 2012 by Hon. Lady Justice Jane Kabuka – Lusaka High Court Judge, Hon. Mr. Justice Nigel Mutuna – Lusaka High Court Judge, Hon. Mr. Justice Jones Chinyama – Ndola Industrial Relations Court Judge, Hon. Chilombo Phiri, Acting Registrar of the High Court, Hon. Sharon Newa – Lusaka High Court Acting Deputy Registrar, Hon. Charles Kafunda – Deputy Director – Subordinate Courts, and Hon. Arida Chulu – Lusaka-based Principal Resident Magistrate, This manual designed for Zambian prosecutors is a product of a broad consultative participatory workshop held February 20-24, 2012 involving representatives of the International Association of Women Judges (IAWJ), the Zambia Association of Women Judges (ZAWJ), judicial officers, the Criminal Investigation Department (CID), the National Prosecutions Authority (NPA)¹, the Office of the Directorate of Public Prosecutions (DPP), the Victim Support Unit (VSU), the Divisional Prosecutions Office (DPO) and Lilay Police Training College in Zambia. Those representatives contributed their time, imparted their expertise, shared their experiences and brought energy and enthusiasm to the process. The IAWJ and ZAWJ are profoundly grateful for their contributions.

¹ The NPA is intended to take over the functions of the Directorate of Public Prosecutions but will be headed by the Director of Public Prosecutions.
Notes on the IAWJ’s Jurisprudence of Equality Program (JEP) and the JJAAZ Program

The Jurisprudence of Equality Programme (“JEP”) is the flagship judicial training program of the International Association of Women Judges. All JEP trainings share a common core – the right to an effective remedy in cases involving discrimination or violence against women. Through JEP, the IAWJ works with its members and national chapters to tailor JEP curricula to nationally-, regionally- or locally-identified needs.

The present program, Justice, Jurisprudence, Access and Accountability in Zambia, or “JJAAZ”, is thus a JEP program based on priorities and concerns identified by ZAWJ and other stakeholders in the Zambian justice system that ZAWJ consulted. IAWJ and ZAWJ developed the curriculum jointly, and co-sponsored a Training of Trainers Workshop at Kafue Gorge in July 2009. ZAWJ trainers have since held two seminars for professional magistrates, and one for judges of the apex courts – the Supreme Court, the High Court, and the Industrial Relations Court.

One of the strengths of the program has been its ability to create “feedback loops.” That is, by bringing together judges and magistrates from different levels of the judiciary, and also by bringing together magistrates and judges with professionals from the health field, JJAAZ has created opportunities for sharing different perspectives, understandings and perceptions of access to justice issues. We encourage you to share generously what you have learned about the communities you serve.
Notes on this Manual for Prosecutors

This manual for prosecutors grew out of a training program originally targeted at judges and magistrates. Participating magistrates, pleased with the training, asked the IAWJ to develop a manual that could be shared with prosecutors which would help prosecutors to present cases of child sexual abuse to the court. At a workshop held February 20-24, 2012, stakeholders urged the importance of bringing together multiple stakeholders – not only prosecutors, but also police investigators and doctors. The training committee decided that a manual could usefully deal with issues confronting all stakeholders, even though the present training for which it is designed will target prosecutors. Prosecutors and magistrates need to understand the challenges confronted by police investigators and the limitations of medical evidence, while police investigators need to understand the courts’ requirements for evidence.

The manual is organized primarily around the story of a single case – a fictitious case involving a little girl named Angela. It explores the evidentiary requirements under Zambian law of “defilement” and “indecent assault.” It assumes that prosecutors work closely with police investigators, and that each needs to understand the role of the other to ensure that a case is well presented.

During these two days, participants will have the opportunity to examine what goes into building a case, preparing witnesses, and presenting a case. We hope that you find it useful, and encourage you to give feedback to the organizers and Facilitators.

In Angela’s case, the manual shows what can happen when a case is well-investigated, resources are found to handle the case, and most stakeholders perform their jobs well. Obviously, not all real-life cases go smoothly. Accordingly, the manual poses exercises in which things go less-than-well – but in which a good prosecutor can still manage to secure a conviction of a guilty party. The hope is that these exercises will encourage prosecutors to think creatively about ways to muster resources and evidence in the service of justice.
DAY 1

Session 1.1: Introductions and Welcome
Session 1.2: The Relevance of International Human Rights Law to Zambian Law
Session 1.3: Child Sexual Abuse: Helping the Victim at Intake
Session 1.4: Helping Child Sexual Abuse Victims and their Parents; Post-Exposure Prophylaxis (PEP)
Session 1.5: Investigating your Case; Witnesses and Evidence
Session 1.6: Which Offense to Charge?
Session 1.1: Introduction and Welcome

Time: 45 minutes

Material: Table tents with participants’ names.

Objective: By the end of this session, participants will know some of the expertise and resources that their colleagues bring to this meeting.

Steps:

1. Go over any logistical details concerning the Seminar, namely daily schedule, reimbursements, etc., that have not been covered in material already distributed to the participants.

2. Each participant should introduce themselves in LESS THAN 2 minutes, by stating their names, where they are from, and sharing one positive or negative experience they have had in prosecuting a case of gender-based violence, defilement, or indecent assault.
Session 1.2: The Relevance of International Human Rights Law to Zambian Law

Time: One hour

Materials: The Universal Declaration of Human Rights (“UDHR”) (in Appendix) “Angela’s Story, Part One: Helping the victim at intake” (in Appendix)

Objective: By the end of this session, participants will have: (1) read the Universal Declaration of Human Rights; and (2) reflected on the relevance of international law to common fact patterns that come before trial courts.

Steps:

1. Divide into three groups, A, B and C. Group A will focus on the first 10 Articles of the UDHR, Group B will focus on Articles 11-20, and Group C will focus on Articles 21-30.

2. Read the UDHR and Angela’s Story, Part One: Helping the victim at intake (Case Study No. 1). Meet with your group and select a Rapporteur. Identify the articles among the 10 assigned to you in the previous step that you believe to be most relevant to this case (put aside for the moment the question of how these articles will be realized).

3. Reconvene in the larger group. Have the Rapporteurs summarize the small group’s conclusions.

4. Facilitator should wrap-up the hour, either by highlighting what s/he sees as the key points of the discussion so far, or by leading participants to list a small number of conclusions from the hour on the flip chart.
Session 1.3: Child Sexual Abuse: Helping the Victim at Intake

Time: One hour

Materials: Angela’s Story: Part One: Helping the Victim at Intake (In Appendix)
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly Resolution 40/34 of 29 November 1985 (in Appendix), Articles 4, 14 and 15 (Reproduced in box below).

Objectives: By the end of this session, participants will have critiqued the response of the police sector to child sexual abuse victims.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

Steps:

1. Role play: The Zambian government has convened a high level task force to analyse strengths and weaknesses in the country’s on-going attempt to fight the scourge of child sexual abuse. You are all members of the Task Force.

2. Break into the same groups as in the previous session. Select Rapporteurs who have not yet had a chance to present.

3. Group A should critique the performance of the officer at the intake desk at the police station in Jeke Mabemba. In your deliberations, make sure you consider the following questions:

   - Did the officer violate any rights of Angela or Barbara?
   - Did he say anything he should not have, or omit to say anything he should have?
• Did he accurately explain Zambian law to Barbara?
• Did he do anything in violation of Zambian law?
• Did he comply with the Basic Principles of Justice in the box above?
• How could he have improved his performance, without requiring any additional expenditure of funds from the Zambian government (that is, in your answer, you should work within existing resources, and not propose that the government build victim support wings in existing police stations, for example).

4. Group B should critique the performance of Officer Elkins, the VSU officer at Jeke Mabemba. In your deliberations, make sure you consider the following questions:

• Did the officer violate any rights of Angela or Barbara?
• Did he say anything he should not have, or omit to say anything he should have?
• Did he accurately explain Zambian law to Barbara?
• Did he do anything in violation of Zambian law?
• Did he comply with the Basic Principles of Justice in the box above?
• How could he have improved his performance, without requiring any additional expenditure of funds from the Zambian government (that is, in your answer, you should work within existing resources, and not propose that the government build victim support wings in existing police stations, for example).

5. Group C should critique the performance of Officer Tembwe at the police station in Shimukunam. In your deliberations, make sure you consider the following questions:

• Did the officer violate any rights of Angela or Barbara?
• Did he say anything he should not have, or omit to say anything he should have?
• Did he accurately explain Zambian law to Barbara?
• Did he do anything in violation of Zambian law?
• Did he comply with the Basic Principles of Justice in the box above?
• How could he have improved his performance, without requiring any additional expenditure of funds from the Zambian government (that is, in your answer, you should work within existing resources, and not propose that the government build victim support wings in existing police stations, for example).

6. Reconvene in the larger group. Have the Rapporteurs summarize the small group’s conclusions.

7. Facilitator should wrap-up the hour by asking participants whether they perceive the descriptions of the police behaviour in the story to be realistic, based on what they have observed in Zambia. If so, how can police response be improved? If not, in what way could the descriptions be made more realistic?
Session 1.4: Helping Child Sexual Abuse Victims and their Parents; Post-Exposure Prophylaxis (PEP)

Time: Forty-five minutes

Materials: Angela’s Story: Part One: Helping the Victim at Intake and Angela’s Story: Part Two: Helping the Victims and their Parents (Appendix).

Objectives: By the end of this session, participants:

1. Will have shared experiences from their police stations on dealing with parents of child sexual abuse victims; and
2. Will have reflected together on how to identify cases in which sexual abuse victims urgently need access to medical care to obtain post-exposure prophylaxis.

Steps:

1. Read Angela’s Story: Part Two: Helping the Victims and their Parents” (In the Appendix).

2. Divide into the same three groups as before. Select different Rapporteurs.

3. In the end, Angela gets access to Post-Exposure Prophylaxis (PEP). On Day 2 of this training seminar, participants will hear from a doctor who treats child sexual abuse victims, who will describe in greater detail the appropriate medical treatment. In some ways, even though what happened to Angela in the story is terrible, she is a “lucky” victim – she reports the abuse the first time it happens, within the 72 hour window in which PEP can save her life. In your small group, discuss how available PEP and emergency contraception are at your police station. How far do victims need to travel to access it? What can the police do to facilitate access? Do you make any attempt in your own work with police officers to ensure that all officers know how to recognize a case in which PEP could be useful, and marshal resources (including transport) to ensure that these cases get the urgent priority they deserve?

4. How do Barbara and Carl compare to the parents whom you have seen in your work as a prosecutor? Are the characters realistically drawn? How, in your experience, do mothers react to learning their child has been sexually abused? How do fathers react? Have you encountered parents who blame the child or treat her (or him) with anger or even violence, rather than support? What can/should police/prosecutors say/do to parents if they fear that they might harm the child in this situation?
Session 1.5   Investigating your Case; Witnesses and Evidence

Time: One hour:

Materials: Angela’s Story, Part Three: Investigating your Case; Witnesses and Evidence (in Appendix)  
Zambian Penal Code Excerpts (In Appendix).

Objectives: By the end of this session, participants: (1) Will have discussed the relationship between prosecutors and police investigators; and (2) Will have begun exploring strategies for assembling a case that will win in court.

Steps:

1. Read Angela’s Story, Part Three: Investigating your Case; Witnesses and Evidence (in Appendix).

2. Divide once more into your three groups, and choose Rapporteurs who have not yet had the opportunity to present.

3. Group A should focus on this paragraph from the story:

*Doris sighed. She knew that Jacob was just making up reasons to do nothing. The Shimukunami station now had the medical report; there was no chance that the other station was doing anything without it – most officers would not launch an investigation until the report came in. This unwillingness to act without a medical report was a source of endless frustration to Doris. While the desk officers waited for a doctor somewhere to write a report, evidence could be destroyed or lost.*

Is this an accurate description of police procedure at the stations where you work? That is, do investigators refuse to go to the scene until they receive the medical report, thereby allowing evidence to be lost? If so, what is the purpose of waiting for the report? What would need to change for officers to start investigating without waiting for the report? (That is, would they need some sort of direction from superiors, or could an officer like Doris take initiative?)

4. Group B should critique Doris’ performance during this part of the story. What does she do well? Do you believe she has made any mistakes or omissions?

5. Group C should analyse Doris’ and Simon’s decision to meet with the school principal, and the way they handled that meeting. Do you think police investigators you have worked with would have done the same? Should they? Notice that in the story, it is not clear that Doris’ only reason for meeting with the principal was to collect evidence: she also notified him that an allegation had been made against a
teacher. What should the principal do with this information? If your child attended
this school, what would you want the principal to do?

6. Reconvene as a full group, and allow Rapporteurs to describe the Groups’
   conclusions.

7. Facilitator should discuss with the Group as a whole: In the story, Doris refers to the
case as “this defilement case”. How did she know that it would be charged as
“defilement,” under Section 138 of the Penal Code (Defilement of a Child), rather
than under Section 137 (Indecent Assault) or Section 132 (Rape)? Who decides what
charges should be laid, the investigator or the prosecutor? At what stage do the two
begin to collaborate? What guidance, if any, do prosecutors give investigators as to
the kind of evidence required?
Session 1.6    Which Offense to Charge?

Time:         Forty five minutes

Materials:    Angela’s Story, Part Four: Building your Case; Witnesses Statements (in Appendix)
              Zambian Penal Code Excerpts (in Appendix).

Objectives:  By the end of this session, participants: (1) Will have discussed the relationship between prosecutors and police investigators; and (2) Will have begun exploring strategies for assembling a case that will win in court.

Steps:

1. Read Angela’s Story, Part Four: Building your Case; Witness Statements (in Appendix).

2. Break into your three groups. Each group will make a list of what Doris and Simon need to include in Barbara’s statement. Group A should assume that the offense charged will be defilement:

   Zambian Penal Code Chapter 87
   Section 138: Defilement of Child

      (1) Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.
      (2) Any person who attempts to have unlawful carnal knowledge of any child commits a felony and is liable, upon conviction, to imprisonment for a term not less than fourteen years and not exceeding twenty years.
      (3) Any person who prescribes a defilement of a child as a cure for any ailment commits a felony and is liable, upon conviction to imprisonment not less than fifteen years and may be liable to imprisonment for life.
      (4) A child above the age of twelve years who commits an offence under subsection (1) or (2) is liable to such community service or counselling as the court may determine, in the best interest of both children.

3. Group B should assume that the offense charged will be indecent assault:

   Zambian Penal Code Chapter 87
   Section 137: Indecent Assault

      (1) Any person who unlawfully and indecently assaults any child or other person commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty years.
      (2) It shall not be a defence to a charge of an indecent assault on a child to prove that the child consented to the act of indecency.
(3) Any person who is found in any building or dwelling house or in any veranda or passage attached thereto or in any yard, garden or other land adjacent to or within the cartilage of such building or dwelling house not being a public place –
   (a) For the purpose of and from motives of indecent curiosity gazing at or observing any other person or child who may be therein while in a state of undress or semi-undress; or
   (b) With intent to annoy or indecently to assault any child or other person who may be there;
Commits an offense and is liable, upon conviction, to imprisonment for a term of not less than two years and not exceeding five years.

4. Group C should assume that the offense charged will be rape:

   **Zambian Penal Code Chapter 87**
   **Section 132 Rape (Amendment Act No. 2 of 2011)**

   Any person who has unlawful carnal knowledge of a woman or girl, without her consent or with the consent, if the consent is obtained by force or means of threats or intimidation of any kind by force or fear of bodily harm or by means of false representation as to the nature of the act or in case of married woman, by personating her husband, is guilty of a felony termed “rape” and may be liable to imprisonment for a period of not less than 15 years or life imprisonment.

5. Reconvene as a whole. Rapporteurs present the three lists. The group as a whole should consider how they are alike and how they differ. Could all three of these offenses be charged in this case? Are some easier to prove than others? Which is the easiest? The hardest? Can you charge more than one offense? How would you decide which one(s) to bring?

**End of Day One**
DAY 2

Session 2.1:   Child Sexual Abuse: What can be done medically?
Session 2.2:   Forensic Evidence issues in Angela’s Story
Session 2.3:   The Importance of a Child Witness’ Statement
Session 2.4:   Proving the Victim’s Age in Child Sexual Abuse Cases
Session 2.5:   Corroborating a Child’s Evidence
Session 2.6:   Putting it All Together
Session 2.1: Child sexual abuse: what can be done medically?

**Time:** One hour

**Materials:** PowerPoint projector and screen

**Objectives:**
By the end of this session, participants will have heard an expert presentation on forensic examinations in child sexual abuse cases. They will have heard from a representative of the medical profession concerning medico-legal issues that arise in these cases.

[Expert presentation by Dr. Jonathan Mwansa, One Stop Center on Child Sexual Abuse, University Teaching Hospital, Lusaka]
Session 2.2: Forensic Evidence issues in Angela’s Story

Time: One half hour

Materials: Angela’s Story, Parts One and Two (Discussed yesterday).

Objective: By the end of this session, participants will have understood that doctors and other medical personnel can testify as to forensic evidence issues even in the absence of a ZP 32 form.

Steps:

1. Recall from yesterday’s discussion that two doctors examined Angela, Dr. Fleming (in Shimukunami), and Dr. Jarrett (at the clinic in Kitwe). Dr. Jarrett filled out a ZP 32 form and gave it to Isabel, the lawyer from FELAZ, who in turn gave it to Doris at the Shimukunami police station.

2. Recall also that when Barbara took Angela to the first doctor, she did not have a ZP 32 to give him, and he told her that without a form, no case could be filed:

   Dr. Fleming . . . examined Angela, and said that she had definitely been defiled. Her hymen was torn and there was semen in her vagina. Barbara had brought the blood-stained undergarments to show him. He looked at them, but told her, with sorrow in his voice, that although he had no doubt Angela had been violated, without a ZP 32 form no charges could be filed.

   This is not an accurate characterization of the law in Zambia!!!

   There is nothing magical about a ZP 32 Form or the new form that is under development to replace it. What matters is the quality of the evidence itself, not the fortuity of whether the police stationery cabinet was well stocked the day the victim presented herself.

   In this case, Dr. Fleming could have testified based on his contemporaneous notes.

3. This is a common misperception about the law here in Zambia. The rule is that a prosecutor can submit a ZP 32 form instead of calling a medical doctor to testify. These forms can be extremely useful, because they put the evidence together in a logically coherent fashion. If, however, the form is unavailable, nothing prevents you from presenting live testimony from the examining physician.

4. In rural areas where there may not be a doctor, a nurse or clinical officer who examines the victim can also testify. As the prosecutor, you should establish your
witness’ qualifications to provide forensic testimony. You could do this by having your witness describe the training s/he received on examining sexual assault victims. The fact that the witness is not a doctor, however, is not a bar to him or her presenting forensic testimony. The defence lawyers are free to attack that testimony (For example, “Isn’t it a fact that you lack a medical degree?”). You, as the person presenting the witness are entitled to respond (For example, “Can you describe for the court any training you received on examining sexual assault victims?” Answer: “Yes, I took a three month course offered by the University Teaching Hospital, and earned a certificate qualifying me as a forensic technician.”)

5. If any of the prosecutors have questions about this issue, they should be encouraged to pose them to the judges or magistrates facilitating the training.
Session 2.3: Child Witness: Pre-trial Statements and Voir Dire

Time: One hour

Materials: Angela’s Story, Parts Five: Building your Case: Tying the Defendant to the Crime (in Appendix).
Juveniles (Amendment) Act 2011 (in Appendix and below)

Objectives: By the end of this session, participants will have: (1) learned the new standard for child witnesses set out in the Juveniles (Amendment) Act of 2011; and (2) understood the need for a “Plan B” in the event a child witness is ultimately not permitted to testify; and (3) understood the need for corroboration of a child's evidence, whether or not the child is ultimately allowed to testify.

Steps:

1. Participants should have read last night Angela’s Story, Part Five: Building your Case: Tying the Defendant to the Crime (in Appendix).

2. As Dr. Mwansa indicated in his presentation, Zambia currently lacks the technology to do DNA testing to determine the identity of a perpetrator. Police investigators must establish the identity through other means.

3. In the absence of DNA evidence, the main source of evidence for the perpetrator's identity is almost always the victim's identification of him. When the victim is a young child this poses special challenges for prosecutors, for two reasons:
   (a). the child may not be able to testify in court; and (b) even when the child is allowed to testify, his or her testimony must be corroborated.

4. Since the child may not be allowed to testify, it is especially important that the police officer investigating the case does a good job of getting a statement from the child – because the child's near-contemporaneous statements about what happened may be admissible through the police officer's testimony, even in cases where the child herself is not allowed to testify in court. Investigators should ask victims about things that they observed while the crime was happening. Depending on the circumstances, questions like, “What was the defendant wearing? Did he have any scars, tattoos, or anything else out of the ordinary? Did you smell or hear anything unusual?” may help in either establishing the crime occurred or in establishing the perpetrator's identity. In the story, what questions did Doris ask Angela that could help tie Davis to the crime?

5. Will Angela be allowed to testify at the trial in this case? Prior to 2011, the question would have turned on whether on voir dire she demonstrated her grasp of the nature of an oath. The new law simplifies the test, focussing on whether the child is of sufficient intelligence to understand “the duty of speaking the truth”: 
Juveniles (Amendment) Act No. 3 of 2011:

122. Where, in any criminal or civil proceedings against any person, a child below the age of fourteen is called as a witness, the court shall receive the evidence, on oath, of the child if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the child’s evidence, on oath, and understands the duty of speaking the truth:

Provided that –

(a) If, in the opinion of the court, the child is not possessed of sufficient intelligence to justify the reception of the child’s evidence, on oath, and does not understand the duty of speaking the truth, the court shall not receive the evidence; and

(b) Where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating the accused.

How could the prosecutor help prepare Angela to meet this test, and what arguments you would make to the court that she should be allowed to testify?

6. Even if Angela is allowed to testify that Douglas Davis was the perpetrator, this testimony will not be sufficient to convict him. Why not? Because a child’s uncorroborated testimony is insufficient as a matter of law. The key language is in paragraph (b) above: “Where evidence admitted by virtue of this section is given on behalf of the prosecution, the accuse shall not be liable to be convicted unless the evidence is corroborated by some other material evidence in support thereof implicating the accused.” Think about the evidence gathering that Doris and Simon are engaged in in Angela’s story. Have they found any corroborating evidence yet?
Session 2.4: Introducing a Child’s Evidence through other Witnesses and Corroborating a Child's Evidence

Time: One hour

Materials: Angela’s Story, Part Seven: Building your Case; Corroboration (in Appendix)

Objective: By the end of this session, participants will have brainstormed strategies for introducing a child's evidence in cases where the child is not allowed to testify and will have deepened their understanding of the corroboration requirement in child sexual abuse cases.

Steps:

1. Participants should have read last night Angela’s Story, Part Seven: Building your Case; Corroboration (in Appendix).

2. Divide into three groups. Select Rapporteurs. You are the prosecutor who will be presenting Angela’s case. You believe that the court will find Angela has the requisite intelligence and understanding of the obligation to tell the truth that will enable her to testify under oath. However, you know that since she is under 14, there is at least some danger that the court will not allow her to testify, so you need a “Plan B.” Each of the groups will consider ways to get different pieces of Angela's evidence admitted:

   • Group A will focus on Angela's statement to Barbara about what happened to her.
   • Group B will focus on Angela's statement to Doris and Simon.
   • Group C will focus on the statement that Angela gave to the doctor who took her medical history. [Angela's story is very unusual in that two doctors examined her. For purposes of this exercise, assume that Dr. Jarrett took a complete medical history, and that it is Dr. Jarrett who will be testifying.]

      You anticipate that defence counsel will object on “hearsay” grounds to some or all of your witness' testimony about what Angela told them. What are your arguments that these statements are not, in fact, hearsay, and should be admitted into evidence?

3. Discuss in your group: Whether Angela is ultimately allowed to testify, or whether you have to bring in her evidence through some combination of testimony by her mother, Doris or Dr. Jarrett, as we discussed earlier today, you will need corroboration of her evidence because she is a child. You have the medical report corroborating that the offence occurred. What additional evidence obtained at the scene of the crime tends to corroborate her identification of Davis as the perpetrator?
4. Reconvene as a whole. Rapporteurs report and facilitator summarizes. **If time permits, you may also want to discuss this scenario:** You are a prosecutor. A police investigator with whom you regularly work has told you about the following case, and wants your guidance on how he should conduct the investigation. He is worried because the victim is too young to testify, and there is no medical report. (This fact pattern is based on an actual case from Ndola):

*Three adults showed up at the police station early one morning. A woman wearing her nightclothes was carrying a baby who appeared to be about six months old. She said that she was the child’s mother. Before the sun rose, she had left the house to use the latrine, some distance away. While she was at the latrine, she suddenly heard her baby crying, as if in pain or fear. She rushed back into the house, and found the baby’s father putting his pants on, a few feet from where the baby lay. The baby had no nappy, and the mother saw what looked like sperm on the baby. There was also a spot of what appeared to be blood on the baby’s leg. She asked her husband what had happened; he did not answer, just shook his head. The other woman was her neighbour, Mrs. Chulu. Mrs. Chulu said she woke up because she heard the baby scream. She rushed to her neighbour’s house to see what was wrong, and found the mother confronting the father, asking what had happened. At the police station, the husband said nothing – he just shook his head. According to the notes in the Occurrence Book, he appeared agitated, but would not talk. Now, weeks later, he denies having done anything to the baby, and his family has hired a lawyer to represent him.*

What guidance would you give the police investigator in this case? What should he look for at the scene? What should he ask the mother? What should he ask the neighbour?
Session 2.5: Proving the Victim’s Age in Child Sexual Abuse Cases

Time: One hour

Materials: Angela’s Story, Part Six: Proof of the Victim’s Age in Child Sexual Abuse Cases (in Appendix).

Objective: By the end of this session, participants will have brainstormed about ways to prove a necessary element of the offense of “defilement” – that the victim is a “child” within the meaning of the Zambian Penal Code (i.e., is less than 16 years of age).

Steps:

1. Participants should have read last night Angela’s Story, Part Six: Proof of the Victim’s Age in Child Sexual Abuse Cases (in Appendix).

2. Break into the same two groups. Select new Rapporteurs who have not yet had an opportunity to present.

3. You are the prosecutor who will be presenting Angela’s case in court. You review the case file assembled by Doris and Simon, and see that you have multiple ways to establish that Angela is a child less than sixteen years of age (a necessary element of the crime of defilement). A computer search shows that Easter last fell on April 15 in 2001, and before that in 1990. It is now March 2012; according to Barbara, Angela was born on April 16, an Easter Monday, and she is now 10 (which would be correct if she were born in 2001 – i.e., she will turn eleven in a couple of weeks). Can you ask the court to take judicial notice of the date of Easter? Are there other ways that are easier to demonstrate her age? Some of the ways you could establish Angela’s age are more complicated, time-consuming, and/or expensive than others. Given the many demands on your time and energy, what way(s) would you try to show Angela’s age in this case?

4. Also discuss in your small group strategies that you have used in other cases to establish a child’s age. When a child is obviously younger than 16, do you ask the court to make a finding based on its own observation? Could you make that a routine practice in these cases? (E.g., “I move the court to enter a finding of fact that this child appears to be her stated age, and in any event, appears to be considerably younger than 16. . .”).

5. Rapporteurs describe deliberations to the whole group, and Facilitator wraps up the discussion, highlighting key points.
Session 2.6: Putting it all Together

Time: One hour

Materials: Materials: Paper and pens for each group

Objective: By the end of this session, participants will have explored issues relating to transportation and preparation of witnesses, and presenting the case in a logical and coherent manner.

Steps:

1. This time, break into three groups, A, B and C. (You may wish to use the same three groups as yesterday, or make new groups.) All of you will be prosecutors charged with handling Angela’s case.

2. Group A will discuss the logistics of getting all the witnesses and evidence to court. Make a list of the evidence you intend to produce (documents, photos, objects from the crime scene, etc.) What witness will you use to introduce each piece of evidence? Which witnesses will you call? How will you ensure they get to court (and, if necessary, with what documents or other evidence?) Will these witnesses need transport or lodging? If so, how will you arrange that? What obstacles do you anticipate? How will you overcome these obstacles?

3. Group B will discuss the logistics of dealing with the court. What motions will you need to file? Does the court prioritize cases involving child witnesses? If not, is it possible to ask the court to do so? What steps does the court take to protect child witnesses? Do you want to submit motions for an in camera hearing, or to clear the court room? Are there steps you can take to ensure that an expert witness will not have to wait for long time periods in court? If you do not have a birth certificate to enter into evidence, what evidence are you using? What findings as to age are you asking the court to make?

4. Group C will discuss the order in which you will present witnesses, and the reasons for whatever sequence you choose. Are you presenting your case in a logical sequence? Are you certain you have covered all elements, including establishing the age of the victim.

5. Re-convene the larger group and discuss what the Rapporteurs present. After each Rapporteur describes his or her group’s discussion, the Facilitator should solicit input from the other groups. In particular, to the extent that discussants identify obstacles and challenges to assembling witnesses and presenting the case, this discussion should focus on overcoming those challenges. Then:

6. The Facilitator should lead the group in discussing what happens after the prosecution’s evidence has come in – what do you do at the “case to answer” stage. In particular:
(a) Suppose that you have charged defilement, but when the evidence comes in, the doctor testifies that he is not certain that penetration occurred, but he is quite positive that there was sexual abuse. (This is not Angela’s Story now, but is based on a real fact pattern). At the “case to answer” stage, can you ask that the charge be changed to indecent assault? What motion(s) would you need to file?

(b) Suppose that you have charged defilement, but when the evidence comes in, the proof that the victim is less than sixteen is shaky (or even, suppose the defendant is able to show that she is, in fact, sixteen. Again, we are not talking here about Angela’s story, but about a different, hypothetical case). At the “case to answer stage,” can you ask that the charge be changed to rape or indecent assault? What motion(s) would you need to file?

END OF DAY TWO
APPENDIX

I. Angela’s Story

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II. International Law

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I. Angela’s Story
I. Angela’s Story
Part One: Helping the Victims at Intake

Angela is 10 years old, and lives with her mother, Barbara, and her baby brother, George, in a small village near Jeké Mabemba, about 100 kilometres from Kitwe. Her father, Carl, lives and works in Kitwe, visiting the village several times a year. Yesterday (a Wednesday), Barbara sent Angela to the market to buy some sugar. Angela came home an hour later than Barbara expected, and she was not at all herself. Usually a cheerful, sunny child, Angela was withdrawn and quiet. When Barbara asked her why she was so late, she started to cry, but would not tell her mother why. When Barbara persisted in asking what happened, she saw Angela was shaking.

She hugged the child close to her, and whispered, “Whatever it is, you can tell me.”

By now trembling all over, Angela sobbed, “But he said he’d kill me if I told you.” Fighting panic, Barbara tried to soothe Angela.

Over the next hour, the story came out. “Mr. Davis,” Angela’s teacher at school, had seen her walking by his house on the way to the market. He asked her if she would buy some eggs for him, and gave her some money. When she brought him the eggs, he invited her into his house for a soda. She told him no, she had to go home, but he said he needed to talk to her about the difficulty she seemed to be having with math class. She went in. As soon as she was inside the house, she felt uncomfortable. She could see he had been drinking a beer. She did not like the way his breath smelled, and he was too close to her.

“I have been very disappointed in your school work in mathematics lately, Angela,” he had told her.

She was confused – she always got good grades, and her friends always came to her for help in mathematics.

“You need to be nice to me,” he continued, “and maybe we can fix this.”

Then he told her she had to do things. Odd things; she didn’t really understand. But then he was inside her panties, and it hurt. When he finished, he told her she should go home, but that he would kill her if she told anyone. When she got home and looked, there was blood on her panties.

In the midst of her horror, one thought cut through Barbara to her core. There had been whispers all year that Mr. Davis looked sick, that maybe he had AIDS. Had he infected her precious baby?

She held Angela for a long time, trying to reassure her. When the shaking subsided, she put George in a chitenge cloth on her back, took Angela by the hand and walked to the police station, 4 kilometres away.

At the station, six or seven men were hanging around the front desk smoking.
“I need to speak to a police officer,” she told the officer at the “inquiries” desk, “in private.”

“Anything you got to say you can tell me,” replied the officer. Angela was trembling again.

“Please. Is there a private room where I could talk about what happened to my little girl?” By now the smokers were definitely interested.

With a shrug, the clerk pointed to a back room. “You can talk to Officer Elkins,” said the clerk. “He’s with the Victim Support Unit.”

Officer Elkins listened to them with sympathy. “Your child has been defiled,” he said sadly. “Now who will marry her? Her life has been ruined. You must press charges so that we can find the man who did this and punish him.” Angela cried softly into Barbara’s shoulder.

“Now, in order to open a file,” he went on, “I will need 10,000 Kwacha. Also, you need to take Angela to a doctor to examine her. There is one in Shimukunani; I will give you Dr. Fleming’s address. You need to bring him a ZP 32 form. That’s the form that a doctor has to fill out before we can file charges with the court. I usually have ZP 32 forms here, but today we are out. Maybe you can get one at the police station in Shimukunani.”

Barbara swallowed hard. She had barely 10,000 kwacha, and Shimukunani was 10 kilometres away.

“Can you take us there in a police car?” she asked.

“I wish I could,” replied Elkins. “Unfortunately, the VSU does not have funds to pay for transport. If you pay me, though, I can take her.”

“How much would I have to pay you to take me?”

“Fifteen thousand Kwacha.”

It was getting dark. She and Angela walked home together. George slept, as though nothing had happened. Early the next morning, a Thursday, Barbara took all the money she had in the house, 20,000 Kwacha, and they set off again on foot for Shimukunani. It took them until mid-morning to get there. The police officer in Shimukunani, Officer Tembwe, said he had only one ZP 32 form left, and Barbara would need to make a copy of it. There was a copy centre on the other side of town, but when Barbara got there, the copy machine was broken. Officer Tembwe had told her that she had to return the ZP 32 form or she would be in trouble. Finally, she gave up and returned the form to the police station, then set off without it to see the doctor.
Doctor Fleming was very kind. He examined Angela, and said that she had definitely been defiled. Her hymen was torn and there was semen in her vagina. Barbara had brought the blood-stained undergarments to show him. He looked at them, but told her, with sorrow in his voice, that although he had no doubt Angela had been violated, without a ZP 32 form no charges could be filed.

At this point, Barbara felt the strength that had so far kept her going ebbing away.

“May I speak to you alone?” she asked. Sending Angela outside to pet the doctor’s dog, she confided in him her fear that Davis was HIV-infected and could have infected Angela.

“There is something we can do about that,” the doctor told her. “But you must get this child to Kitwe, and right away. If a girl is exposed to AIDS through defilement, there is a medicine she can be given that will keep the virus from making a home in her body. But the medicine only works if it is given very soon after the rape – the sooner the better. And I do not have it here. It is only available in cities. I know that there is a shelter in Kitwe, and that they have access to this medicine called ‘PEP’. But tomorrow may be too late.”

Trying to steady herself, Barbara thought about somehow getting to Kitwe. It was far; she had only been there a handful of times, and never alone. If she could somehow get there, though, her husband would be able to help. Or would he? What would Carl think, when he learned what had happened? She had not dared let herself think about Carl. What would he do? Would he blame her, Barbara? And even if he would help, how would she get to Kitwe? She looked out the window at her only daughter. . .
Angela’s Story

Part Two: Helping the Victims and their Parents; Post-Exposure Prophylaxis (PEP)

George started to cry; he was hungry. Barbara nursed him, and thought about the road to Kitwe. The next bus, she knew, would not come for three hours. She had the money for the bus, but by the time she got to Kitwe, what if the clinic had closed? And even if it were still open, this medicine that Dr. Fleming told her about, this “PEP” must be very expensive if it could work such magic. She would never be able to afford that.

She thought about the traditional healer, Henrietta, back in Jeke Mabemba. Henrietta was very wise and might have some herbs or other medicine that could fight the virus. She thought about how tired they all were, and how far they had already come. She thought about her chickens back at home, waiting to be fed.

“Thank you, Doctor,” said Barbara, “But I must take my children home.” Dr. Fleming gave her a card with his phone number, and told her he was sorry for her and to let him know if there was any way he could help her.

Barbara nodded. “I would like you to help us put this monster in jail,” she said. “This cannot be the only child he molested. Even if I cannot help my baby, perhaps I can spare some other mother.”

Dr. Fleming looked miserable. “I wish I could help you,” he said, “but without a ZP 32 form there is nothing we can do.” . . .

George fell asleep and began to doze. Barbara folded him carefully into his chitenge and slung him onto her back. She called to Angela, and set off along the red, dusty road back home. She hadn’t gone far, when Dr. Fleming caught up with her.

“Wait a minute,” the doctor yelled. “I found a solution.” He was holding a mobile phone. “I called my sister. She has a car, and can take you to Kitwe.” He explained that his sister was a lawyer with the Female Lawyers Association of Zambia (FELAZ). She would take the family to Kitwe, call ahead to the PEP Clinic, and make sure that they got there and back.

“I could not pay for transport,” said Barbara. “Nor for this medicine you speak of.”

“No, no. You misunderstood. No one will charge you. My sister and I want to help you, and the PEP medicine is free.”

The sister, Isabel, pulled up in her Jeep. Barbara and her children piled in, and an hour later they were at the Clinic.

The doctor at the clinic, Dr. Jarrett, examined Angela again. She ordered some lab tests, and took one of a stack of ZP 32 forms from her cabinet. She filled out the ZP 32 form, and gave one copy to Barbara and one copy to Isabel, the lawyer from FELAZ. She gave Barbara the PEP, and carefully explained to her the importance of Angela’s taking every dose.
She wanted Barbara to bring Angela back in a month for another visit. When Barbara hesitated, Isabel said, “Don’t worry. FELAZ will see that you get here.”

Isabel asked Dr. Jarrett when the lab results would be back. “This is the tenth one the technician got today,” replied the doctor. “We should have the results on this batch in a few days.”

As they left the clinic, Isabel handed Barbara her mobile. “We should call your husband.” Barbara hesitated, but took the phone.

The phone rang just as Carl walked in the door of his apartment from his job. His roommate, Michael, handed it to him. At first, he did not recognize Barbara’s voice – it sounded so strange, so distant. As she told him where she was and what had happened, Carl leaned against the wall, and then paced back and forth the length of the cord. Something was breaking within him. His daughter was defiled. His mind balked at the word. Defiled. Filthy. Dirty. Stained. He and Barbara had failed to safeguard their precious jewel. He could feel his breath quicken and the rise and fall of his heart, with each throb pressing shards into recesses of pain and anger he had not known were there. Why had Barbara sent her out alone? Why had Angela gone into that house? Hadn’t she been told to not talk to strange men? Why had he, Carl, not been there to protect them? If only he had not taken this job. If only there were jobs closer to home. How could he have been here in Kitwe, while this beast was touching his little girl, the baby he’d called Angel, who would never be pure again.

Michael had a bicycle that Carl borrowed. He raced the six blocks to the clinic where his family waited. When he saw Angela’s pinched, frightened little face and Barbara’s anxious eyes, all the rage faded from him and a fierce protectiveness surged in its place. He caught his Angel in his arms and held her.

The minutes stretched by, and no one spoke but George, who cooed in delight at the unexpected sight of Daddy. Carl held out his finger for the baby to grasp. From nowhere, a snatch of poetry came to him – no doubt dredged from some long ago class with the sisters. “Not that devour’d, but that which doth devour, Is worthy blame.”

He thought about a poster that he had seen on the bus he took to work each day: “Break the Silence,” it said, and there was a number for a rape crisis centre. He thought of the women who rode the bus with him, and the women who worked at his office in Kitwe. They were smart, educated, confident – and happy. His wife worked so hard, and she always seemed so careworn. She was smart, but her parents had made her drop out of school when she was 12. “And she was a virgin when I married her,” he thought. His parents would never have agreed to anything less. Firmly, he shoved this unwelcome thought away. His daughter had done nothing wrong. She was as innocent now as she was when he visited the village last month. He would kill anyone who said otherwise. And she would be happy. She would go to

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1 No man inveigh against the wither’d flower, But chide rough winter that the flower hath kill’d! Not that devour’d, but that which doth devour, Is worthy blame. O, let it not be hild Poor women’s faults that they are so fulfill’d With men’s abuses! Those proud lords, to blame, Make weak-made women tenants to their shame. William Shakespeare, “The Rape of Lucrece”
school – but not in a classroom with this evil man -- and she would be okay. He would see to it. . . .

Isabel had walked a discreet distance away from the family during this reunion. As she saw Carl look up, she re-joined the family group. She promised Carl she would take Barbara and the children home safely, and deliver the medical report form to the police the next day (it was now long after five, and the station in Shimukunami would be closed).
Angela’s Story
Part Three: Investigating your Case; Witnesses and Evidence

On Friday morning, VSU Officer Doris Mwebe arrived at her job at the Shimukunami police station. She had been gone from the station for the previous three days, attending a workshop of the Zambia Association of Women Judges (ZAWJ) in Lusaka. The first thing she did when she arrived was check the Occurrence Book for the three days she had missed. She frowned when she saw Jacob Tembwe’s note that a mother had brought a girl from a rural village to complain about a defilement case. Shimukunami got five or six such cases a year, and Doris was sorry she had not been there when the case came in, as she had a great deal of experience dealing with them, while Jacob had little. Plus, Jacob was not a very energetic police officer. Doris and her husband, Caleb (who was a police prosecutor with DPO) sometimes referred to him in private as “the Turtle,” because of his tendency to only reach out for evidence a tongue’s length away. He liked to show off his uniform, the way a turtle basks on a log secure in his shell; he almost never seemed to exert himself to chase prey or evidence that was not right in front of him.

Looking at Jacob’s notes, Doris realized the crime had taken place on Wednesday, only 48 hours ago. A child of ten defiled by a teacher would almost certainly have been HIV negative at the time of the offense. That meant that she was still within the 72 hours in which post-exposure prophylaxis (PEP) could help her. If Jacob had not taken her to the clinic in Kitwe (and she was pretty sure he hadn’t), there was still time.

“Jacob,” Doris asked, “What happened with this defilement case, this little girl, Angela? Did you get them to the clinic?”

Jacob grunted. “Now Doris, how am I supposed to do that? Simon had the car out on investigation. How was I supposed to get her to the clinic?”

Doris reflected grimly that in his stead, she would have found a way. But she said nothing. She could get the car today, and go to the woman’s village. She looked at her watch. There was still time.

At just that moment, the door to the station opened. It was Isabel, the lawyer from FELAZ, coming to deliver the ZP 32 form. Isabel greeted Doris warmly; the two women had known each other for years, and each was delighted to see that the other was working on the case.

Doris opened a file on Angela’s case, and quickly interviewed Isabel about the latter’s involvement. She now had the name of the doctor at the clinic, the name of Isabel’s brother (Dr. Fleming, who had first examined Angela), Carl’s cell phone number and Barbara’s and Angela’s address in the village. She also knew, now, that there was slightly less urgency in her mission – the little girl was already getting the medication she needed.
At the workshop she had just attended in Lusaka, Doris had learned that the government was working on getting PEP to police stations, so that police officers could deliver the first dose when the parent brought the child to file a report. She was glad to learn this, as she knew full-well that every hour mattered in these cases. In this case, however, it appeared that Angela was already protected.

With no other crime more urgent on the docket, Doris arranged to take the car for a few hours. She asked Jacob to accompany her, leaving Simon at the inquiries desk. As she expected, Jacob was reluctant. “That village is a long way away,” he complained. “Besides, the lady told me she’d already been to the police station at Jeke Mabemba, 4 kilometres from her village. It’s Jeke Mabemba’s problem, not ours. We’ll get in trouble for stepping into their case.”

Doris sighed. She knew that Jacob was just making up reasons to do nothing. The Shimukunami station now had the medical report; there was no chance that the other station was doing anything without it – most officers would not launch an investigation until the report came in. This unwillingness to act without a medical report was a source of endless frustration to Doris. While the desk officers waited for a doctor somewhere to write a report, evidence could be destroyed or lost. When she herself got a complaint like this, she always started the investigation as soon as she knew that the child was safely en route to a place where she could get the medical treatment she needed.

Fortunately, Simon was anxious to accompany Doris. Although he had not had any special training on child sexual abuse, he had a much better attitude towards his work than Jacob, and Doris was happy to have his company for the day. Before setting off, Doris first called the police station near Barbara’s village and talked to the duty officer there. As she had suspected, they had done nothing to investigate the matter, and had no intention of doing anything. She and Simon signed out the police car for the day.

When they got to the village, they did not go straight to Barbara’s house. They stopped first at the school, where Doris asked to see the headmaster. He ushered them into his office, and asked what brought them to his school.

“I’m afraid we have had a complaint against one of your teachers.” Doris started. . .

“Davis,” interrupted the principal. It was not a question.

“Yes. How did you know?”

The principal looked uncomfortable, as though he knew he’d made a mistake. Doris met his gaze, unblinking. He hesitated, and then seemed to decide it was best to be honest with her.

“When Doug Davis came to our school from Chingola two years ago, I heard a rumour that his old school was getting rid of him because he had done something wrong with a child. I asked him about it, and he told me that it was all a misunderstanding. Then last
February, the parents of an eleven year old complained against him to me. They wanted money. I assume he gave it to them, as they haven’t been back.”

Doris turned her eyes away from him, looked out the window. She must not let him see the contempt that rose within her for this man who had failed to protect the children entrusted to his care; if she needed him to be a witness, she had to stay on as cordial terms as she possibly could.

“Do you have the school registration cards for the children in his class?” she asked, as calmly as she could. “I may have to provide evidence to the court that the child is less than 16 years of age.”

“Certainly,” the principal replied. “For what child do you need a card?”

“I’d rather not say, until I know for certain that the parents will be willing to go forward with this. May I see the registration cards for all of the students in that class?”

The principal was irritated. “I’m a busy man,” he told her. “Why don’t you come back when you have your answer, so that I don’t waste my time?”

Doris bit her tongue, so that she would not ask him what better use of his time there could be than in protecting his students. She did not want to have to come back all the way from Shimukunami just for this card. On the other hand, she also did not trust him to keep Angela’s identity secret; on balance, it was best to wait. She secured a promise from the principal that he would not warn Davis that the police were investigating. Afraid that he might not keep his promise, she dropped some dark hints about how if anyone were to tip off Davis and let him escape, such a person might be guilty of obstruction of justice.

She stopped at the kiosk across from the school and bought some juice. When she returned to the police car, a young woman was waiting for her, on the street side of the police car, where she would not be seen by someone looking out the school window. It was the principal’s secretary. The young woman looked anxiously around, lowered her voice and whispered, “I heard what you said to the principal, and I looked at all the registration cards for Davis’ class. The oldest child in the room is 12; all the rest are ten or eleven.” Doris thanked the young woman, and drove to Barbara’s address.
Angela’s Story
Part Four: Building your Case; Witness Statements

Barbara was sitting in front of her house with the two children when Doris parked the police car. She and Simon greeted the three, and asked if they could speak to Barbara alone. Angela buried her head in her mother’s lap, reluctant to leave. Gently, Barbara disentangled her, and asked her to wait inside the house. She walked to a tree twenty meters away and sat with Doris. Simon sat nearby, taking notes.

“How is your daughter?” Doris asked gently. Barbara let out a long sigh, and replied that she was not well. “I apologize for bothering you,” Doris continued. “I am here because I want to help make sure that this man will never hurt another child. I hope that you and Angela will work with me.”

Barbara nodded, and Doris took her through the story of what happened, occasionally interposing questions while Barbara talked. Simon wrote it all down, and when he had finished, asked Barbara to read and sign the statement. When Barbara hesitated, Doris guessed that Barbara did not know how to read, but was embarrassed. “Would you like to have someone you trust read it to you?” Barbara nodded. “Is there someone here whom you trust?”

After a long pause, Barbara volunteered that Angela could read. Then, it was Doris’ turn to hesitate; she did not want to make Angela play an adult role, but she could see that Barbara had not told others around her. (It hardly matters, Doris thought grimly; in a village like this, no secrets remain secret for long.) Nor did she want Simon or herself to read the statement aloud to Barbara; it would be too easy for a clever defence lawyer to suggest in court that the police had misrepresented to Barbara what she was signing. Then Barbara provided the solution: “My husband is on his way here from Kitwe. He will arrive sometime in the next hour or so, and he can read.”

Doris asked Barbara about the medicine, the Post-Exposure Prophylaxis. Did Barbara understand the importance of Angela taking every dose, even if Angela didn’t want to? Doris was not surprised when Barbara started to cry. “What is the use?” The mother sobbed. “My daughter has suffered so much. The doctor said that the medicine could make her feel ill. I don’t think I can stand to see her suffer more, when she will die now anyway.” The sobs came thick and fast.

“You must pull yourself together, my Sister,” Doris insisted. “You must be strong for your daughter, and she will not die.” Slowly, Doris drew out her wallet, and found a much-worn photograph. “Look, I have something to show you.”

Barbara took the photo from the police woman. It was of a pretty girl, a year or two younger than Angela. “This was my daughter, Mary, the year before her teacher did to her what Mr. Davis did to your Angela,” Doris explained. “I was so frightened then. We got no justice; the teacher died three months later, before the trial could start. Like you, I was sure my little girl would die. But we lived in Lusaka then, and my husband and I took her to the
University Teaching Hospital, where they gave us this PEP. It was hard to make her take it – after a week or two it made her very sick to her stomach and she cried. But the doctors had told us that if we made her take the pills, even when she cried, that she would not die.”

Doris handed Barbara another photo, much newer. “This is Mary at her graduation from secondary school. She is in university now – the first member of our family to go to college. She is studying to be a doctor, so that she can help other children. She is in love with one of her classmates, who wants to marry her when they graduate. He knows all about what happened to her, and he says that it makes him only love her more, because he knows how brave she has been.”

Barbara gave Doris a long, searching look. “I need to talk to Angela now,” the woman in uniform whispered. “You need to be strong for your daughter. Can you do that?” Slowly, Barbara nodded. Together, the two women entered the house.
Angela’s Story

Part Five: Building your Case; Tying the Defendant to the Crime

Doris introduced herself and Simon to Angela, and explained to the child that they were there because they wanted to help make sure that Mr. Davis would never hurt her or any other child again. She told Angela that she would have to ask her some questions, that she knew Angela had already told her story to the doctor, and she was sorry to have to ask her more questions, but it was really important. She asked if Angela would like her mother to be with her while she asked the questions, and Angela nodded. She explained that it was very important for Angela to tell the truth, and asked Angela if she understood how important that was.

When Angela nodded her assent, in a very soft, gentle voice, Doris asked the child to tell the story about what happened when she went to the market. When Angela got to the part about going into Mr. Davis’ house, Doris asked her whether the house was round or rectangular, like Angela’s own house. “Like a rectangle,” the child responded. Doris asked how many rooms Angela had been in. “Two. First we went into the living room. Then he pushed me into his bedroom.”

“Was there a kitchen?” Doris asked.
“When he pushed me into the bedroom, I think I saw a sink.”
“Were the walls inside painted?”
“I don’t remember.”
“What do you remember seeing inside his house?”
“The living room was dark. I don’t remember much about it.”
“What about the bedroom? Do you remember anything about what was in the bedroom?”

Angela frowned, thinking. “The blanket had stripes.”
“Do you remember what colour stripes?”
“Red. It was white, with red stripes on it.”
“That’s very good, Angela. You are a smart little girl, to have noticed something like that and remembered it. Is there anything else you remember?”
“He had a picture.”
“What kind of picture?”
“He had a picture of Jesus. It was a picture of Jesus with some children and some writing under it. While he was (here Angela gulped) . . . doing . . . (another gulp) . . . I said a prayer to Jesus asking Him to help me and to make it stop.” At this, Doris pulled out two of the bottles of juice she had bought at the kiosk, and offered one each to Barbara and Angela. When the child had composed herself, Doris went on.

“I’m sorry to have to ask you this, Angela, but we need to make sure that the judge at the court who will help decide what should happen next understands exactly what happened. Can you tell me in your own words, what you mean by when he was ‘doing it’?”

“I mean ‘bad manners’ said the child.”
“I mean he took a big, black hose pipe and put it inside me.”
“Where did he get the big black hose pipe?”
“From his pocket.”
“When you say he put the big black hose pipe ‘inside you,’ where did he do that?”
Angela gestured towards her vagina. “Between my legs,” she whispered.

“Angela, you are a very brave little girl, and I can see that you are very strong. You did the right thing to notice all this and remember it. Your Mommy tells me that you can read, too. Is that right?” Angela nodded.

“Officer Simon here has been writing down what you said. I want you to read what he wrote, and tell us if he got it right. If he didn’t hear something correctly we can fix it. If it is right, I want you to sign it. Do you understand?” Again, the child nodded. She read the statement, and told them it was correct. Doris gave her a pen, and she signed and dated it.

As Doris finished the interview, Carl arrived from Kitwe. After greeting his wife and children, he read Barbara’s statement to her, and Barbara signed and dated the statement with her husband’s help.
Angela’s Story
Part Six: Proof of the Victim’s Age in Child Sexual Abuse Cases

Doris explained to Carl and Barbara that in order to prove defilement, the prosecution would have to prove that Angela was under the age of sixteen. She asked if they had a birth certificate for Angela; as she had expected, they did not. In rural areas, women seldom went to a hospital to give birth, and the process for obtaining a birth certificate for a baby born outside a hospital was cumbersome; few parents bothered.

“Do you have an “under five” card for Angela, then?” Doris knew that many parents kept the card that entitles young children to medical care, as a kind of substitute for the birth certificate. Unfortunately, Carl and Barbara had not saved Angela’s. They showed her the card they had for George, but told her they did not know they would need to use it so many years later.

“Isn’t it obvious that she is under 16?” Carl demanded impatiently. “I mean, just look at her.”

Doris agreed. “Sometimes the court will make a finding based on the child’s appearance, and I am sure that the prosecutor will ask the magistrate to make such a finding. But it would be better if we can give the court some proof.”

“Her birthday was April 16,” said her mother. “It was Easter Monday. I remember going to church the day before. I was very big, and Father Seamus told me that perhaps she would be born the day that Christ was resurrected.

Simon made a note of her comment. The prosecutors would have access to a computer, which could tell them what years Easter fell on April 15.

“Is Father Seamus still at St. Catherine’s?”
“Oh yes, he’s been there for years.”
“Was she baptized?” Doris asked.
“We are Catholic. She was christened at St. Catherine’s, a week or two after she was born.”
“What about a First Communion, did she have one?”
“Yes,” smiled her mother. “Wait, I have a photo. Angela was seven then.” She went over to the wall next to the fireplace, and pulled down a photo of half a dozen little girls in white dresses, standing next to the church. Doris took the photo off the wall and turned it over. There was no date on the photo, but if she needed to, she could probably get some kind of dated record from St. Catherine’s, either of the christening or the First Communion.

Simon had been scanning other photos on the wall. His eyes fell on one with four adults and two baby girls with matching red hair ribbons on their heads. The babies looked less than a year old. Two of the adults looked like younger versions of Barbara and Carl. “Who are the people in that photo?” Simon asked.
“That’s my sister and her husband,” Carl pointed. “Their daughter was born a week before Angela. We had Christmas at their place in Kabwe that year, and took that picture of the parents and the cousins at a studio.” Carl took the photo down from the wall, and turned it over. “Christmas 2001,” was stamped on the reverse.

“Was your niece born in a hospital? Would they have a birth certificate for her?” Simon demanded.

“She was – I’m pretty sure they’d have a certificate.” The two police officers conferred, and agreed they had enough proof of age to present to a prosecutor. Doris handed Carl her phone number at the police station, and asked if he could find out from Father Seamus whether the church had any records of the dates of Angela’s christening or First Communion. Carl promised to ask, and to call Simon and Doris at the police station the following Monday.

The officers took their leave of the family, and headed to Davis’s house...
Angela’s Story
Part Seven: Building your Case; Corroboration (cont’d)

Teacher Douglas Davis was just arriving home from work when the police car pulled up in front of his house. He looked panicky for a moment, but tried to look calm.

“Can I help you officers?” he asked, politely.
“I think so.” Doris replied.
“What is this about, Officer?”
“I think you know, Sir.”
“I’m afraid not, Officer. Perhaps you could enlighten me.”
Doris looked the man in the eye. “One of your students has filed a complaint against you.”
“She’s lying.” Davis spluttered. “This is an outrage.”
Neighbours were coming out of their houses, attracted by the police car and the raised voices.
“Perhaps we can discuss this inside.” Simon suggested.
Reluctantly, Davis ushered them into his darkened living room. While Simon started questioning him, Doris wandered over towards the doorway to the bedroom. From where she stood, she saw the white bedspread with the red stripes. Hanging on the wall beyond was a print she knew well from her childhood, and without being able to read the inscription from this distance, she knew the words of Matthew 19:14 by heart:

But Jesus said, Suffer little children, and forbid them not to come unto me: For of such is the kingdom of heaven.

Sickened, she turned to Davis: “You’re under arrest,” she told him calmly.
II. International Law
Universal Declaration of Human Rights
Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,
Whereas it is essential to promote the development of friendly relations between nations,
Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,
Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,
Now, therefore,
The General Assembly,
Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by
teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier
penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16
1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21
1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.
Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
Adopted by General Assembly resolution 40/34 of 29 November 1985

A. Victims of crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

   (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

   (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

   (c) Providing proper assistance to victims throughout the legal process;

   (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

   (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution
8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair
restitution to victims, their families or dependants. Such restitution should include the return of
property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of
the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an
available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as
possible, restoration of the environment, reconstruction of the infrastructure, replacement of
community facilities and reimbursement of the expenses of relocation, whenever such harm results in
the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated
national criminal laws, the victims should receive restitution from the State whose officials or agents
were responsible for the harm inflicted. In cases where the Government under whose authority the
victimizing act or omission occurred is no longer in existence, the State or Government successor in
title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should
endeavour to provide financial compensation to:

( a ) Victims who have sustained significant bodily injury or impairment of physical or mental health as
a result of serious crimes;

( b ) The family, in particular dependants of persons who have died or become physically or mentally
incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims
should be encouraged. Where appropriate, other funds may also be established for this purpose,
including in those cases where the State of which the victim is a national is not in a position to
compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through
governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant
assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to
sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have
special needs because of the nature of the harm inflicted or because of factors such as those
mentioned in paragraph 3 above.

B. Victims of abuse of power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or
mental injury, emotional suffering, economic loss or substantial impairment of their fundamental
rights, through acts or omissions that do not yet constitute violations of national criminal laws but of
internationally recognized norms relating to human rights.
19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.
III. Provisions of Zambian Law
Excerpts from the Zambian Penal Code
Section 131: Definition of Child

131A. In this part "Child" means a person below the age of sixteen years.

Section 137: Indecent Assault

(1) Any person who unlawfully and indecently assaults any child or other person commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty years.

(2) It shall not be a defence to a charge of an indecent assault on a child to prove that the child consented to the act of indecency.

(3) Any person who is found in any building or dwelling house or in any veranda or passage attached thereto or in any yard, garden or other land adjacent to or within the cartilage of such building or dwelling house not being a public place -

   (a) For the purpose of and from motives of indecent curiosity gazing at or observing any other person or child who may be therein while in a state of undress or semi-undress; or

   (b) With intent to annoy or indecently to assault any child or other person who may be there;

Commits an offence and is liable, upon conviction, to imprisonment for a term of not less than two years and not exceeding five years.

Section 137A: Sexual Harassment

(1) Any person who practices sexual harassment in a work place, institution of learning or elsewhere on a child commits a felony and is liable, upon conviction, to imprisonment to a term of not less than three years and not exceeding fifteen years.

(2) A child who commits an offence under subsection (1) is liable to such community service or counselling as the court may determine in the best interest of the child.
In this section, sexual harassment means –

a) A seductive sexual advance being unsolicited sexual comment, physical contact or other gesture of a sexual nature which one finds objectionable or offensive or which causes discomfort in one’s studies or job and interferes with academic performance or work performance or a conducive working or study environment;

b) Sexual bribery in the form of soliciting or attempting to solicit sexual activity by promise of reward;

c) Sexual threat or coercion which includes procuring or attempting to procure sexual activity by threat of violence or victimization; or

d) Sexual imposition using forceful behaviour or assault in an attempt to gain physical sexual contact.

Section 138: Defilement of Child

(1) Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and maybe liable to imprisonment for life.

(2) Any person who attempts to have unlawful carnal knowledge of any child commits a felon and is liable, upon conviction, to imprisonment for a term not less that fourteen years and not exceeding twenty years.

(3) Any person who prescribes a defilement of a child as a cure for any ailment commits a felon and is liable, upon conviction to imprisonment not less than fifteen years and maybe liable to imprisonment for life.

(4) A child above the age of twelve years who commits an offence under subsection (1) or (2) is liable, to such community service or counselling as the court may determine, in the best interest of both children.

Section 139: Defilement of an Imbecile or Person with Mental Illnesses

Any person who, knowing a child or other person to be an imbecile or person with a mental illness, has or attempts to have unlawful carnal knowledge of that child or other person in circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the child or the other person was an idiot or imbecile commits a felony and is liable, upon conviction, to imprisonment for a term of not less that fourteen years.
Section 140: Procuring Child or other Persons for Prostitution, etc

Any person who-

Procures or attempts to procure any child or other person to have unlawful carnal knowledge either in Zambia or elsewhere, with any person or other persons for pornography, bestiality or any other purpose;

(a) Procures or attempts to procure any child or other person to become, either in Zambia or elsewhere, a common prostitute;

(b) Procures or attempts to procure any child or person to leave Zambia, with the intent that the child or person may become an inmate or frequent a brothel elsewhere; or

(c) Procures or attempts to procure any child or person to leave that child’s or other person’s usual place of abode in Zambia with intent that the child or other person may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Zambia or elsewhere;

Commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life;
Provided that no person shall be convicted of an offence under this section upon the evidence or one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Section 142: Householder, etc, Permitting Defilement of Child on Premises

Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly permits any child to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any other person, whether such carnal knowledge is intended to be with any particular person or generally, commits a felony and is liable, upon conviction, to imprisonment for not less than twenty years and may be liable to imprisonment for life.

Section 143: Selling or Trafficking in Children

Any person who sells or traffics in a child or other person for any purpose or in any form commits an offence and is liable, upon conviction, to imprisonment for a term not less than twenty years:

Provided that where it is proved during the trial of the accused person that the sell or trafficking in a child or other person was for the purpose of causing that child or person to be unlawfully and carnally known by any other person, whether such carnal knowledge was intended to be with any particular person or generally, the person is liable upon conviction, to imprisonment for life.
However, in 2008 the Law was enacted to specifically deal with Human Trafficking Act no. 11 of 2008.

**Section 144: Detention with intent or in Brothel**

(1) Any person who detains any child or other person against that child or other person's will;

(a) in or upon any premises with intent that the child or other person may be unlawfully and carnally known by any third person, whether particularly or generally or for rituals or any other purposes; or

(b) in any brothel;

Commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life.

(2) When a child or person is in or upon any premises for the purposes of having any unlawful carnal knowledge or is in any brothel, another person shall be deemed to detain such a child or persons in or upon such premises or in such brothel, if, with intent to compel or induce the child or person to remain in or upon such premises or in such brothel, such other person withholds from the child or person any wearing apparel or other property belonging to the child or person, or where wearing apparel has been lent or otherwise supplied to such child or person or by the directions of such person, such other person threatens such person with legal proceedings for taking away the wearing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against any child or person for taking away or being found in possession of any such wearing apparel as was necessary to enable the child or person to leave such premises or brothel.

**Section 150: Conspiracy to defile**

Any person who conspires with another person to induce any person or child, by means of any false pretence or other fraudulent means, to permit any other person to have unlawful carnal knowledge of such person or child, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.
Section 155: Unnatural offences

a) Has carnal knowledge of any person against the order of nature: or

b) Has carnal knowledge of an animal;

c) Permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony and liable to imprisonment for fourteen years.

Section 156: Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years but not exceeding fourteen years.

Section 157: Harmful Cultural practices

(1) Any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable upon conviction, to imprisonment to a term not less than fifteen years and maybe liable to imprisonment for life.

(2) In this section (harmful cultural practice) includes sexual cleansing, female genital mutilation or an initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.

Section 158: Indecent practices between males

(1) Any male person who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male child or person, whether in public or private commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(2) Any female person who, whether in public or private, commits any act of gross indecency with a female child or a person, or procures a female child or a person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female child or person whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.
(3) A child who, whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with a child's self or with another child or person of the same sex, whether in public or private commits an offence and is liable, to such community service or counselling as the court may determine in the best interest of the child.

Section 159: Incest

(1) Any male person who has carnal knowledge of a female person, who is to that person's knowledge his granddaughter, mother, sister, daughter, granddaughter, auntie or niece commits a felony and liable, upon conviction to imprisonment for a term not less than 20 years and maybe liable to imprisonment for life.

(2) Any female person who has carnal knowledge of a male person who is to that person's knowledge her grandfather, father, brother, son, grandson, uncle or nephew commits a felony and is liable upon conviction to imprisonment of a term of not less than 20 years and maybe liable to imprisonment for life.

(3) For the purposes of this section, it is immaterial that the carnal knowledge was had with the consent of the other person.

(4) Any person who attempts to commit incest commits a felony and is liable to imprisonment for a term not less than ten years and not exceeding twenty five years.

Section 183: Negligent Act likely to spread Infection

Any person who unlawfully or negligently does any act which is, and which he knows or has reasons to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of a misdemeanour.

Section 132: Rape (Amendment Act No.2 of 2011)

Any person who, has unlawful carnal knowledge of a woman or girl, without her consent or with the consent, if the consent is obtained by force or means of threats or intimidation of any kind by force or fear of bodily harm or by means of false representation as to the nature of the act or in case of married woman, by personating her husband, is guilty of a felony termed "rape" and may be liable to imprisonment for a period of not less than 15 years or life imprisonment.
Juveniles (Amendment) Act of 2011
GOVERNMENT OF ZAMBIA

ACT

No. 3 of 2011

Date of Assent: 12th April, 2011.

An Act to amend the Juveniles Act.
[15th April, 2011.

ENACTED by the Parliament of Zambia.

1. This Act may be cited as the Juveniles (Amendment) Act, 2011, and shall be read as one with the Juveniles Act, in this Act referred to as the principal Act.

2. The principal Act is amended by the repeal of section one hundred and twenty-two and the substitution therefor of the following:

122. Where, in any criminal or civil proceedings against any person, a child below the age of fourteen is called as a witness, the court shall receive the evidence, on oath, of the child if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the child’s evidence, on oath, and understands the duty of speaking the truth:

Provided that—

(a) if, in the opinion of the court, the child is not possessed of sufficient intelligence to justify the reception of the child’s evidence, on oath, and does not understand the duty of speaking the truth, the court shall not receive the evidence; and

(b) where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating the accused.

Single copies of this Act may be obtained from the Government Printer,
P.O. Box 30136, 10101 Lusaka, Price K1,000 each.