AN ASSESSMENT OF THE EFFECTIVENESS OF THE VICTIM FRIENDLY LEGAL SYSTEM IN ZIMBABWE: A CASE STUDY OF HARARE METROPOLITAN PROVINCE.

BY

WEBSTER CHIHAMBAKWE

(P1248892U)

THESIS SUBMITTED IN FULFILLMENT OF THE REQUIREMENTS FOR DOCTOR OF PHILOSOPHY IN COUNSELLING PSYCHOLOGY

TO

ZIMBABWE OPEN UNIVERSITY

SUPERVISOR: PROFESSOR. B.C. CHISAKA

NOVEMBER 2016
ABSTRACT

This study assessed the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation. It was a case study of Harare Metropolitan Province. The study focused on the victim friendly legal system in Zimbabwe since its inception in 1997, targeting the protection of child victims of sexual abuse from further traumatisation in the criminal justice system. The study was conducted at the Harare Magistrates Courts which are located at the Rotten Row Building on the western side of Harare. The research methodology that was used to conduct the study was qualitative in nature. The research method used was a case study within the interpretive paradigm. The purposive sample used in this study consisted of seventeen (17) participants who were selected from the regional magistrates, regional public prosecutors, victim friendly unit police officers, and intermediaries who held different positions in the victim friendly legal system in Zimbabwe. Data generation was done using the in-depth face to face interview, observations and analysis of relevant documents to the study. The research findings from this study were presented in the form of themes that emerged. These themes were then divided into two categories, that is, themes concerning the positive aspects of the effectiveness of the victim friendly legal system in Zimbabwe and those concerning the negative aspects of its effectiveness. Themes that emerged were: the need to capacitate the victim friendly legal system staff members; recognition for professional counselling services to child victims of sexual abuse; the need to embark on community awareness campaigns on the role of victim friendly (court) legal system procedures; establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe; inadequate victim friendly court equipment; challenges on the current policy and institutional arrangements of the victim friendly legal system in Zimbabwe; problems of safer houses; and interference by family members in trying to influence the victim in court. Recommendations from this research were on policy makers in government to come up with legislation that effectively complement the efforts by victim friendly legal system in protecting child victims of sexual abuse from further traumatisation; the need to establish a one stop shop infrastructure in the victim friendly legal system and provision of transport, meals and accommodation to victims and vulnerable witnesses when they attend court sessions.
ACKNOWLEDGEMENTS

I would like to express my sincere gratitude and appreciation to my supervisor, Professor Chisaka B.C. for his kindness, guidance, encouragement and careful revision of my work. Without him this thesis would not have been possible.

I would like to record my gratitude to the Office of the Prosecutor General of the National Prosecuting Authority of Zimbabwe, the Judicial Service Commission and the Chief Magistrate Office for the cooperation that they rendered me during the data generation.

I also wish to express my deepest sense of gratitude to my wife Florence and my children Tanaka Phillip; Tadiwanashe Agnes; Thandiwe and Nenyasha Chihambakwe for their patience and perseverance throughout the period of this study.
DEDICATION

This work is dedicated to my wife, Florence and my children, Tanaka Phillip, Tadiwanashe Agnes, Thandiwe and Nenyasha.
# Table of Contents

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cover Page</td>
<td></td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>i</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>ii</td>
</tr>
<tr>
<td>DEDICATION</td>
<td>iii</td>
</tr>
<tr>
<td>List of Tables</td>
<td>viii</td>
</tr>
<tr>
<td>List of Figures</td>
<td>ix</td>
</tr>
<tr>
<td>List of Appendices</td>
<td>x</td>
</tr>
<tr>
<td>Acronyms</td>
<td>xii</td>
</tr>
<tr>
<td><strong>CHAPTER ONE</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>INTRODUCTION</strong></td>
<td>1</td>
</tr>
<tr>
<td>1.1 The Problem</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Background and Motivation to Problem of the Study</td>
<td>1</td>
</tr>
<tr>
<td>1.2.1 Motivation to the Problem of the Study</td>
<td>9</td>
</tr>
<tr>
<td>1.3 Statement of the Problem</td>
<td>12</td>
</tr>
<tr>
<td>1.4 Purpose of the Study</td>
<td>12</td>
</tr>
<tr>
<td>1.5 Objectives of the Study</td>
<td>12</td>
</tr>
<tr>
<td>1.6 Research Questions</td>
<td>13</td>
</tr>
<tr>
<td>1.7 Significance of the Study</td>
<td>14</td>
</tr>
<tr>
<td>17.1 Government Line Ministries</td>
<td>15</td>
</tr>
<tr>
<td>17.2 Non-Governmental Organisations</td>
<td>15</td>
</tr>
<tr>
<td>1.8 Delimitation of the Study</td>
<td>15</td>
</tr>
<tr>
<td>1.9 Limitations of the Study</td>
<td>16</td>
</tr>
<tr>
<td>1.9.1 Mitigatory Strategies to the Limitations</td>
<td>16</td>
</tr>
<tr>
<td>1.10 Definition of Key Terms</td>
<td>17</td>
</tr>
<tr>
<td>1.11 Organisation of the Thesis</td>
<td>21</td>
</tr>
<tr>
<td>1.12 Chapter Summary</td>
<td>23</td>
</tr>
<tr>
<td><strong>CHAPTER TWO</strong></td>
<td>24</td>
</tr>
<tr>
<td><strong>REVIEW OF RELATED LITERATURE</strong></td>
<td>24</td>
</tr>
<tr>
<td>2.1 Introduction</td>
<td>24</td>
</tr>
<tr>
<td>2.2 Conceptual Framework</td>
<td>25</td>
</tr>
</tbody>
</table>
CHAPTER THREE ......................................................................................................................... 111

RESEARCH METHODOLOGY ........................................................................................................ 111

3.1 Introduction ............................................................................................................................... 111

3.2 Research Methodology and Paradigm of the Study ................................................................. 112

3.2.1 The Qualitative Research Methodology and its Paradigms .............................................. 114

3.2.2 The Quantitative Research Methodology and its Paradigms ........................................... 120

3.3 Rationale for the Selection of the Methodology and Its Paradigm ........................................ 124

3.4 The Research Paradigm ............................................................................................................ 129

3.4.1 The Interpretive Paradigm .................................................................................................... 130
CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.1 Introduction

4.2 Background information of the research participants

Table 1: Composition of research participants in the study.

Table 2: Interview questions schedule guide questions for research participants

4.3 Research findings

4.3.1 Findings from Interviews

4.3.2 Findings from Observations

4.3.3 Findings from the analysis of relevant documents

4.4 Discussion of the Themes That Emerged From the Research Findings

4.5 Themes concerning the positive aspects on victim friendly legal system in Zimbabwe

4.5.1 Capacity building for the victim friendly legal system staff members

4.5.2 Recognition on the need for professional counselling services to child victims of sexual abuse
4.5.3 Community awareness campaigns on the role of victim friendly (court) legal system procedures. 209

4.5.4 Establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe. .......................................................... 210

4.6 Themes concerning negative aspects on the victim friendly legal system in Zimbabwe .......... 213

4.6.1 Inadequate victim friendly court equipment. .......................................................... 213

4.6.2 Challenges on the current policy and institutional arrangements of the victim friendly legal system in Zimbabwe. .......................................................... 214

4.6.3 Challenges of safer houses. ......................................................................................... 216

4.6.4 Interference by family members in trying to influence the victim in court. .................... 218

4.7 Chapter Summary .......................................................................................................... 226

CHAPTER FIVE .......................................................................................................................... 228

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS ................................................................................................. 228

5.1 Introduction ......................................................................................................................... 228

5.2 Summary of findings ........................................................................................................... 228

5.2.1 Background to the study ................................................................................................. 229

5.2.2 Conceptual and Theoretical Frameworks ..................................................................... 230

5.2.3 Review of Related Literature ......................................................................................... 231

5.2.4 Research Methodology Aspects .................................................................................... 232

5.2.5 Data Analysis and Findings ............................................................................................ 233

5.3 Conclusions ........................................................................................................................ 236

5.4 Recommendations ............................................................................................................ 240

5.4.1 General recommendations for victim friendly legal system in Zimbabwe .................... 241

5.4.2 A Model for the victim friendly legal system in Zimbabwe .......................................... 241

Figure 4: A child victim centered model for the victim friendly legal system .......................... 242

5.4.3 Recommendations for policy makers ............................................................................ 243

5.4.4 Specific recommendations to actors/role players in the victim friendly legal system. .... 245

5.4.5 Recommendations for further research ........................................................................ 246

REFERENCES .......................................................................................................................... 248

LIST OF APPENDICES .............................................................................................................. 277
**List of Tables**

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 1: Composition of Research Participants</td>
<td>176</td>
<td></td>
</tr>
<tr>
<td>Table 2: Interview guide questions for research participants</td>
<td>178</td>
<td></td>
</tr>
</tbody>
</table>
List of Figures

Figure 1: Map of greater Harare 136

Figure 2: Rotten Row Building that houses the Harare Magistrates Courts 137

Figure 3: Steps in analysing qualitative data 155

Figure 4: A child victim centered model for the victim friendly legal system in Zimbabwe. 242
### List of Appendices

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix A</td>
<td>Completed Cases</td>
<td>277</td>
</tr>
<tr>
<td>Appendix B</td>
<td>Statutes used by other countries</td>
<td>278</td>
</tr>
<tr>
<td>Appendix C</td>
<td>International Instruments</td>
<td>280</td>
</tr>
<tr>
<td>Appendix D</td>
<td>Regional Instruments</td>
<td>281</td>
</tr>
<tr>
<td>Appendix E</td>
<td>Budget</td>
<td>282</td>
</tr>
<tr>
<td>Appendix F</td>
<td>Timeframe</td>
<td>283</td>
</tr>
<tr>
<td>Appendix G</td>
<td>Interview Questions Schedule Guide</td>
<td>284</td>
</tr>
<tr>
<td>Appendix H</td>
<td>Application Letter seeking for permission to conduct the study</td>
<td>285</td>
</tr>
<tr>
<td></td>
<td>to Commissioner General of Zimbabwe Republic Police</td>
<td></td>
</tr>
<tr>
<td>Appendix I</td>
<td>Application Letter seeking for permission to conduct the study</td>
<td>286</td>
</tr>
<tr>
<td></td>
<td>to the Secretary for the Judicial Service Commission of Zimbabwe</td>
<td></td>
</tr>
<tr>
<td>Appendix J</td>
<td>Application Letter seeking for permission to conduct the study to</td>
<td>287</td>
</tr>
<tr>
<td></td>
<td>the Prosecutor General of the National Prosecuting Authority of Zimbabwe</td>
<td></td>
</tr>
<tr>
<td>Appendix K</td>
<td>Application Letter seeking for permission to conduct the study to</td>
<td>288</td>
</tr>
<tr>
<td></td>
<td>the Permanent Secretary, Ministry of Public Service, Labour and Social Welfare</td>
<td></td>
</tr>
<tr>
<td>Appendix L</td>
<td>Application Letter seeking for permission to conduct the study to</td>
<td>289</td>
</tr>
<tr>
<td></td>
<td>the Director, Childline</td>
<td></td>
</tr>
<tr>
<td>Appendix M</td>
<td>Application Letter seeking for permission to conduct the study to</td>
<td>290</td>
</tr>
<tr>
<td></td>
<td>the Country Director, Save the Children</td>
<td></td>
</tr>
<tr>
<td>Appendix N</td>
<td>Application Letter seeking for permission to conduct the study to</td>
<td>291</td>
</tr>
<tr>
<td></td>
<td>the Director, Family Support Trust (FST)</td>
<td></td>
</tr>
<tr>
<td>Appendix O</td>
<td>Response from the Commissioner General of Zimbabwe Republic Police</td>
<td>292</td>
</tr>
<tr>
<td>Appendix</td>
<td>Response From</td>
<td>Page</td>
</tr>
<tr>
<td>----------</td>
<td>--------------</td>
<td>------</td>
</tr>
<tr>
<td>P</td>
<td>Chief Magistrate, Judicial Services Commission</td>
<td>293</td>
</tr>
<tr>
<td>Q</td>
<td>Director of Public Prosecutions, National Prosecuting Authority of Zimbabwe</td>
<td>294</td>
</tr>
<tr>
<td>Acronyms</td>
<td>Full Form</td>
<td></td>
</tr>
<tr>
<td>--------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>ACRWC</td>
<td>African Charter on Rights and Welfare of the Child</td>
<td></td>
</tr>
<tr>
<td>APA</td>
<td>American Psychiatric Association</td>
<td></td>
</tr>
<tr>
<td>CCTV</td>
<td>Closed Circuit Television</td>
<td></td>
</tr>
<tr>
<td>CJSZ</td>
<td>Criminal Justice System of Zimbabwe</td>
<td></td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
<td></td>
</tr>
<tr>
<td>CSA</td>
<td>Child Sexual Abuse</td>
<td></td>
</tr>
<tr>
<td>DSM IV PTSD</td>
<td>Diagnostic Statistical Manual IV Post Traumatic Stress Disorder</td>
<td></td>
</tr>
<tr>
<td>DSS</td>
<td>Department of Social Welfare</td>
<td></td>
</tr>
<tr>
<td>FSTC</td>
<td>Family Support Trust Clinic</td>
<td></td>
</tr>
<tr>
<td>JSC</td>
<td>Judicial Services Commission</td>
<td></td>
</tr>
<tr>
<td>MoHCC</td>
<td>Ministry of Health and Child Care</td>
<td></td>
</tr>
<tr>
<td>MoJLPA</td>
<td>Ministry of Justice, Legal and Parliamentary Affairs</td>
<td></td>
</tr>
<tr>
<td>MoPSLSW</td>
<td>Ministry of Public Service, Labour and Social Welfare</td>
<td></td>
</tr>
<tr>
<td>NCVFSZ</td>
<td>National Coordinator of the Victim Friendly System in Zimbabwe</td>
<td></td>
</tr>
<tr>
<td>NVFSC</td>
<td>National Victim Friendly System Committee</td>
<td></td>
</tr>
<tr>
<td>NGOs</td>
<td>Non-Government Organisations</td>
<td></td>
</tr>
<tr>
<td>OVC</td>
<td>Orphans and Vulnerable Children</td>
<td></td>
</tr>
<tr>
<td>PEP</td>
<td>Post-Exposure Prophylaxis</td>
<td></td>
</tr>
<tr>
<td>PTSD</td>
<td>Post Traumatic Stress Disorder</td>
<td></td>
</tr>
<tr>
<td>RM</td>
<td>Regional Magistrate</td>
<td></td>
</tr>
<tr>
<td>RPP</td>
<td>Regional Public Prosecutor</td>
<td></td>
</tr>
<tr>
<td>SAfAIDS</td>
<td>Southern Africa HIV and AIDS Information Service</td>
<td></td>
</tr>
<tr>
<td>SITPCAP</td>
<td>Structured Sensory Intervention for Traumatised Children, Adolescents and Parents</td>
<td></td>
</tr>
<tr>
<td>SRP</td>
<td>Stress Reaction Process</td>
<td></td>
</tr>
<tr>
<td>TLC</td>
<td>Trauma and Loss in Children</td>
<td></td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational and Scientific Organisation</td>
<td></td>
</tr>
<tr>
<td>UNCRC</td>
<td>United Nations Convention on the Rights of the Child</td>
<td></td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
<td></td>
</tr>
<tr>
<td>VFC</td>
<td>Victim Friendly Court</td>
<td></td>
</tr>
<tr>
<td>VFUO</td>
<td>Victim Friendly Unit Officer (Police)</td>
<td></td>
</tr>
<tr>
<td>VFLS</td>
<td>Victim Friendly Legal System</td>
<td></td>
</tr>
<tr>
<td>VFS</td>
<td>Victim Friendly System</td>
<td></td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>---------------------------------</td>
<td></td>
</tr>
<tr>
<td>VT</td>
<td>Vicarious Traumatisation</td>
<td></td>
</tr>
<tr>
<td>VWC</td>
<td>Vulnerable Witness Committee</td>
<td></td>
</tr>
<tr>
<td>ZRP</td>
<td>Zimbabwe Republic Police</td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER ONE

INTRODUCTION

1.1 The Problem

The current policy and institutional arrangement in Zimbabwe do not appear to effectively complement the Victim Friendly Legal System (VFLS).

1.2 Background and Motivation to Problem of the Study

The establishment of the Victim Friendly Legal System (VFLS) in Zimbabwe was a development that was initiated by the government, women and children’s rights activists in the early 1990’s. In 1992, the Vulnerable Witness Committee (VWC) was set up by the Ministry of Justice, Legal and Parliamentary Affairs (MJLPA) and it comprised of magistrates, prosecutors, intermediaries and police officers. These people had the mandate to investigate problems faced by vulnerable witnesses in the Criminal Justice System in Zimbabwe (CJSZ). This committee was headed by the then Regional Magistrate Malaba and in 1993 the committee presented their “Vulnerable Witnesses Committee Report.” A regional magistrate is a judiciary officer who presides over criminal cases of a serious nature. These crimes include rape, armed robbery, car theft, robbery and fraud.

The Committee’s Report spelt out the problems that were encountered by victims of crime and it presented its recommendations to the Ministry of Justice, Legal and Parliamentary Affairs. The committee was tasked with the responsibility to see that all victims of crime such
as women and children were adequately protected from further abuse and trauma within the Criminal Justice System. This resulted in a multi-sectoral approach to offering welfare and judicial services to survivors of sexual violence and abuse. The recommendations of the committee’s report incorporated contributions that were also made by most stakeholders with an interest in women and children’s rights.

The Vulnerable Witnesses Committee Report (1992) findings and recommendations led to the formation of the Victim Friendly Court Committee that oversees the implementation of the protection of victims of crime and their active participation in the Criminal Justice System in Zimbabwe (CJSZ). The composition of the Criminal Justice System in Zimbabwe includes police officers, magistrates, judges, public prosecutors, intermediaries, prison officers and lawyers. These professionals in the Criminal Justice System have a responsibility to ensure that justice delivery service is fair and should be given within a stipulated time frame. This raises the confidence of victims and alleged abusers on the CJSZ.

Zimbabwe accepted the definition of Victims of Crime as outlined in the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (United Nations, 1985:178) defined as:

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 prescribing criminal abuse of power.

The assessment on the effectiveness of the Victim Friendly Legal System in Zimbabwe (VFLSZ) requires a comparative analysis of other countries in the SADC region (South Africa and Namibia). This is because of the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) which these countries signed as a commitment
to the protection of victims of crime. The selection of South Africa and Namibia in this study was due to the fact that these two countries were the only ones in southern Africa that had incepted the Victim Friendly Legal System model as an intervention strategy in child sexual abuse cases. These countries gave me a lynch pad on which I could make an assessment on the effectiveness of the system in the Zimbabwean context.

The criminal legal procedure prevailing in South Africa, Zimbabwe and Namibia are based on the accusatorial system. The accusatorial system entails a conflict between the State and the person accused of committing a crime. This system is widely used in most of the countries in the world and it had been proven to be effective. The system pits the public prosecutor against the accused or his/her defence lawyer as a mechanism of arriving at the truth. Child victims and their witnesses are expected to eloquently and comprehensively verbalise their memories of the crime within the confines of the criminal justice system (Saywitz, 1995). They are expected to appear in person in court and present themselves for cross-examination by the perpetrator or his/her defence lawyer.

Copen (2000) also noted that the criminal court procedure created “the most challenging, demanding, confusing and difficult environment for any victim or witness”. These challenges were attributed to the victims fear of the police, court officials and the accused. There was no trust for all these people by victims of sexual abuse, thus creating a difficult environment for them to openly say what would have happened to them at the hands of the alleged abusers. The fundamental characteristics of the accusatorial system include confrontation, oral testimony and cross-examination. These fundamentals create particular difficulties for the victims and witnesses to any form of abuse, that is, sexual, physical, neglect or emotional (Davies and Westcott, 1995). Such difficulties could be as a result of misunderstandings of
how the accusatorial system operates. From 2006 up to date, research has established that in order to protect child victims and witnesses from re-traumatisation during the course of the trial, there is need for professional counselling services (Marowa, 2011). The accusatorial system has proven to be effective in the criminal justice system due to its flexibility in allowing both the victim and the alleged abuser to express themselves in court without obstacles. For example, victims and alleged abusers have the freedom to express themselves using the language they are comfortable with such as Shona, Ndebele, Tonga, etc.

The need to assist child victims and other vulnerable witnesses necessitated the introduction of intermediaries into the victim friendly legal system (Muller and Holley, 2000). The intermediary was identified as a mechanism through which child victims could avoid confrontation with the accused, as they would give their oral testimony from a separate room at the courtroom thereby also avoiding direct cross-examination from the perpetrator. The intermediary would be in a position to act as a form of protection for the child victim against any hostility implicit in questions posed by the perpetrator during trial. An intermediary is a person who enhances communication between the child and the courtroom in a manner that takes into account the child’s cognitive and developmental limitations. Thus, he or she is a person who conveys the meaning and content of the questions from the court to the child witness in a language and form understandable to the child witness (Muller and Hollely, 2000). The intermediary protects the child victim from any forms of age inappropriate questioning. The intermediary’s presence is not only reassuring and comforting to the child, but reduces the chances of re-traumatisation, while understanding the questions asked.

South Africa, Zimbabwe and Namibia, have to varying degrees, introduced some changes to their victim friendly legal systems in as far as the criminal court procedures are concerned. This allows the protection of child victims of abuse when they testify. These three countries
have made use of intermediary services for child victims during criminal trials. The victim friendly system concept was first introduced in South Africa in 1991, in Zimbabwe in 1997 and in Namibia in 2003. In these countries the necessary legislation permitting child witnesses to receive intermediary assistance was created as a way to improve the effectiveness of the system in place. South Africa and Zimbabwe have managed to introduce and establish the intermediary system in their criminal justice systems. The situation is different for Namibia where in spite of the creation of various pieces of legislation authorizing intermediary assistance for vulnerable witnesses in Namibia, the country still has to introduce intermediaries into its criminal courts to assist child witnesses during trial.

In South Africa the intermediary system was introduced into the criminal court system by the Criminal Law Amendment Act 135 of 1991, which inserted section 170A into the Criminal Procedure Act 55 of 1977. Although the South African intermediary system has been weighed down by various administrative challenges, the system is largely revered in the region and has been emulated by other countries, including Zimbabwe and to a limited extent Namibia. In Zimbabwe, the intermediary system was created by the Criminal Procedure and Evidence Amendment Act 8 of 1997, which inserted section Part XIVA into the Criminal Procedure and Evidence Act Chapter 9:07 Sections 319A to G. The Zimbabwean intermediary system is found at each established victim friendly courts are located but its effectiveness has been negatively impacted by the economic downturn experienced by the country in the last eight years from 2000 to 2008.

The first instrument permitting the use of intermediaries in the Namibian courts was introduced in 2003 by the insertion of Section 158A into the Criminal Procedure Act under Section 51 of 1977 through the Criminal Procedure Amendment Act 24 of 2003. Although
section 158 does not use the word “intermediary” to refer to the person through whom a witness may be cross examined, it was generally accepted that the person referred to was in fact an intermediary (Hubbard, 2004). In the following year the Criminal Procedure Amendment Act was replaced by a new Criminal Procedure Act 25 of 2004 which included comprehensive provisions on how intermediaries were to be used to assist children and other vulnerable witnesses in the Namibian courts. The new Namibian Criminal Procedure Act was nevertheless withdrawn and replaced by the old Criminal Procedure Amendment Act. The latter was withdrawn on the grounds that the Namibian government lacked sufficient resources to fully implement it.

Victims of any form of abuse (sexual, physical or neglect) require support, protection and assistance when seeking justice through the courts. However, the victim’s safety during a trial is a legal imperative in Zimbabwe. Though in other countries such as South Africa and Namibia such protection measures pose serious challenges and are frequently inadequate. Various measures were put in place to protect victims of crime in Zimbabwe due to the various concerns that had been raised by the populace. It has been generally accepted that victims of crime globally are protected in various ways in different countries. The Zimbabwean Government accepted in principle that victims of crime by and large are women and children because of their vulnerability in their communities and thus, the ratification of the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power in 1991.

Before 1991 there was no appropriate and corresponding attention that was given to children’s rights and interests. It was from 1991 that there was the realisation of the need to restore the balance between the fundamental rights of suspects and offenders and the rights
and interests of victims by the government. This realisation led to legislative amendments, the creation of Victim Friendly Courts and the creation of Victim Friendly Units in the Zimbabwe Republic Police. All these were to become part of the Victim Friendly Legal System in Zimbabwe (VFLS).

The VFLSZ provides various legal provisions for victims of any form of abuse in Zimbabwe are protected from their perpetrators. These include the imposition of stringent bail conditions on the perpetrators and escort of victims by police to hospitals and courts. The creation of a Victim Friendly Court and the adoption of the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003; 2012) editions were all put in place as deterrent measure, to protect victims of abuse. Amendment No. 8 of 1997 to Section 319 B of the Criminal Procedure and Evidence Act (Chapter 9:07) states that: “if it appears to the court in any criminal proceedings that a person, who is giving evidence or will give evidence in the proceedings, is likely to:

(a) Suffer substantial emotional stress (trauma) from giving evidence: or
(b) Be intimidated, whether by the perpetrator/accused or any other person or by the nature of the proceedings or by the place where they are being conducted, so as not to be able to give evidence fully and truthfully;

The court may do any or one of the following:-

(i) Appoint an intermediary for the person.
(ii) Direct that the person shall give evidence in a position or place, whether in or out of the perpetrator’s/accuser’s presence, that the court considers will reduce the likelihood of the person suffering stress or being intimidated (in camera trial).
(iii) Adjourn the proceedings to some other place, where the court considers the person will be less likely to be subjected to stress or intimidation.”

(iv) Subject to section 81 subsection (1a,b,c,d,e,f,g,h and i) (2) and (3) of the New Zimbabwe Constitution (2013), make an order in terms of courts and Adjudicating Authorities (Publicity Restriction) Act (Chapter 7:04) excluding all persons or any class of persons from the proceedings while the person is giving evidence.

These provisions of Amendment No. 8 of the 1997 Criminal Procedure and Evidence Act Chapter 9:07 further enabled the development of the Protocol on the Multi-Sectoral Management of Child Sexual Abuse in Zimbabwe. The Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2012) is a guidance tool for stakeholders that further refines and strengthens the holistic, effective and efficient service delivery for victims of sexual violence and abuse. It offers a renewed opportunity to ensure that victims of sexual violence and abuse are afforded their right to co-ordinated, comprehensive, quality care and support. The protocol also sets out minimum standards and key procedures for all relevant stakeholders to provide victim centred services to victims of sexual violence and abuse.

Police responses to victims of sexual attack have been unsatisfactory in many countries the world over, Zimbabwe included. This has been attributed to a variety of societal, psychological and economical factors. According to the then Zimbabwe Republic Police Deputy National Coordinator (VFU) (2003 to 2005), police officers before the establishment of the victim friendly unit did not have the required passion for sensitivity towards victims of sexual abuse (VFC Country Report-Zimbabwe, 2005).
This attitude by members of the police caused members of the public to be hostile, resentful and uncooperative with them worse still. Such conduct discouraged crime victims from reporting cases to the police for fear of secondary victimization. However, the Zimbabwe Republic Police (ZRP) through its VFU initiatives has managed to overcome such negative attitudes through specialised training of Victim Friendly Investigators in counselling skills techniques for effective interviewing of victims of abuse as well as provision of a friendly, conducive and empathetic environment for carrying out interviews and medical examinations of victims.

1.2.1 Motivation to the Problem of the Study

Victim Friendly Courts (VFC) were established in order to create a confidential and conducive criminal justice system. The VFC is a special and different closed circuit court designed to allow child victims to talk freely and comfortably about their ordeals in the hands of the abuser. Separate rooms are created for offenders and victims waiting for the trial. During trial proceedings the victim is placed in a separate room from the courtroom with an intermediary or support person. A video camera is placed in the victim’s room for the purpose of capturing and relaying the victim’s testimony into the courtroom where a television monitor receives and shows the victims conduct and testimony.

From the moment a victim reports a case of sexual abuse to the police until the matter is finalised in court, the victim is assisted by the state. The assistance would be in the form of protection from having a face to face encounter with the perpetrator. This would reduce re-traumatisation of the victim. The statements are recorded by the police at no cost to the
victim. Medical examination, treatment and production of medical examination affidavits are done at the state’s expense.

Most importantly the Protocol (Judicial Service Commission, 2012) champions on age, disability and gender sensitive approach and the special measures that are subsequently required for all stakeholders engaged in preventing and responding to victims of sexual violence and abuse. The protocol has the room for revision based on new policy developments on the multi-sectoral management of sexual violence and abuse in the country. When new laws or policies are developed in relation to sexual violence and abuse, these would over-rule the Protocol. The changes would also be annexed to the Protocol which would be considered as an integral part of this Protocol. The purposes of the protocol are:

- To safeguard the rights of victims of sexual violence and abuse, guaranteeing that they receive a holistic package of age and gender sensitive, victim centred services for their psychosocial well-being and protection by the welfare and justice systems.

- To provide a standard set of age and gender sensitive procedures that must be undertaken to ensure this holistic response to child and women victims of sexual abuse.

- To strengthen and clarify the roles and responsibilities between service providers and agencies that have statutory and thus obligatory responsibilities in the delivery of age and gender sensitive, victim centred services thereby enhancing their accountability and credibility (Judicial Service Commission, 2012).

Victims of child sexual abuse are no longer allowed to be re-traumatised once the abuse had been reported to the police (Khan, 1999). The multi-sectoral approach was resuscitated with much vigour. This resulted in the establishment of more national victim friendly courts from
six (6) courts in 2006 to thirteen (13) courts nationwide by 2010. Records from non-governmental organisations (Justice for Children, Child Protection Society, and Just Children Foundation), showed that in 2006, they had received a total of one thousand two hundred (1200) cases of child sexual abuse. This had increased to three thousand five hundred and seventy (3570) cases in 2010. Such an increase was attributed to a lot of lobbying and advocacy work by the police, victim friendly courts subcommittees, non-governmental organisations and other government departments within the child sector. They relentlessly educated children on the different forms of abuse and how perpetrators can be identified before an abuse is committed.

The Children’s Protection and Adoption Act Chapter 5:06 (2005) is a piece of legislation that protects children but it would appear that it was not properly implemented by the government and stakeholders in the child sector. The New Zimbabwe Constitution (2013) has provided support to the Children’s Protection and Adoption Act Chapter 5:06. More child centred rights and interests as enshrined under section 19 sub section (1) (2a,b,c and d) (3a and b (i)(ii)) have been provided in the new constitution. Children’s Protection and Adoption Act Chapter 5:06 (2005) is the Act of Parliament upon which the Victim Friendly Legal System in Zimbabwe is anchored.

It is against this background information about Victim Friendly Legal System that I got motivated by the problem. It then became prudent to carry out an in-depth qualitative study on the assessment of the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of victims of child sexual abuse from further traumatisation.
1.3 Statement of the Problem

The effectiveness of the Victim Friendly Legal System in Zimbabwe has been perceived in different ways with regards to child sexually abused victims. These perceptions on its effectiveness from regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers have either been positive or negative. Claims by the different media houses in Zimbabwe (Newsday, Daily News, The Herald, etc) have been made that child sexual abuse victims continue to be abused even after the abuse has been reported to the police. The current policy and institutional arrangements in Zimbabwe do not appear to effectively complement the Victim Friendly Legal System on the protection of child sexual abuse victims. In view of the background and motivation to the problem of the study, I sought to assess the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of sexually abused victims.

1.4 Purpose of the Study

The purpose of this study was to carry out an assessment of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse. This study was a case study approach which focused on the victim friendly courts situated at the Harare Magistrate Courts, Rotten Row Building within Harare Metropolitan Province.

1.5 Objectives of the Study

The main aim of this study was to carry out an assessment of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse. The specific objectives to the study included:

1.5.1 To assess the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse.
1.5.2 To explore the role of professional counselling in the victim friendly legal system in Zimbabwe.

1.5.3 To identify gaps in the current policy and institutional arrangements that complements the victim friendly legal system in the protection of child victims of sexual abuse from being further traumatised.

1.5.4 To establish the perceptions on the role of various stakeholders in the victim friendly legal system towards the protection of child victims of sexual abuse from further traumatisation.

1.5.5 To determine the response of the various stakeholders on issues about the effectiveness of the victim friendly legal system.

1.6 Research Questions

1.6.1 How effective is the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?

1.6.2 What is the role of professional counselling services in the victim friendly legal system?

1.6.3 What are the gaps in the current policy and institutional arrangements that do not complement the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?

1.6.4 What issues have been raised by key stakeholders on the effectiveness of the victim friendly legal system towards the protection of child victims of sexual abuse from being further traumatised?

1.6.5 How has the response been to issues raised by stakeholders on the effectiveness of the victim friendly legal system in Zimbabwe?
1.7 Significance of the Study

The researcher anticipated that the findings of this study were going to benefit those child victims or potentially vulnerable children of sexual abuse in ways that would reduce their traumatic experiences. It was also hoped that the study would identify loopholes within the current policy and institutional arrangements that target complementing efforts of the victim friendly legal system in Zimbabwe in the protection of sexually abused child victims from further traumatisation. Stakeholders in the child care sector such as the Zimbabwe Republic Police Victim Friendly Unit, Victim Friendly Courts and Non-Governmental Organisations (NGOs) would also benefit. There would be a refocus on their scope of work and aim to fully complement the victim friendly legal system through the Ministry of Justice, Legal and Parliamentary Affairs, Ministry of Home Affairs and the Ministry of Health and Child Care in the protection of child victims of sexual abuse from further traumatisation. The researcher also anticipated that the findings of this study would strengthen the Victim Friendly Legal System’s aims and objectives in fostering a safe environment for children in Zimbabwe.

It would also become clear that some of the domestic violence tragedies as highlighted by the different media houses (Newsday, Daily News, The Standard) and other social networks (Facebook, Twitter) could be linked to continuous traumatisation of some victims. Such traumatisation from childhood would burst out in their adulthood as asserted by the Freud’s psychoanalytic theory (1910). Freud asserted that emotional problems of a child would continue to haunt the individual in adulthood unless they were resolved. Traumatisation is reduced when justice is done within the victim friendly legal system resulting in the victim moving on with life. Findings of this study would also assist those in positions of influence in government policy makers and other key stakeholders to formulate policies to fill any identified gaps.
17.1 Government Line Ministries

I hope that the different government line ministries that work with children especially the Ministry of Health and Child Care, Ministry of Labour, Public Service and Social Welfare (Department of Social Welfare), Ministry of Justice, Legal and Parliamentary Affairs and Ministry of Home Affairs to speak with one voice and lobby for tight policy management and formulation of strategies that address the shortcomings of the current policy and institutional arrangements on the protection of victims of child sexual abuse as indicated in the background and motivation to the problem of the study section. In other words the establishment of a one stop shop in the victim friendly legal system in Zimbabwe would effectively assist child victims of sexual abuse from further traumatisation. The one stop shop victim friendly system has been practiced in other countries such as South Africa and Namibia and has been proved to be effective.

1.7.2 Non-Governmental Organisations

The findings of the study would assist non-governmental organisations (NGOs) in the child sector to coordinate their activities with other partners and put first the interests of the child. There would be no need for NGOs to compete with each other whilst the child is not being protected from further sexual abuse.

1.8 Delimitation of the Study

The researcher focused on government line Ministries of Justice, Legal and Parliamentary Affairs (Department of National Prosecuting Authority), Ministry of Home Affairs (Zimbabwe Republic Police Victim Friendly Unit Section) and the Judicial Service Commission (Victim Friendly Courts at Harare Magistrates Court). These institutions were assessed on their practices, perceptions, attitudes, behaviours, meaning and values on the
effectiveness of the victim friendly legal system in Zimbabwe in the protection of victims of child sexual abuse from further traumatisation. The theoretical framework that guided this study were the humanistic and trauma theories.

1.9 Limitations of the Study

The limitations of the research included generalisability of information across settings. Due to the fact that the Victim Friendly Legal System is Eurocentric hence became difficult to establish the effectiveness of the system in the African context. Child sexual abuse in the African traditional context has been kept as a closely guarded secret culturally. This became a challenge to effectively make an assessment of the effectiveness of the system. Another limitation to this research was that the assessment of the effectiveness of the system came from those participants who directly work under the system. These participants were regional magistrates, regional public prosecutors, national coordinator of the victim friendly courts, intermediaries and victim friendly unit police officers in the Harare Metropolitan Province. The other limitation to the study was on the need to abide by Official Secrets Act policy and regulations that bound all my research participants as they are all government officials who are not supposed to denigrate government policies. Thus the information that was deemed unfavourable to publish in this thesis could not be published due the government policy on publishing information (Section 4 of the Official Secrets Act Chapter 11:09) that would be deemed unfavourable by those in authority.

1.9.1 Mitigatory Strategies to the Limitations

Due to the limitations to the study stated above, I proposed to make use of some mitigatory strategies in addressing those hindrances. These included seeking the assistance of government officials in the departments concerned to obtain consent where the Official
Secrets Act policy and regulations had to be adhered to. On the different interpretation of meanings and understandings that would likely be noted on the ground in the child sector, I took note of the various interests of the research participants by continuously engaging them whereupon the best interests of the child were given precedence.

1.10 Definition of Key Terms

**Aggravated indecent assault** refers to the unlawful and intentional assault in an indecent way of either male or female involving the penetration of any part of the persons’ body or of the perpetrators’ body (Protocol, 2012).

**Anatomically correct dolls** These are special dolls that have the same body parts as a real person and assist children to give clear and accurate testimony during interviews or when giving evidence in court (Protocol, 2012).

**Child** refers to any male or female person under the age of 18 years (New Zimbabwe Constitution, Amendment No. 20 of 2013).

**Child Abuse** refers to the maltreatment of children by older people in a family, community or country at large.

**Child sexual abuse** refers to the involvement of a child in sexual activity with another person that he or she does not fully comprehend; is unable to give informed consent to; for which the child is not developmentally prepared; or that violates the law or social taboos of a society. Children can be sexually abused by both adults and other children who are in a position of
responsibility, trust or power over the victim by virtue of their age or stage of development (Protocol, 2012).

**Criminal Law** is a set of rules to regulate conduct of people within society/community whereby those who commit crimes are seen as being a social menace (Feltoe, 1989).

**Counselling** refers to the helping relationship focusing on the mental health, psychological or human development principles, through cognitive, affective, behavioural or systemic interventions, strategies that address wellness and personal growth as well as pathology (Nelson-Jones, 1997).

**Effectiveness** refers to working well and producing the intended results or producing a decisive or desired effect.

**Evaluation** refers to the systematic investigation of the value, importance, significance of something, someone along defined dimensions or the judgment of the quality of something.

**Gender** refers to the social differences between males and females that are learned and though deeply rooted in culture are changeable over time and have wide variations both within and between cultures. Gender also determines the roles, responsibilities, opportunities, expectations and limitations of males and females in a given context (Protocol, 2012).

**Indecent Assault** refers to the display or exposure of one’s genitals for sexual satisfaction. This could either be a male or a female person.
**Intermediary** refers to a specially trained person designated to assist a child throughout the justice process in order to prevent the risk of duress, re-victimisation or secondary victimisation.

**PEP** (Post Exposure Prophylaxis) refers to a short term antiretroviral treatment to reduce the likelihood of HIV infection after potential exposure. To be effective, it must be administered generally within 72 hours of potential exposure.

**Perpetrator** refers to a person, group or institution that directly inflicts or otherwise supports sexual violence or abuse on another person.

**Rape** refers to sexual intercourse by a male person over the age of 14 years without the female person’s consent. Vaginal penetration of the slightest degree is sufficient with a penis (Criminal Law [Codification and Reform Act] Chapter 9:23).

**Re-victimisation** refers to a situation in which a person suffers more than one criminal incident over a specific period of time (Pearlman and Saakvitne, 1995).

**Secondary victimisation** refers to victimisation that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim (Pearlman and Saakvitne, 1995).

**Sodomy** refers to sexual intercourse that takes place between two males through the anus. At law the blameworthiness is increased if the act is performed on a child and thus without his consent.
**Trauma** refers to the experiencing, witnessing, anticipating or being confronted with an event that involve actual or threatened death or sexual violence by a stranger, relative or friend (Classen et al, 1993).

**Trial** refers to the hearing of the criminal case in court with the intention of establishing or determining the guilt or innocence of the person being charged with committing a crime (Criminal Procedure and Evidence Act Chapter 9:07).

**Victim/Survivor** refers to a person who has experienced and survived sexual violence or abuse.

**Victim Friendly Clinic** refers to a healthy facility that offers specialised care and support to victims of violence, particularly sexual violence. The facilities provide medical care, professional counselling services and ensure referrals to other services to ensure a continuum of comprehensive care (Protocol, 2012).

**Victim Friendly Court** refers to a specialised court that has been enacted by law to allow vulnerable witnesses to give evidence through closed circuit television (CCTV) and other special victim sensitive measures (Criminal Procedure and Evidence Act Chapter 9:07).

**Victim Friendly System** refers to an intervention strategy that follows legal parameters which seek to reduce trauma on victims of child sexual abuse (Criminal Procedure and Evidence Act Chapter 9:07).
**Vulnerable witness** refers to a person who is or will give evidence in criminal proceedings and is likely to suffer substantial emotional stress from giving evidence, or to be intimidated, whether by the perpetrator or any other person or by the nature of the proceedings or by the place where they are being conducted, so as not to be able to give evidence fully and truthfully. The vulnerable witness is entitled to access special measures by a court. Women, girls and boys are particularly more likely to fall into this category. However, vulnerability is ultimately determined by factors that result in the individual being less powerful, visible or more dependent on others for their survival and well-being (Criminal Procedure and Evidence Act Chapter 9:07).

### 1.11 Organisation of the Thesis

The thesis was organised into five chapters. **Chapter One** focused on the introduction which comprised of the problem, the background and motivation to the problem of the study, statement of the problem, purpose of the study, objectives of the study, research questions significance of the study, delimitations of the study and anticipated limitations of the study, mitigatory strategies to the limitations of the study, definition of key terms and the organisation of the thesis. The rationale for focusing on sexually abused children and the VFLS came from the realisation by the government that victims and alleged abusers were facing traumatic experiences in the delivery of justice in Zimbabwe.

**Chapter Two** explored and reviewed related literature in the area of assessment of perceptions of the effectiveness of the victim friendly system in the protection of child victims of sexual abuse. The chapter covered domestic, regional and international instruments on child protection, the need for victim friendly system, conceptual framework of the study,
and the theoretical framework for the study. Some of the theories that would be reviewed include the Humanistic Theory and Trauma Theory. The role of professional counselling in the Victim Friendly Legal System as well as other roles, issues and concerns of stakeholders in the system would also be reviewed.

**Chapter Three** looked at the research methodology that would be used in the study. The researcher began by conceptualising research methodology employed in this thesis. The thesis employed the qualitative research methodology. The researcher went on to identify and define the research paradigm suitable for the thesis. The thesis was rooted in the interpretive paradigm. A case study method was used in the thesis. Discussion of the study population, the sample and sampling procedures, research instruments used in the study, data collection/generation methods and management procedures, data presentation, analysis and ethical considerations was presented in this chapter.

**Chapter Four** dwelt on the data presentation, analysis and interpretation of the research findings from the study. Research data that was generated by means of the three research instruments used, that is, in-depth face to face interviews, observations and analysis of relevant documents. This whole process was based on the research questions and objectives of the study that directed the study. The discussion of the themes that emerged from the research findings from the study was also made in this chapter. The themes that emerged were anchored on the in-depth face to face interviews, observations and analysis of relevant documents to the study by the researcher.

**Chapter Five** concludes the study. It subsumes the summary of the findings, conclusions and recommendations that were made by the researcher to the relevant authorities. Specific
recommendations would also be made to the various critical actors/players in the victim friendly system. In a bid to implement proper budgetary plans and implications for the thesis of this magnitude, Gray (2009:530-1) gives things any researcher needs to be clear about:

- the objectives of the report;
- access to resources needed to complete it;
- time scales for delivery;
- the extent to which the research report would be purely descriptive or analytical and;
- the importance of the philosophical or theoretical underpinnings of the study and the intended audience and style, tone, structure that report should convey.

1.12 Chapter Summary

This chapter focused on the problem, the background to the study, statement of the problem, purpose of the study, research questions, objectives of the study, significance of the study, delimitations of the study, limitations of the study, organisation of the study, and definition of key terms. The key information on the background to the study was on the rationale behind the establishment of the victim friendly legal system in Zimbabwe and in other countries such as Namibia and South Africa. A brief background to the current policy and institutional arrangement was given with regards to the victim friendly legal system in Zimbabwe. Chapter Two focuses on the review of related literature to the study.
CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Introduction

This chapter focuses on the review of related literature to the study. Generally, the purpose of a review is to analyse critically a segment of a published body of knowledge through summary, classification and comparison of prior research studies, empirical reviews of related literature, conceptual frameworks and theoretical frameworks and their perspectives. Going through the above will assist me in gaining a deeper understanding and meaning of the problem to my study in the Zimbabwean context, regionally and internationally. Hart (1998:223) defines literature review as follows:

A selection of available documents (both published and unpublished) on the topic which contain information, ideas, data and evidence written from a particular standpoint to fulfil certain aims or express certain views on the nature on the topic and how it is being investigated, and the effective evaluation of these documents in relation to the research being proposed.

The above quoted enhances my argument to the problem as I will be able to go through several authoritative documents from other parts of the world. In proffering my argument to the problem of the study, I will have an informed position having done a comparative analysis of the problems raised in those documents in relation to my study.

This chapter is divided into seven sections. Section One covers the Introduction, Section Two covers the Conceptual Framework that was constructed and used in the study. Section Three focused on the Theoretical Framework and Perspectives of the study, Section Four explored
on the Regional and International Instruments. Section Five presented The Rationale for Victim Friendly System; Section Six explored the Empirical Review of Related Literature and Section Seven was the Chapter Summary, the gaps justifying the thesis. The bases of the sections were the various themes raised in the research questions. The review of related literature was also presented in the form of claims made by authorities and research carried out by other scholars where applicable with regards to the perceptions of effectiveness of the victim friendly legal system.

A comparative review of the Victim Friendly Legal System in countries such as Namibia and South Africa was given regarding the protection of victims of child sexual abuse. Attempts were also made in each of the sections to link the reviewed literature to the current study. The most controversial issue in child sexual abuse has been the role of the family. In all three countries (that is, South Africa, Namibia and Zimbabwe) information supplied by government departments, academics and scholars, policy speeches, police records and statute books was examined. The Internet was a significant source of information. It was used to access e-journals and other documents on prosecutors, magistrates, Victim Friendly Unit in the police force, intermediaries and the protection of child witnesses in the court system.

2.2 Conceptual Framework

Conceptual frameworks or models are used to guide research studies in counselling practice and other educational programmes (Warmbrod, 1986). Very few researchers have described the criteria used for selecting a conceptual framework for guiding the design of professional counselling service as an effective intervention strategy on child victims of sexual abuse. The United Nations Convention on the Rights of the Child (UNCRC) defined a child as a person
under the age of eighteen (18) years. The Convention also acknowledged children’s freedom from violence in several of its provisions especially under Article 19 on freedom from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person(s) who has (have) the care of the child.

It was from this international convention that I derived the conceptual framework to this study. The conceptual framework/model of the study is deductively anchored on the UNCRC as articulated under Article 19. In the present study, the UNCRC is anchored on four pillars of the judicial system, the family, victims of sexual abuse (children) and stakeholders in the child welfare sector. These pillars allowed me to build a stronger conceptual framework that guided the study. The convention’s four pillars formed the bedrock of my study where the participants were drawn from them. This gave me a stronger conceptual framework to the study. It was also imperative to realise that “counselling” covers: the provision of information and advice to empower children and support others acting on children’s behalf regarding all courses of action required to prevent or respond to incidents of violence; sexual abuse; legal counselling; and psychological or psychosocial counselling, that is, therapeutic interventions designed to prevent, mitigate or repair the mental, moral and social damage caused by violence including help to address feelings of fear, guilt, shame and confusion children may experience.

Information and advice provided to children would be conveyed in a manner adapted to their age, maturity and circumstances, in language children could understand and which is gender and culture sensitive, supported by child friendly materials and information services. There was no sharp conceptual distinction between complaints and reports made by victims and
perpetrators. Complaints resulted from the failure to prevent sexual abuse on children and ensure the effective protection of victims. In the context of this research study, the term “complaint” was used to refer to communications about sexual abuse allegations made by victims or those acting on their behalf to relevant authorities with the expectation of receiving protection, assistance or redress. This included the investigation of incidents of sexual abuse and the imposition of punishment against those found guilty in a court of law.

The term “reporting” is used here to refer to communications on incidents of sexual abuse made to the relevant authorities by someone, be it a child or an adult, other than the victim. The fight to protect children from sexual abuse required a holistic approach, involving: awareness raising, prevention, law enforcement, and relevant data and research about previous trends; the protection, treatment, recovery and social reintegration of child victims; and the investigation and punishment of perpetrators. Although this research study focused on assessment of perceptions of the effectiveness of the victim friendly legal system in the protection of child victims of sexual abuse, the subject of professional counselling, complaint and reporting mechanisms, some brief comments on their links to other components of children’s freedom from sexual abuse was needed.

Firstly, advocacy and awareness campaigns on children’s right to freedom from sexual abuse were essential in promoting more effective mechanisms. If sexual abuse remained pervasive and socially accepted, most children would not complain about it, most adults would not report sexual abuse against children, and professionals would hesitate to act.
Secondly, complaints and reporting on sexual violence against children would be intimately related to the larger issues of criminal and child protection proceedings. Whether complaints and reports lead to appropriate legal or other relevant action, clearance rate of cases during trials and conviction rates of alleged perpetrators would be some of the key indicators of the assessment of perceptions of the effectiveness of the victim friendly legal system in Zimbabwe. Unfortunately, many challenges have prevailed due to lack of information on the outcome of child protection and criminal proceedings involving child victims. This conceptual framework was inductively derived from two (2) theories, that is, Humanistic Theory and Trauma Theory.

### 2.3 Theoretical Framework and Perspectives

Most research studies have an explicit or implicit theory which describes, explains, predicts or controls the phenomenon under study. Theories are linked to conceptual models and frameworks; whereas a conceptual model is more abstract than a theory. A theory may be derived from a model; the framework is derived inductively from the theory (Burns and Groves, 2001). Theories are important for intervention assessment of perception research because:

- They guide the development of the intervention and the design and conduct of the study; and
- Attempt to explain how the intervention works and which factors facilitate or inhibit the effectiveness of the intervention.

There is need to make an assessment of different theories available within a topical area of interest before selecting one. Some of the theories that were assessed in this study included the behavioural theory, cognitive-behavioural theory, crisis intervention, assessment theory,
systems theory, social work critical theory, humanistic theory and trauma theory. These theories were relevant to my study as they informed in some way ranging from the victims’ behaviour, actions, feelings and thoughts about their situation. In order to make an informed decision in selecting a conceptual model, the researcher conducted a comprehensive review of the related literature on the topic under study.

Having outlined the conceptual framework of particular interest to this study, the researcher found it necessary to consider some of the theories that guide the study. A definition of the term theory suffices. A theory consists of a set of interrelated concepts, definitions and propositions that demonstrate relationships between variables (Gray, 2009). A theory can also be defined as a set of interrelated constructs (concepts), definitions, and propositions that present a relationship of phenomena by specifying relationships among variables, with the purpose of explaining and predicting phenomena (Kerlinger and Lee, 2000). Gill and Johnson (2002: 221) in Gary (2009: 101) put forward a seven (7) fold explanation of a theory. According to these authors, a theory:

- is an accumulated body of knowledge, written by acknowledged experts;
- informs ‘state of the art’ concepts and innovations;
- is a body of work where inconsequential and misleading ideas can be filtered out;
- represents knowledge that should be viewed critically and rejected when incompatible with practice;
- adds interest and intellectual stimulation to a project;
- acts as a model against which ‘live’ business processes can be evaluated; and
- guides execution of research methodology.

The present study derived guidance and direction from the two (2) theories: the humanistic theory and trauma theory that I perceived to be more relevant to my study.
2.3.1 Humanistic Theory

The humanistic approach is characterised by a process experiential model of traumatic processing. The starting point is in understanding how drastically the victim’s perceived world would have been transformed by trauma (Elliott et al, 1998). A criminal or sexual assault or a natural or human disaster divides the victim’s life into three phenomenological moments, that is, before, during and after the traumatic event (Wertz, 1985). In this model, post traumatic stress disorder (PTSD) is viewed as having two major conceptual components: an emotional processing conflict model and a trauma related emotion schemes model. It was argued by Elliott et al, (1998) that these aspects of PTSD have been largely neglected by the dominant information processing models.

The Diagnostic Statistical Manual IV Post Traumatic Stress Disorder (DSM IV PTSD) clustering of symptoms in terms of re-experiencing, avoidance/distancing and hyper arousal was seen by Elliott et al, (1998) as having some phenomenological validity, and would be accounted for in this model in several ways. For instance, within the emotional processing conflict part of this model, re-experiencing was seen as the human tendency for a need to resolve and master important painful or interrupted emotional experiences (Greenberg et al, 1993). Thus these memories can be seen as “unfinished businesses.” Trauma related emotion schemes can be understood as comprising changes in the client’s views of the world, others and self in terms of dangerousness, unpredictability, vulnerability, etc (Elliott et al, 1998). Although this interesting model offers cogent reasoning on the phenomenology and treatment of PTSD it does not address why some victims are able to process traumatic events while others are not.
Victims of sexual abuse are in one way or the other bound to such traumatic experiences as a result of the abuse. Post traumatic stress disorder if not professionally managed through counselling services, child victims have a chance of re-experiencing the traumatic event in their adulthood. Professional counselling to victims of sexual abuse assists in the management of emotional stress that builds up internally. Thus, victims of sexual abuse at most are always living in fear and when they get to be upset, they can easily fall back to their earlier state of discomfort.

(i) Tenets of humanistic theory

Basic sense of trust is the client’s ability to move forward in a constructive manner if conditions fostering growth are present. His (Rogers) professional experience taught him that if one is able to get to the core of an individual, one finds a trustworthy, positive centre (Rogers, 1987a). Rogers firmly maintained that people are trustworthy, resourceful, capable of self understanding and self-direction, able to make constructive changes and able to live effective and productive lives. When counsellors/therapists are able to experience and communicate their realness, support, caring and nonjudgmental understanding, significant changes in the client are most likely to occur.

Rogers expresses little sympathy for approaches based on the assumption that the individual cannot be trusted and instead needs to be directed, motivated, instructed, punished, rewarded, controlled and managed by others who are in a superior and “expert” position. He maintained that three therapist/counsellor attributes create a growth-promoting climate in which individuals can move forward and become what they are capable of becoming: congruence (genuineness, or realness); unconditional positive regard (acceptance and caring); and
accurate empathic understanding (an ability to deeply grasp the subjective world of another person).

According to Rogers, if therapists/counsellors communicate these attitudes, those being helped will become less defensive and more open to themselves and their world and they will behave in pro-social and constructive ways. Rogers held the deep conviction that “human beings are essentially forward moving organisms drawn to the fulfilment of their own creative natures and to the pursuit of truth and social responsiveness” (Thorne, 1992, p. 21). The basic drive to fulfilment implies that people will move towards a healthy living if the way seems open for them to do so. Broadley (1999) writes about the actualising tendency, a directional process of striving toward realisation, fulfilment, autonomy, self-determination, and perfection. This growth force within us provides an internal source of healing, but it does not imply a movement away from relationships, interdependence, connection, or socialisation.

This positive view of human nature has significant implications for the practice of counselling. Due to the belief that the individual has an inherent capacity to move away from maladjustment and toward psychological health, the therapist/counsellor places the primary responsibility on the client. The person-centered approach rejects the role of the therapist/counsellor as the authority who knows best and of the passive client who merely follows the dictates of the therapist. Therapy is rooted in the client’s capacity for awareness and self-directed change in attitudes and behaviour. The person-centered therapist focuses on the constructive side of human nature, on what is right with the person and on the assets the individual brings to therapy.
The emphasis is on how clients act in their world with others, how they can move forward in constructive directions and how they can successfully encounter obstacles (both from within themselves and outside of themselves) that are blocking their growth. Counsellors/therapists with a humanistic orientation encourage their clients to make changes that will lead to living fully and authentically, with the realisation that this kind of existence demands a continuing struggle. People never arrive at a final state of being self-actualised; rather, they are continually involved in the process of actualising themselves.

(ii) How was the theory developed

The person-centered approach is based on concepts from humanistic psychology, many of which were articulated by Carl Rogers in the early 1940s. Of all the pioneers who have founded a therapeutic approach, Rogers stands out as one of the most influential figures in revolutionising the direction of counselling theory and practice. Our opinion is supported by a 2006 survey conducted by Psychotherapy Networker (2007), which identified Carl Rogers as the single most influential psychotherapist of the past quarter century. Rogers has become known as a “quiet revolutionary” who both contributed to theory development and whose influence continues to shape counselling practice today (Rogers and Russell, 2002). The person-centered approach shares many concepts and values with the existential perspective. Rogers’s basic assumptions are that people are essentially trustworthy, that they have a vast potential for understanding themselves and resolving their own problems without direct intervention on the therapist’s part, and that they are capable of self-directed growth if they are involved in a specific kind of therapeutic relationship.

From the beginning, Rogers emphasised the attitudes and personal characteristics of the therapist and the quality of the client therapist relationship as the prime determinants of the
outcome of the therapeutic process. He consistently relegated to a secondary position matters such as the therapist’s knowledge of theory and techniques. This belief in the client’s capacity for self-healing is in contrast with many theories that view the therapist’s techniques as the most powerful agents that lead to change (Tallman and Bohart, 1999). Clearly, Rogers revolutionised the field of psychotherapy by proposing a theory that centered on the client as the agent for self-change (Bozarth, Zimring and Tausch, 2002). Contemporary person-centered therapy is the result of an evolutionary process that continues to remain open to change and refinement (Cain and Seeman, 2002). Rogers did not present the person-centered theory as a fixed and completed approach to counselling. He hoped that others would view his theory as a set of tentative principles relating to how the therapy process develops, not as dogma. Rogers expected his model to evolve and was open and receptive to change.

(iii) **The relevance of the humanistic theory to this study**

The humanistic theory is very relevant to my study in the sense that it gives the child victim of sexual abuse the opportunity to heal from the abuse and move on with their lives. This theory assumes that the victim has the capacity to self-healing on their own. The Victim Friendly Legal System is one such intervention strategy that seeks to capacitate the self-healing of the victim by saying it all to the relevant authorities in the Criminal Justice System. The imposition of a penalty in a prison of the perpetrator is a sigh of relief to the victim for her to heal and move on with her life in a positive manner. The humanistic theory fits in very well in addressing the research problem to the study. It seeks to close the gap on the current policy and institutional arrangement in Zimbabwe in trying to complement the victim friendly legal system by way of capacitating the self-healing of the child victims of sexual abuse in an environment that enhances positive growth. The gap on the current policy
and institutional arrangement in Zimbabwe lies on the failure by the government to offer continuous psychosocial support to the victims after the court trial.

2.3.2 Trauma Theory

There has been wide documented research on the effects of trauma on sexually abused victims (children and adults) which has become increasingly available. The research is consistent in its descriptions of the cognitive, affective and behavioural alterations following exposure to trauma. From early childhood through to adulthood, trauma can alter the way we view ourselves, the world around us, and alter how we process information and the way we behave and respond to our environment. Without intervention, these cognitive processes and behavioural responses can lead to learning deficiencies, performance problems, and problematic behaviour being exhibited by victims of traumatic exposures (Classen et al, 1993).

Classen et al, (1993) defined “trauma” as an abrupt physical disruption in an individual’s ordinary daily experience that often causes a loss of control over the body, and may be perceived as objectification of the body. The traumatised individual becomes helpless because he/she experiences the world as unpredictable, threatening and assaulting, which fundamentally threatens the individual’s sense of self. The traumatic event is extremely alien and, as such, an experience outside the range of ordinary life with respect to which “the mind has little immediate resources but to distort the event or to banish it from consciousness” (Classen et al, 1993: 98). The perceived helplessness is often paralleled by pain and fear that emanate from the stricken individual’s sense of having little or no control over what happened.
Regarding the term “stress”, researchers have adopted a stimulus-response perspective, because there has been a relationship observed between the environment and responses, for example, anxiety (Jones and Bright, 2001). Stress has been defined as a transactional approach (Goldberger and Breznitz, 1993). An interviewee who shows anxiety related reluctance to narrate his or her experiences causes stress to the counsellor in his or her efforts to create a positive narrative environment. In this perspective, stress is seen as a specific relation between the human being and the environment that is perceived and evaluated as a strain that may exceed the individual’s coping resources.

Moreover, Huether et al, (1999) argue that stimulus and response are closely linked components that interact and mutually affect each other in a process described as the “stress reaction process” (SRP). Stress reaction process is triggered by a physiological and/or a psychosocial, imagined or anticipated strain. For example, a suspect’s reluctance to admit a crime and then elaborate on it may be due to the uncertainty of what will happen next. The SRP implies continuous interaction and feedback between cognitive and emotional appraisal of the strain and its meaning for the stricken victim. From this emanates a sequence of physiological, cognitive, emotional and behavioural reactions that induce an individual coping behaviour relevant to the perceived situation. For that reason, it is important that a police interviewer be receptive and provides space for the interviewee to ventilate psychologically loaded issues in the interview.

These issues are not necessarily investigative facts. For example, a female suspect, also a mother may worry very much about her children, a process which stresses her and hinders her from even thinking about providing information to the investigation. If she has the opportunity to ventilate her anxiety, it is likely that she would see her situation from another,
somewhat less anxious perspective. When the individual can manage to terminate the Stress Reaction Process, a controllable SRP is established; but when the SRP is non-manageable and cannot be terminated, an uncontrollable SRP is apparent. Huether et al. (1999) stressed that an uncontrollable SRP is existent when there are no resources, no adequate coping strategies that can be applied to eliminate the stressor.

Following exposure to a potentially trauma inducing incident, victims/survivors may become frozen in an activated state of arousal. “Arousal” refers to a heightened state of alert or a persistent fear for one's safety. Short term and prolonged arousal can affect cognitive and behavioural functions. In the arousal state, changes in the brain are triggered by a variety of stress related functions (van der Kolk, 1996). Bremmer et al. (1996) found that victims of physical/sexual abuse traumatisation had lower memory volume in the left brain (hippocampal) area than did the non-abused. This “left-brain function” refers to understanding or processing information. One of these functional alterations takes place in the neocortex.

Perry and Szalavitr (2006) and Bremmer (2001) have found that while in the arousal state it becomes difficult to process information because of the altered functioning of the neocortex. Anyone who has had to see a physician for potentially life-threatening condition may remember very little of what the physician said. Only after getting home, (a place of safety) comes the realisation of how many questions needed to be asked, which were forgotten at the time. Health advocates today understand how difficult it is for a victim to process information while in an anxious (arousal) state and recommend that victims take another family member or friend with them to the counsellor’s office as well as write down all the questions needing to be asked.
If a child who has been traumatised remains in an aroused state of fear and finds it difficult to process verbal information, it then becomes difficult to follow directions, to recall what was heard, and to make sense out of what is being said. Focusing, attending, retaining and recalling verbal information becomes very difficult. These are primary learning functions that can be altered during or immediately following traumatic exposure. For some, it may continue unrecognised for long periods.

Cognitive deficits such as poor problem solving, (unable to think things out or make sense of what is happening), low self-esteem (how one thinks of oneself, victim-thinking) and hopelessness (loss of future orientation) have all been clearly linked to negative (traumatic) life events (Stein and Kendell, 2004; LeDoux, 2002; Schore, 2001; Teicher, 2000; Yang and Clum, 2000). The fact is trauma has been shown to significantly compromise cognitive development (Levine, 2007; Perry and Szalavitr, 2006; Trickett, McBride and Chang, 1995). Yang and Clum (2000) using a series of structured equation analysis showed that “early negative life events” have a strong impact on cognitive deficits which can have a strong impact on suicidal behaviour as well. Furthermore, stress induces the release of glucocorticoids, such as cortisol, that can damage the left hippocampal area of the brain, increasing memory deficit (Perry and Szalavitr, 2006; Bremmer, 2001).

Cognitive alterations following trauma can take place at any age including early infancy. The right brain is involved “in the vital functions that support survival and enable the organism to cope actively and passively with stress (Schore, 2001)”. The right hemisphere controls perception analysis of visual patterns and emotions (Alessi and Ballard, 2001). Buck (1994) supports the belief that the right side of the brain is where the dominant reactions to stress occur. Main (1996) observes that the ability to regulate ones response to stress can be
negatively altered even during early infancy when a child is exposed to such negative environmental influences such as sexual abuse and violence.

Schore (2001a) concurs and Hopkins and Butterworth (1990) support these and similar findings that appropriate responses to external changes (stress/crisis) can be altered by activation of the arousal state; the heightened state of fear induced by traumatic exposure. Interventions must help trauma victims to change their thought processes. However, cognitive intervention can only be successful when first the sensory experience to trauma is altered. For example, the September 11 disaster, Americans were repeatedly reassured (cognitively) that they were safe, but this could not be accepted until they first felt safe which is a sensory experience. What was seen communicated a greater sense of safety than what was being heard. Understanding trauma as a sensory experience is also critical to understanding the levels of intervention necessary to restore cognitive functioning as well as behavioural appropriateness.

(i) Tenets of trauma theory

The stressful event poses a problem which is by definition insoluble in the immediate future. The identified problem overtaxes the psychological resources of the family, since it is beyond their traditional problem solving methods. Thus, the situation can be perceived as a threat or danger to the life goals of the family members. The crisis period is characterised by tension which mounts to a peak, then falls. Crisis situation can awaken unresolved key problems from both the near and distant past. (Parad and Caplan, 1960, pp. 11–12)

(ii) How was the theory developed

The relationship between trauma and mental illness was first investigated by the neurologist Jean Martin Charcot, a French physician who was working with traumatised women in the
Salpetriere hospital. During the late 19th century, a major focus of Charcot’s study was “hysteria”, a disorder commonly diagnosed in women. Hysterical symptoms were characterised by sudden paralysis, amnesia, sensory loss, and convulsions. Women comprised the vast majority of patients with hysteria, and at the time, such symptoms were thought to originate in the uterus. Until Charcot, the common treatment for hysteria was hysterectomy (van der Kolk, Weisaeth, and van der Hart, 1996, p. 50).

Charcot was the first to understand that the origin of hysterical symptoms was not physiological but rather psychological in nature, although he was not interested in the inner lives of his female patients. He noted that traumatic events could induce a hypnotic state in his patients and was the first to “describe both the problems of suggestibility in these patients, and the fact that hysterical attacks are dissociative problems—the results of having endured unbearable experiences” (van der Kolk, Weisaeth, and van der Hart, 1996, p. 50). In Salpetriere, young women who suffered violence, rape, and sexual abuse found safety and shelter. Charcot presented his theory to large audiences through live demonstrations in which patients were hypnotised and then helped to remember their trauma, a process that culminated in the termination of their symptoms (Herman, 1992).

Pierre Janet, a student of Charcot, continued to study dissociative phenomena and traumatic memories (van der Kolk, Weisaeth, et al., 1996). Janet investigated the influence of patients’ traumatic experiences on personality development and behaviour. He recognised that patients’ intense affects were reactive to their perceptions of the traumatic events that happened to them. He also found that through hypnosis and abreaction, or re-exposure to the traumatic memories, patients’ symptoms could be alleviated (van der Kolk, Weisaeth, et al., 1996). In his early studies of hysteria (1893–1895), Freud, too, was initially influenced by
Charcot and adopted some of his ideas. In *Studies on Hysteria* co-authored with Josef Breuer, Freud (1893) suggested that we must point out that we consider it essential for the explanation of hysterical phenomena to assume the presence of dissociation, a splitting of the content of consciousness. The regular and essential content of a hysterical attack is the recurrence of a physical state which the patient has experience earlier as cited in van der Kolk, Weisaeth, et al., (1996).

Freud and Breuer (1893) termed traumatic dissociation “hypnoid hysteria” and highlighted its relationship to a traumatic antecedent. In 1896, Freud suggested that “a preconscious experience of sexual relations resulting from sexual abuse committed by another person is the specific cause of hysteria not merely an agent provocateur” (1896, p. 195, cited in van der Kolk, Weisaeth, et al., 1996, p. 54). In the 1880s, Freud and Breuer independently concluded that hysteria was caused by psychological trauma. They agreed that unbearable reactions to traumatic experiences produced an altered state of consciousness that they called “dissociation.” According to Freud and Breuer dissociation manifested in hysterical symptoms (Herman, 1992). Putting the emotions into words and reconstructing the past helped alleviate the patients’ symptoms.

Freud eventually moved from what has been termed “seduction theory” to conflict theory, suggesting that it was not memories of external trauma that caused hysterical symptoms but rather the unacceptable nature of sexual and aggressive wishes. Seduction Theory was relevant to this study in the sense that child victims of sexual abuse experienced trauma as a result of the unacceptable nature of the sexual advances done to them. What his followers neglected to notice was that whereas Freud privileged intrapsychic theory and fantasy over external trauma, he did suggest that it was possible for external trauma to influence the
patient’s state of mind (Diamond, 2004). Ferenczi (1955) was the only one among Freud’s followers who regarded his patients’ stories of childhood sexual abuse as vertical recollections, but he remained somewhat of an outsider in the psychoanalytic movement during his lifetime, his theories gaining favour only in the decades following his untimely death in 1933.

Crisis intervention methods to address traumatic events developed gradually, with the establishment of the first suicide hotline in 1902 in San Francisco. Psychological “first aid” was then further developed in the context of military combat. During World War I, psychiatrists observed that soldiers returned with “shell shock” syndrome. Psychological first aid was first developed to help World War I soldiers overcome their symptoms of uncontrollable weeping and screaming, memory loss, physical paralysis, and lack of responsiveness (Herman, 1992). The goal of psychological first aid was to provide a short intervention that would help the soldiers recover and return to the front as soon as possible.

It was observed that by providing intervention close to the front and soon after deployment, traumatised soldiers were able to overcome their shell shock symptoms and return to active combat duty. In 1923, following World War I, Abram Kardiner started to treat traumatised U.S. war veterans (Kardiner, 1941). Kardiner (1941) observed the nature of re-enactment, a central construct in modern trauma theory, and noted that “the subject acts as if the original traumatic situation were still in existence and engages in protective devices which failed on the original occasion” (p. 82; cited in van der Kolk, Weisaeth, et al., 1996, p. 58).

Kardiner (1941) also foresaw an important controversy that continues to haunt trauma therapists, that is, whether to bring the traumatic memories into the patient’s consciousness or
to focus on stabilisation (van der Kolk, van der Hart, and Marmar, 1996). Although earlier trauma theorists blamed the soldiers’ symptoms on their poor moral character, Kardiner understood that any man could be affected by the atrocities of war and that the traumatic symptoms were a normal response to an unbearable situation.

(iii) **The relevance of the trauma theory to this study**

Trauma theory is relevant to my study in the sense that, one of the goals of the establishment of the Victim Friendly Legal System in Zimbabwe was to protect child victims of sexual abuse from further traumatisation. What is evident from the tenets and historical background of trauma theory is that, trauma can reoccur to a victim at any given time if proper psychosocial counselling services are not adequately provided. This study focused on the assessment of perceptions of the effectiveness of the victim friendly legal system in Zimbabwe. Victim friendly legal system in Zimbabwe was established after an outcry in the manner victims of sexual abuse were being treated at police stations and courts (VWC, 1992). Victims were continuously being subjected to further traumatisation after they had reported their cases. Thus the need to include trauma theory as one of the theories that informed this study.

As detailed above, trauma can trigger (arouse) the activation of the autonomic nervous system to ready itself to resist or solve the real or perceived threat presented by exposure to a critical incident (van der Kolk, et. al 1996). If the response (arousal) is not discharged or deactivated, the sustained arousal state can lead to sustained cognitive and behavioural dysfunction (Levine, 2007; Grill, 2001). Trauma being a sensory experience (Lang, 1979; Steele, and Raider, 2001; Rothchild, 2000), arousal is experienced as an absence of the “sense of safety” and as a “sense of powerlessness.”
Aggressiveness over-reactive responses and exaggerated withdrawal (Le Doux, Romanski and Xagoraris, 1991) are survival behaviours – attempts to feel safe and being in control. As long as a child is not feeling safe and in control, this aroused state makes it difficult to process verbal information, attend, focus, retain and recall (Perry and Szalavitr, 2006, Bremmer, 2001; Starknum, Gergarski, Berent and Schteingart, 1992; Saigh, 1999). Intervention designed to de-activate the arousal state and return the child to a sense of safety and a sense of power or control helps to restore previous cognitive and behavioural patterns (Thompson, Charlton, Kerry et al. 1995). The most immediate, short term and long term intervention must be designed to restore that sense of safety and power.

(iv) Four Levels of Intervention

Whenever there is a disaster, it is important for counsellors and other service providers to take of the different levels of intervention. It is important to understand that not all victims of sexual abuse exposed to a critical incident would need all four levels of intervention. Not all victims of sexual abuse would experience a critical incident with the same level of vulnerability. Some victims of sexual abuse would feel safer and more in control than others. Some would perform better at a cognitive level than others. To pull all victims of sexual abuse, for example into debriefing (second level of intervention) may needlessly overexpose some of the victims and worsen their original reactions (Mc Farlane, 1994).

Counselling practitioners must be careful to apply the least intense and least intrusive interventions first (Rando, 1993). The National Institute for Trauma and Loss in Children (TLC) approaches trauma intervention at four different levels listed below as follows:

- Level one – crisis intervention;
• Level two – debriefing;
• Level three – social responsiveness; and
• Level four – structured sensory intervention.

This format would assist you to deactivate the state of arousal or restore a sense of safety and power (control) from the victim as quickly as possible.

(a) Level One - Crisis Intervention

The value of crisis intervention was established as early as 1944 by Eric Lindemann (1944), who detailed the grief reactions of those involved in the Coconut Grove fire in Boston. Hundreds of books and research projects have since detailed its benefits for children and families (Caplan, 1964; Rapoport, 1970; Johnson, 1993; Webb, 1994). Schools became familiar with the importance and need for crisis intervention in the early 80’s when suicide among children became an epidemic. Most schools today have, in place, a set of protocols to initiate when a critical incident takes place. Some, of course, are more comprehensive, more practical and more user-friendly than others.

TLC’s Trauma Response Protocol Manual (Steele, et. al 2000) was developed with the help of some 1,500 school professionals across the country (USA) who had first hand experiences with critical incidents. It is written in a format that details specific tasks needed following those situations. What is most important concerning the types of crisis intervention initiated is that it directs itself to restoring a sense of safety and control for all victims of sexual abuse and violence? Crisis intervention is the first level of intervention. It is initiated immediately following a critical incident and continues for two to three days. It consists of organised responses, dissemination of information, in part through classroom presentations and attending to the emotional needs of those involved. We have learned that in the midst of
trauma, normal cognitive functions can be overwhelmed and disappear because of the sensory nature of trauma. Hundreds of examples exist which show that otherwise calm, organised victims lose their ability to think clearly in the midst of trauma. In a sense, certain protocols exist so that people do not have to think in the midst of chaos yet they can still act appropriately (Webb, 1986).

Organised responses are the result of an orderly “thinking things through” before they happen, so that appropriate actions are immediate. “A time of crisis is not conducive to improvisation. Prior preparation and orientation of potential victims regarding management of a crisis such as sexual abuse would greatly assist those expected to assume leadership roles as counselling practitioners, psychologists or social workers to initiate actions appropriate to the time of need” (Webb, 1986). The following scenario illustrates the need to have organised responses that are designed to keep everyone safe regardless of their ability at the time to think clearly. Imagine a school building under attack. Panic sets in: some freeze, some flee and some stand ready to fight. Those who freeze or run in terror would find it very difficult to take verbal directions. They need to first see someone they recognise and then either is physically led or guided to a pre-designated area of safety.

This tells us that we must have personnel in that school who are clearly identifiable (staff identification badges) and who position themselves as visible reference points for those in panic to run to and then be directed to a pre-designated safe area. There would also be a need to physically assist those who freeze and are unable to move into that safe area. Those certified by Trauma and Loss in Children (TLC) understand that the use of personnel in this fashion addresses sensory reactions in the midst of trauma versus basic cognitive functions.
which may not be accessible to many at the time of the trauma (Caplan, 1964; Rapoport, 1970; Johnson, 1993; Webb, 1994).

For instance, many elementary teachers across the country left television sets turned on the day of the 9/11 terrorist attacks. Adults had a need to know what was going on in order to try and manage their anxiety. They however, unduly over-exposed the children. Weeks later, when feeling safe, most were able to cognitively understand that they had not afforded their children protection from over-exposure. They also now understood that in the midst of trauma, we do not always rely on cognitive processes to assist us. These same teachers would act differently the next time because of what they have learned. Organised protocols, therefore, help support the deficiencies in cognitive functioning that can occur in the midst of trauma (Caplan, 1964; Rapoport, 1970; Johnson, 1993; Webb, 1994).

(b) Level Two – Debriefing

Dr. Jeffrey Mitchell (1985), a former fireman, is credited with establishing the Critical Incident Stress Debriefing Model and process designed to assist rescue workers and survivors of catastrophic situations. Other models have been developed: Armstrong et.al, (1991), Raphael (1986), Hobfoll (1994), but Mitchell’s model receives the most attention.

The purpose of debriefing is to give participants the opportunity to tell their story by using much focused questions that identify the cognitive, affective and behavioural experiences of the participants. The formal debriefing model is, however, very cognitive and its processes do not address the unique needs of schools and students. The National Institute for Trauma and Loss in Children, with the help of some 1,500 professionals across the country developed several models to meet the needs of the various ages of students; the needs of the most
exposed and least exposed the needs of staff and of administrative response. Trauma Debriefing for Schools and Agencies (Steele, 1999) is now used in schools across the country.

Defusing for younger children, debriefing for adolescents and adults, operational debriefing for all staff and debriefing crisis teams are the major models used by TLC. Debriefing is only for the most exposed and takes place in most situations about the third or fourth day following the incident. In New York following 9/11 over 8,000 students were evacuated from the target area and relocated to other schools and sites (Lehmuller and Switzer, 2002). Because of all that was actually happening, debriefing was not a possibility for several days. In situations where major everyday functions or resources cease like electricity, or water supply, inaccessible roads, etc. the initiation of debriefing may not occur until these services and resources are returned.

Not everyone would need debriefing. Debriefing is generally reserved for the most exposed. There are four possible ways to be exposed such as the following:

- As a surviving victim – victim of physical/sexual abuse, other assaults, community violence, critical injuries, catastrophic situations, etc;
- As a witness to any potential trauma inducing incident; violent or non-violent – murder, suicide, assault, car fatality, bus tragedy, house fire, drowning, etc;
- Being related to the victim – as a family member friend, or peer. (“Being related” can also include one’s perceived similarity to or personal identification with victims.)

Milgram et al. (1988) found in their study of 268 seventh graders following a tragic school bus accident that “personal involvement” with the victims, rather than the incident itself, increased the level of prevalence. A study of 64 children (Schwarz and
Kowalski, 1991) following a school shooting showed that irrespective of physical nearness to the event, emotional stress resulting from personal identification also led to Post Traumatic Stress Disorder (PTSD); and

- Verbal exposure – Saigh (1991) found that listening to the details of traumatic experiences, traumatic stress reactions can be induced. This is especially true for professionals (counsellors) responsible for intervention with traumatised children. Vicarious traumatisation is always a potential development. Children who are exposed to repeated media coverage of details and survivors, understandably still may be vulnerable to trauma reactions.

Being “related to” and a “witness to” is far more frequent in today’s technological society. Approximately six months after the Oklahoma City bombing this author was speaking to a group of Head Start teachers. During the presentation, one of the teachers told the story of how her children spontaneously devised a game where one half of them took all their sleeping (floor) mats and covered them. The other half, in pairs of two, one at a time would go over to the other children, lift up the mat, picked up the child under the mat and then escort that child over to the other side of the room by their indoor soccer nets (Milgram et al, 1988).

They did this until all of the children under the mats were rescued and taken to the “safety” nets. Afterward, they switched sides. Rescuers became victims trapped under the mats; victims were now rescuers. By being witnesses to the tragedies of the bombing and seeing the rescue workers carry out children their own ages from the rubble of their day care centre, these children identified with the victims and consequently needed to find a way to conquer
the fear induced by being witnesses and recovery themselves to be “related to” the victims (Milgram et al, 1988).

In research, evaluating the outcome differences between those exposed to debriefing and those not involved in debriefing, showed that the former have shorter duration of reactions and less intense reactions. Debriefing can accelerate symptom reduction (Hokanson and Wirth, 2000; Everly and Mitchell, 2000; Eid, Johnson and Weisaeth, 2001). Debriefing is unlike any counselling process. Training is necessary to learn how to conduct debriefing. In school settings, debriefing should only be conducted by trained social workers, counsellors with experience in working with the age level of those being debriefed and who also have a working knowledge of the developmental issues at the various age levels. Debriefing six (6) year old children is far different than debriefing sixteen (16) year old adolescents.

(c) Level Three – Social Responsiveness and Empowerment

Level three is not a formal intervention for persistent reactions, but is actually happening concurrently with debriefing. It applies itself to the general population who needs to do something to feel better. These intervention activities are sometimes spontaneous and can be initiated by staff or students. In most cases, they begin three or four days following the critical incident, but can begin earlier. They are sensory in nature, in that participants are actively involved in doing something in response to the trauma experienced. Following 9/11, for example, blood drives were initiated, monies were collected, letters written, pictures drawn that were then sent to victim’s families and students in the attack area. Vigils were held, community forums addressing cultural and religious issues triggered by the attack were convened, the meaning of such an attack were discussed in social science and history classes (Rowlands, 1998).
It is this kind of social response at a sensory level that helps to return a sense of control and power to those who were left feeling vulnerable following exposure. They can help to empower not just individual students or staff, but an entire community. They also provide the opportunity to teach children about the value of life, respect for diversity, generosity of spirit, care for others and how to collaboratively work together to support one another in a time of crisis (Rowlands, 1998). They generate a social conscience as well as help teach children difficult lessons. They also help restore a sense of hope.

Numerous activities were encouraged and supported by the US Department of Education, Parent Teacher Associations, American Psychological Association, National Association of School Social Workers, Educators for Social Responsibility, American Academy of Child and Adolescent Psychiatry, National Institute of Mental Health, National Institute for Trauma and Loss in Children, and many other state and local organisations. Schools Response to Terrorism: Handbook of Protocols, published by Trauma and Loss in Children (Fall, 2002) provides a wide-range of social responsive and empowerment activities and resources.

Research related to the value of such activities is limited, yet administrators across the country saw how such activities had value in not only giving their students a voice, but in helping them collectively to feel better. They become a way to help the “negativity” and “impotence” survivors can be left with immediately following exposure (Rowlands, 1998). They help children “gain control of the intense emotions and sense of helplessness that follow community disaster” (Austin, 1992). For immediate survivors, the outpouring of support helps to “validate” the value of the sacrifices made by their loved ones (van der Kolk et al, 1996).
The social aspect of this level of intervention may not help individuals with more intense or severe levels of trauma reactions. For some, it may even delay reactions. Think in terms of rescue workers, who work hard at doing what they are trained to do. When all of the activity ceases, the reality of what they have been exposed to begins to take hold and reactions emerge. For some of these rescue workers, additional intervention would be needed.

(d) Level Four – Structured Sensory Intervention

This final level of intervention responds to those victims who are experiencing post traumatic stress disorder (PTSD) weeks following exposure, even months or years later. It also responds to those who may not fulfil the criteria for post traumatic stress disorder (PTSD) but are in fact experiencing one or more trauma-specific reaction and/or delayed grief reactions (traumatic grief). This level of intervention can actually be used with students who have been exposed to a singular incident or chronic multiple traumatisation.

Structured Sensory Intervention for Traumatised Children, Adolescents and Parents (SITCAP) (Steele and Raider, 2001) is the result of eleven years of development, field-testing in school and agency settings and research by The National Institute for Trauma and Loss in Children (TLC). SITCAP includes trauma-specific intervention programmes for pre-school children three-to-six years - *What Colour Is Your Hurt?*; children six-through-twelve years *I Feel Better Now!*; children six-through-twelve years and thirteen-through-eighteen years *Trauma Intervention for Children and Adolescents*, formerly known as *Trauma Response Kit*; adults – *Adults and Parents in Trauma: Learning to Survive* and *Trauma Debriefing for Schools and Agencies*. 

52
Trauma and Loss in Children (TLC) has over 3,000 certified Trauma and Loss School Specialists, Consultants and Consultant Supervisors using these intervention programs across the country in school and agency settings with children and families exposed to such incidents as murder, suicide, sexual/physical assault, domestic violence and other forms of violent acts; car fatalities, house fires, drowning, critical injuries, terminal illnesses, divorce, separation from parents and other non-violent critical incidents. These interventions are based upon well-researched cognitive-exposure based intervention strategies (Saigh and Bremmer, 1999; Malchiodi, 1998; Deblinger et. al, 1996; Roje, 1995; van der Kolk et. al, 1996; Pynoos, 1998).

The restoration of a sense of safety and power is a primary concern in each programme. The activities are primarily sensory activities, as trauma is experienced at a sensory level, not a cognitive level. The structure of the intervention, however, directs those sensory experiences into a cognitive framework, which can then be reordered in a way that is manageable and empowering for children (Steele and Raider, 2001; Saigh, 1999). This intervention “is structured because with structure comes a sense of control and safety” (Steele and Raider, 2001).

Trauma specific questions are used to help the victim give their experience a language, to tell their story. Sensory activities are used to help the victims make us a “witness” to what the experience was like. Once those tasks are completed, the child can now think differently about what happened. Thus, the definitions of trauma and stress are congruent in the sense that the experience of a certain event causes an imbalance between the perceived demands of the event and the perceived resources at the individual’s disposal in the situation and its
aftermath. For instance, child victims of sexual abuse experience some mental instability as a result of the abuse (Deblinger et al., 1996).

Trauma due to sexual abuse on a child can severely impact negatively on a child, where certain behaviours can be adopted. These behaviours would result in children ignoring the relevance of education, developing an anxiety for marriage at an early age as well as drawing self into isolation. For some, it lingers longer after the traumatic event has passed or recalled in memory by new experiences that serve as a reminder of the past trauma. Based on their cultural experiences some of the victims of child sexual abuse perceive sexual abuse as something that would be culturally accepted especially those who have a deep rural background. Thus, the reporting of such abuses to the relevant authorities for action is inhibited (Deblinger et al., 1996).

The impact of trauma on child sexual abuse victims often have widespread and devastating effects on individual’s health, family, community and nation. The victim friendly legal system was formed with the idea of curbing re-victimisation and re-traumatisation of child victims of sexual abuse. Re-victimisation and re-traumatisation of victims could be done by authorities in the search for justice, family members and friends (Steele and Raider, 2001).

(v) Vicarious traumatisation
The term “vicarious traumatisation” (VT) was introduced by McCann and Pearlman (1990) to describe how psychotherapeutic work with trauma victims can cause distress to practitioners such as counsellors, social workers, intermediaries, etc. Vicarious traumatisation can be conceptualised as a normal reaction arising from hearing traumatic material while in a caring role. It was noted to have consequences for health workers (Pearlman and Saakvitne, 1995),
similar to those experienced by Post Traumatic Stress Disorder (PTSD) sufferers themselves (Blair and Ramones, 1996). In fact, according to the DSM-IV criteria for PTSD, becoming aware of traumatic events experienced by someone close could lead to the development of PTSD symptomatology (American Psychiatric Association (APA), 1994).

In previous literature the term vicarious traumatisation was sometimes used interchangeably with other terminology, including ‘secondary traumatic stresses and “burnout” (Sabin-Farrell and Turpin, 2003). These distinct terms reflect the three main definitions of vicarious traumatisation (VT) currently available:

- Secondary Traumatic Stress (Figley, 1995) (formerly called ‘compassion fatigue’) refers to Post Traumatic Stress Disorder symptoms which are a direct consequence of the practitioner’s engagement with traumatised victims rather than a result of their own traumas;
- Vicarious Trauma (McCann and Pearlman, 1990) refers to negative changes in therapists’ cognitive schemas regarding trust, safety, power, independence, esteem and intimacy resulting from contact with traumatised victim’s; and
- Burnout is a more general term referring to the emotional exhaustion, disconnection and ineffectiveness caused by complex and emotionally demanding work (Bride et al., 2004; Jenkins and Baird, 2002; Kadambi and Ennis, 2004).

A number of theoretical explanations have been offered as to why psychotherapists might develop vicarious trauma following exposure to their victims’ traumatic narratives. Cognitive theories, for example, have suggested that key beliefs and assumptions about one’s self and the world could change as a result of exposure to clients’ traumas (Janoff-Bulman, 1985; 1979). McCann and Pearlman (1990) proposed that therapists who work with trauma victims
are exposed to narratives about abuse of trust, powerlessness and lack of safety experiences encountered at the time of primary traumatisation.

Vicarious traumatisation (VT) may occur if it is assimilated and incorporated into the therapists’ personal schemas. Pearlman and Saakvitne (1995) later described vicarious trauma as a process which occurred ‘through empathic engagement with victims’ trauma material’. While the concept of vicarious traumatisation appeared to have been enthusiastically embraced by practitioners, the empirical research remained fragmented and inconsistent and does not represent a coherent body of work (Arvay, 2001; Kadambi and Ennis, 2004; Sabin-Farrell and Turpin, 2003).

There remained a scarcity of empirical research to endorse the validity of the concept (Dunkley and Whelan, 2006; Kadambi and Ennis, 2004; Sabin-Farrell and Turpin, 2003). The aim of the present review was to make an assessment of the available evidence base for vicarious trauma in practitioners who work with survivors of sexual violence and child sexual abuse (CSA). Premised on the above, I embarked on an assessment of the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse. Hence, such questions as what with the victim friendly legal system in Zimbabwe as an effective intervention strategy is and how it reduces trauma on victims of child sexual abuse would be addressed in the study.

2.4 Regional and International Instruments

Over the past eighteen years (1996-2014), the shortcomings of the Criminal Justice System with respect to the manner in which child witnesses and child offenders were perceived and treated have received substantial attention in sub-Saharan Africa. The inadequacies in the
Criminal Justice Systems to assist children in a fair manner prompted a significant number of African governments to introduce novel changes to their criminal justice systems. Whilst most of these innovative changes made in the court systems may not be totally attributed to the current international and regional instruments, these have substantially provided governments with a solid framework from which to implement substantive child-friendly policies.

There are several regional and international instruments that were put in place with the aim of protecting children from any harm. One of these international instruments is the Universal Declaration of Human Rights of 1948 under Article 25 that provides for the right to a standard of living adequate for health and medical care as well as necessary social services. The necessary social services could mean anything that a country is able to offer its citizens. It would therefore be up to the country concerned to do what it deems proper. The researcher evaluated the effectiveness of the systems in place as enshrined in these regional and international instruments in the protection of child victims of sexual abuse paying particular attention to Zimbabwe. By regional instruments the researcher was referring to instruments from the Southern Africa Development Community (SADC) block. As of the international instruments the researcher was looking at the United Nations and African Union instruments that relates to child protection of victims of sexual abuse.

Where an abused child is concerned, it would also depend on how sensitive the systems which deal with the children in that particular country would be structured. In Zimbabwe there is the Victim Friendly Legal System which is operating in the criminal justice delivery system which has checks to ensure that the services are actually enforced. It may be a while yet before all child victims of sexual abuse access the services availed to them. Victim
Friendly System refers to an intervention strategy that seeks to reduce trauma on victims of child sexual abuse.

The period after 1980 saw the emergence of certain regional and international instruments that were directing governments to improve their child protection policies. The year 1980 was when Zimbabwe gained independence and an elected government was brought into force to run the affairs of the country in a way that was aimed at benefitting black people. These instruments also compelled different governments to ensure that all children who came into contact with the criminal justice system, either as victims or as perpetrators, are given special treatment. However, the first declaration on the Rights of the Child was adopted by the League of Nations in 1924 and subsequently became international law. The declaration highlighted the need to provide the child with “the means requisite for its normal development, both materially and spiritually.”

In 1948:102, the United Nations Universal Declaration of Human Rights promulgated that every human being has the right to freedom from “degrading treatment”. The 1966 International Covenant on Civil and Political Rights restated that the United Nations standard and norm for children was that they must be protected from all forms of mistreatment/abuse. As different countries subscribed to the various regional and international policies, they also attempted to implement corresponding domestic policies in health, education and justice systems. Over the years, the desire to introduce child friendly programmes, initiatives and legislative reform in the three countries (South Africa, Namibia and Zimbabwe) has been sustained partly by a desire to comply with the dictates of the international instruments the countries have subscribed to. The concept of the victim friendly system in South Africa,
Namibia and Zimbabwe was albeit on varying levels considerably influenced by international and policies requiring that a child’s best interests be protected.

Over the past seventeen years (1997 to 2014), the shortcomings of the Criminal Justice System in Zimbabwe with respect to the manner in which child witnesses and alleged child perpetrators are treated have received substantial attention in sub-Saharan Africa. The substantial attention was evidenced through the formation of Victim Friendly Systems in South Africa, Namibia and Zimbabwe. The inadequacies in the criminal justice systems to treat children in an equitable manner prompted a significant number of African governments to introduce novel changes to their criminal justice systems. While most of the innovative changes made in the court systems may not be totally attributed to the current regional and international instruments, they have substantially provided governments with a solid framework from which to implement substantive child-friendly policies. The Constitution of the Republic of Namibia under Article 144 expressly provides for the recognition of international instruments by stating:

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

This means that whatever regional and international instruments the country accedes to automatically become binding law in the country and is eligible to be recognised as such. In Zimbabwe, like Namibia, the Constitution indicates under Section 327 subsection (2) (a) (b) (2013) that an international treaty which has been concluded or executed by the President or under the President’s authority-

(a) Does not bind Zimbabwe until it has been approved by Parliament; and

(b) Does not form part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament.
What this section implies is that the domestication of an international treaty that the President might have executed might take longer to benefit the Zimbabwean populace. A lot of challenges have been witnessed in the past where international treaties that were executed by the President have taken over ten (10) years to become part of the Zimbabwean law. This affects children who have been sexually abused by foreigners, when extradition of the alleged abuser could be difficult.

In South Africa since the change of government in 1994, the government has taken significant steps towards ensuring that the Constitution of the Republic of South Africa and domestic legislation conform to regional and international instruments. Section 39(1) (b) of the South African Constitution posits that international law is instrumental in interpreting its Bill of Rights. This means that international law is used as the standard by which the Bill of Rights is interpreted.

2.4.1 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

In 1985 the United Nations General Assembly (hereafter, the “General Assembly”) adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereafter, the “Declaration of Basic Principles of Justice”). South Africa, Namibia and Zimbabwe are all part of the General Assembly which adopted the resolution for the Declaration of Basic Principles of Justice. The latter defines a victim of crime as a person who, due to the criminal actions or omissions by other people, has experienced “physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights” (DBPJ, 1985: 123).
The DBPJ sets out that every victim must be treated in a worthy and considerate manner. It urges governments to provide child victims with special provisions commensurate with their ages and needs. Governments are encouraged to support all victims of crime with the appropriate assistance throughout the legal process, and to ensure that the police, justice, health, social service personnel are trained to handle victims of crime.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) (DBPJVCA) signified an important shift in the discourse around crime and victimisation that had begun to emerge in the early 1980s. The declaration (and related national legislation in some Western countries) was the result of interest groups advocating a shift away from ‘offender-focused’ justice systems. Their argument was that while states assumed the responsibility of judging and sentencing offenders, their responsibility to victims was less clear. The DBPJVCA (1985) identifies the following as the needs of victims:

- Access to justice and fair treatment
- Contact with the criminal justice system (to be recognised as a legitimate participant in the process)
- Safety (both within the criminal justice system, and a restored sense of overall safety)
- Information (the most commonly expressed need for victims)
- Assistance and services
- Continuity (in systems and across organisations and departments)
- To have a voice (to be heard, especially regarding what they have suffered)
- Validation and acknowledgement (that their feelings are normal)
- Restitution, redress and apology
The DBPJVCA (1985) as enunciated above was incorporated into the Zimbabwean Criminal Justice System. This was evidenced by the government’s amendment no. 8 of the Criminal Procedure and Evidence Act (Chapter 9:07) (1997) which paved the way for the formation of the Victim Friendly Legal System in the country. The system was specific in the provision of services that were friendly to the victims as spelt out above in the DBPJVCA (1985). Specialised courts were formed with the aim of servicing the needs of victims of crime such as women and children.

2.4.2 The Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child was adopted in 1989 by the United Nations General Assembly. The instrument sets child protection standards for governments in areas including justice, health and education systems. The Convention on the Rights of the Child implores all member States to commit towards appraising and improving legal frameworks for child protection in the justice sector and other areas.

**Article 3.1 of the Convention on the Rights of the Child (CRC) provides:**

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

**And Article 3.3 provides:**

*State Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and sustainability of their staff, as well as competent supervision.*

Children must be protected from all forms of abuse including physical, emotional, sexual abuse and exploitation through the introduction of appropriate legislative, administrative and social mechanisms. The Convention on the Rights of the Child has been pivotal in the
implementation of child protection policies in most countries worldwide including South Africa, Zimbabwe and Namibia.

The New Zimbabwe Constitution (2013) under section 81 subsection (2) recognises the importance of the best interests of children in every matter concerning the child. The best interest of children implies that the government has an obligation to prioritise the wishes of children first. Elsewhere (section 2.6.3) in this study, there will be a description on some “Minimum Standards” which are meant to provide guidance to all institutions which deal with children on how to handle children in a sensitive, confidential and professional manner. This was meant to safeguard the interests of children. What is not clear is whether this is checked and corrective measures taken against a country which would not be following them.


Each country was encouraged to assess its national plans, programmes and policies in order to prioritise the welfare of children, provide for the special care of children in difficult circumstances and to make provision for the necessary resources. Governments were urged to seek capacity building assistance, not only from the United Nations external cooperation, but
also from international developmental agencies and non-governmental organisations through strategic partnerships. South Africa, Zimbabwe and Namibia have used this route to secure funds for implementing child-friendly courts and training programmes for court personnel, including prosecutors, magistrates and intermediaries. UNICEF and Save the Children have played a pivotal role in the provision of funding for the child protection projects in Zimbabwe.

2.4.3 The International Association of Prosecutors (1995)

The International Association of Prosecutors was established in 1995 at the United Nations offices in Vienna and was formally inaugurated in 1996. Its membership, which is open to individual prosecutors, prosecution services and associations of prosecutors, is drawn from sixty countries from every continent. It has one hundred and thirty (130) organisational and individual members. South Africa’s National Prosecuting Authority and Namibia’s Office of the Prosecutor General are current members. Zimbabwe’s National Prosecuting Authority is also a member of the association.

One of the major objectives of the International Association of Prosecutors is to protect human rights as laid down in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948. Prosecutors are urged to promote the effective, fair, impartial and efficient prosecution of criminal offences and also to uphold high standards and principles in the administration of criminal justice including procedures to guard against or address miscarriages in support of the rule of law.
2.4.4 The United Nations Guidelines on the Role of Prosecutors (1990)

“The United Nations Guidelines on the Role of Prosecutors” were adopted at the Eighth United Nations Congress in 1990. These guidelines underscored the prosecutors’ responsibility towards the protection of human dignity and promotion of human rights. Subsequently; in 1997 the United Nations Guidelines for Action on Children in Criminal Justice reinforced the prosecutors’ protective role towards child victims to ensure that children are not re-victimised by the exposure to the criminal justice system.

In 2001 the International Centre for Criminal Law Reform and Criminal Justice Policy prepared a guideline entitled “Model Guidelines for the Effective Prosecution of Crimes against Children”. A number of prosecution authorities, including the International Association Prosecution participated in developing the guidelines. The Model Guidelines for the Effective Prosecution of Crimes against Children urged prosecutors to receive training on the operations of the child or victim-friendly court system. The guidelines also recommended the implementation of the following measures:

(1) Intermediary services;
(2) Closed circuit televisions;
(3) One-way screens;
(4) Support persons; and
(5) Reduce court room formality.

2.4.5 World Fit for Children Resolution (2002)

The Special Session of the United Nations General Assembly (SSUNGA) held in May 2002 included 400 children from 150 countries. A document titled, A World Fit for Children, was put together for the enhanced protection of children against abuse, exploitation and violence.
The document subsequently adopted as a resolution by the United Nations General Assembly in the same year. It was endorsed by one hundred and fifty (150) countries, including South Africa, Namibia and Zimbabwe. “The World Fit for Children Resolution” reminds leaders to continue promoting and protecting the rights of all children and to uphold the legal standards set by the Convention on the Rights of the Child and its other protocols. It urges all countries to inter alia introduce witness support services in their criminal justice systems and to uphold the best interests of child victims (SSUNGA, 2002).

2.4.6 The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)

“The United Nations Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime” set out a practical framework for its member States. The guidelines encourage member States to review domestic legislation and to develop policies, practices and programmes that address child witnesses’ needs in the development of legislation, procedures, policies and practices to assist each other in the implementation of the following:

1. Proper care and sensitivity towards a child witness or victim;
2. Provision of a private room for child interviews or questioning;
3. Proper training of professionals;
4. Consideration of child’s needs, thoughts and feelings by enabling children to express themselves freely and in their own way; and
5. Provision of a child victim and witness specialist to assist the children during trial.

For example, in the South African case of the Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development, Albert Phaswane and Aaron Mokoena (Centre for Child Law, Childline South Africa, RAPCAN, Children First, Operation Bobbi
Bear, POWA and Cape Mental Health Society as Amici Curiae) (“DPP v Mokoena and Phaswane”), the instrument was referred to as a guideline on how children should be treated. Zimbabwe also confirmed its acknowledgement to the guidelines set by the “United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime” in 2005.


The majority of African heads of States have sanctioned the need for Africa to collectively ratify the United Nations standards child protection rights and human rights. The African Charter on the Rights and Welfare of the Child (hereafter, the “African Charter”) was created in 1990 and enforced in 1999. It was created to complement the Convention on the Rights of the Child and to make the latter more culturally relevant for Africa by factoring in the socio-cultural and economic realities and values of the African states. The African Charter is much broader than the Convention on the Rights of the Child in that it emphasises that in all matters involving children, their best interests are paramount. It states that: “In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.”

This posture has been used to further justify the creation of the victim friendly system, despite that this move may be perceived as an inroad into the perpetrators’ rights. The African Charter further states, that “during judicial and other proceedings, a child’s views must be taken into consideration. All States are urged to establish “special monitoring units” to provide inter alia necessary support for referral investigation, treatment and follow-up of instances of child abuse and neglect. Namibia ratified the instrument in 2004. Zimbabwe and South Africa also ratified the African Charter. The South African Constitution adopted the
wording used in the African Charter that in all actions the best interests of the child shall be the primary consideration.

**Article 16 of the African Charter on the Rights and Welfare of the Child provides:**

1. *State Parties to the present Charter shall take specific legislative administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.*

2. *Protective measures under this Article shall include effective procedures for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment and follow-up of instances of child abuse and neglect.*

Zimbabwe recognises child sexual abuse as being inhuman and degrading treatment of another person. Amendment No. 8 of 1997 of section 319 of the Criminal Procedure and Evidence Act (Chapter 9:07) was done to ensure that child victims of sexual abuse falls in the category of vulnerable witnesses. This amendment was in fulfilment of Article 16 subsection (1) and (2) of the African Charter on the Rights and Welfare of the Child as stated above. Since the amendment of the above stated Criminal Procedure and Evidence Act (Chapter 9:07) (1997), child victims of sexual abuse treatment from the police stations up to the court have shown a remarkable improvement.

**Article 4 (2) (e) and (f) of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (the Charter) put an obligation on State Parties to:**

e) Implement programmes for the rehabilitation of women victims; and

f) Establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.

**Article 12 (d) of the same Instrument provides that the State must …**

*Provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment.*
The African Charter shows that the SADC region is aware that children and women suffer abuses (that is, sexually, physically, emotional, etc) and that they needed professional counselling services. There was also recognition that information was available but the intended beneficiaries were not able to access it so that it could be effective to them. The victim friendly legal system (courts, police, etc) has been a good example of a service which is available in Zimbabwe. However the victim friendly legal system can only be effective if it was easily and freely accessed by all the victims of sexual abuse.

2.4.8 The Declaration on Gender and Development by the Southern African Development Committee (1997)

The Declaration on Gender and Development by the Southern African Development Committee (SADC) Heads of States or Governments of 1997 outlined the region’s commitment towards the prevention and eradication of violence against women and children. By signing the SADC Declaration on Gender and Development in Mauritius in 1998, which included an addendum on the prevention and eradication of violence against women and children, SADC Heads of State committed themselves to the prevention and eradication of such violence.

The SADC Declaration Addendum (1997) contains a resolution by Heads of State to enact legislation pertaining to, for example, sexual offences and domestic violence. Such laws were intended to clearly define various forms of violence against women and children as crimes, and to provide clear measures for associated penalties, punishment and other enforcement mechanisms. The relevant addendum also commits SADC Heads of State to review all criminal laws and procedures applicable to cases of sexual offences in order to eliminate gender bias and ensure justice and fairness to both the victim and the perpetrator/accused.
The committed parties further resolved to ensure that the legal and administrative mechanisms to protect women and children subjected to violence were implemented and that effective access to counselling, restitution, reparation and other forms of dispute resolution were available to them.

The SADC Declaration Addendum (1997) also commits the signatories to ensure accessible, effective and responsive police, prosecutorial, health, social welfare and legal services; to establish specialised units to redress cases of violence against women and children; and to introduce and promote gender sensitisation and training of all service providers engaged in the administration of justice such as judicial officers, prosecutors, police officers, welfare officers and prison and health officials. Several governments including Namibia, South Africa and Zimbabwe have signed and ratified the SADC Declaration on Gender and Development and committed to addressing the increasing levels of violence against women and children.

**Paragraph 7 of the Addendum to SADC Declaration on Violence against Women (The Addendum) recognises that:**

Existing measures to protect women and children against violence have proved inadequate, ineffective and biased against the victims.

**The following recommendations were then made:**

- Introducing, as a matter of priority, legal and administrative mechanisms for women and children subjected to violence and sexual abuse, effective access to counselling institutions;

- Providing easily accessible information on services available to women and children victims/survivors of violence including women and children with disabilities;
• Ensuring accessible, effective and responsive police, prosecutorial, medical examination, social welfare and other services, and establishing specialised units to redress cases of violence against women and children.

• Ensuring that all these measures are implemented in an integrated manner.

### 2.5 The Rationale for Victim Friendly Legal System

Extensive research conducted has shown that contrary to popular beliefs, sexual abuse of children by strangers accounts for a small percentage. Epidemiological studies shows that abuse of children by strangers is low compared to the sexual abuse perpetrated by relatives or acquaintances. Kitzinger (1988) criticised those who stated that the home is the sanctuary for children against sexual abuse and warned children to say “no to strangers” since most sexual abuse and exploitation is within the family. Events that occur within the family were not subject to international law until recently. Developments in international law challenge the numerous traditional practices that sexually involve children.

These traditional practices have affected the child’s sexual development in ways that are inconsistent with the emerging domestic, regional and international law norms. Culture is identified as one of the major obstacles in enforcing children’s human rights in African countries. Each country has an obligation under the African Charter on the Rights and Welfare of the Child (ACRWC) to protect children against cultural practices that results in sexual abuse and exploitation while in the care of parents, guardians or others under the disguise of culture. Rwezaura (1998) stated that one of the causes of abuse of children in Africa is the perception of children as a family resource and this has caused conflicts with the rights of the child.
Countries in Africa have an obligation to protect the child against sexual abuse and exploitation. Protection of children can only be achieved by assisting families to carry out their protective mandate towards the girl child. Bueren (1995) stated that other than adopting legislation against child sexual abuse and exploitation, the state should support the family when it is in need. The state must take all measures to curb child sexual abuse and exploitation of the girl child as this violation could be linked to violations of other rights such as rights to bodily, sexual integrity and right to life.

2.5.1 The Namibian Victim Friendly System

The judicial structure in Namibia largely parallels that of South Africa. The seven decades after 1917 were characterized by Namibia’s colonial domination by South Africa. Prior to 1977, the country’s criminal prosecutions took place in terms of the Criminal Ordinance which was similar to the Criminal Procedures Act 51 of 1977 of South Africa. This explains why the Namibian Criminal Procedure Act 51 of 1977, which amounts to a literal replica of a South African Act, the Criminal Procedure Act 51 of 1977, bears the same name.

Before 1989, the Namibian legal system overlapped in many instances with the South African legal system. After being colonised by Germany in 1885, the surrender of the Kaiser’s military forces in German South West Africa to the Union Army of South Africa in 1917 marked the beginning of Namibia’s domination by South Africa under the Covenant of the League of Nations. South Africa held all the legislative powers over Namibia, then known as South West Africa. A significant number of legal instruments from both countries contain the same wording and some Namibian Supreme Court decisions are found in the South African Law Reports. However, the Criminal Procedure Act 51 of 1977 (hereafter, the “1977 Criminal Procedure Act 51 of 1977”) is still applicable, since the Namibian independence in
1990, amendments to the South African Criminal Procedure Act 51 of 1977 are no longer applicable in Namibia, unless amended in Namibia.

Child sexual abuse is a major problem in Namibia. The magnitude of the abuse prompted the government to promulgate new child friendly laws and to identify new strategies and initiatives that enhance the protection of children. The Namibian criminal justice system is accusatorial in nature. The accused has the right to a fair and public hearing before an independent, impartial and competent court. The accused is expected to confront and question his or her accusers.

**Article 12 (1) (d) of the Namibian Constitution states that:**
All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross examining those called against them. Although the Namibian Constitution does not make specific reference to children’s rights in the justice system, the provisions under the “Respect for Human Dignity” impliedly cover the children. The provision states the following:

**Article 8 (1) (2) (a) (b) of the Namibian Constitution**

(1) The dignity of all persons shall be inviolable.

(2) (A) in any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

(B) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
The post independent Constitution of the Republic of Namibia was adopted at independence in 1990 and it was from the onset, connected to international law.

**Article 144 of the Namibian Constitution states that:**

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

The Namibian government has signed several child rights-based international and regional instruments. To date the Namibian Government has ratified several agreements and conventions pertaining to gender equality, the elimination of violence against women and the protection of the rights of children. These protocols include:

- the United Nations (UN) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);
- the UN Convention on the Rights of the Child;
- the Beijing Declaration and Platform of Action; and
- The Southern African Development Community (SADC) Gender and Development Declaration and the Addendum on Prevention and Eradication of Violence against Women and Children.

Namibia is also part of the General Assembly which adopted the resolution for the Declaration of Basic Principles of Justice. In Namibia no other laws are necessary to enact the international laws and other United Nations human rights covenants and treaties the country has ratified or acceded to. In other words, all international and regional instruments the country has ratified or acceded to automatically become part of the law of the country.
In the late 90s, the manner in which Namibian criminal procedure handled child victims and witnesses was typically like any other adversarial system. The system did not provide special protection to the children. Child victims of sexual abuse were required to be competent in order to testify although some children would testify *in camera* UNESCO, 2000). Child witnesses had to give *viva voce* evidence without assistance (Sections 153 and 154 of the Criminal Procedure Act). They were subsequently cross-examined by the accused or the defence counsel. The difficulties experienced by child witnesses in the courtroom were not unnoticeable. A significant number of judges and prosecutors expressed their concerns over the manner in which children struggled to give evidence in court. In 1998, a Namibian prosecutor stated that:

*It is a standing rule that a complainant giving evidence must do so in the presence of the accused, despite her age. The complainant stands alone in the witness box and can be intimidated by the accused person’s presence, often a male parent or relative. The complainant becomes more anxious, the alien atmosphere of the court combined with other factors as mentioned above, have such an impact on the younger female witnesses that they are often reduced to silence. This is one of the most important reasons why cases of sexual abuse are not officially reported* (Hubbard, 2004).

In 2000, UNESCO highlighted the high levels of discomfort experienced by young children as they struggled to give evidence in the presence of the accused. The stress experienced by a child witness was said to rekindle a child’s memories of the original traumatic act (Theron, 2005). The courtroom attire worn by the judge and the other court officials was found to be intimidating to the vulnerable witnesses (Theron, 2005). Judge Silungwe later addressed the issue of re-traumatisation of the Namibian child witnesses by pointing out the following:

*It is generally accepted that sexual crimes and criminal acts of domestic violence inflict psychological trauma on the victims. However, as previously shown, it is not easy for children and other vulnerable witnesses to testify in the physical presence of the alleged perpetrator, since the stress of a direct confrontation with the accused may result in such witness confusing events or details, recalling things incorrectly, or forgetting essential information and consequently losing credibility.*
The judge further confirmed that some Namibian child witnesses did find the attire worn by the judge and other court officials to be intimidating. Regarding the stressful criminal litigation process, it was established that a child who was not prepared to handle the high level courtroom aggression would be crushed. The Namibian child witnesses were reported to struggle the most with the dread of testifying in public and fear due to their inability to understand complex legal procedures, confrontation and cross-examination (Theron, 2005).

The origins of the Namibian intermediary system can be traced back to the work of the 1999 Victim-Friendly Sexual Offences Courts Project (hereafter the Sexual Offences Project). The creation of the Sexual Offences Project was largely an expression of discontent within the Namibian judiciary system that the accusatorial system was not equipped to address the developmental needs of child witnesses (UNESCO, 1999). The increase in sexual offence matters served to highlight this anomaly. The Sexual Offences Project, comparable to the Zimbabwean Victim- Friendly National Committee, was multi-sectoral in nature (UNESCO, 1999). Its main objective was to identify solutions towards the eradication of violence against women and children.

In 1999 and 2000 the Sexual Offence Project undertook two major study tours to the United Kingdom and South Africa. In the United Kingdom the delegates visited the Zero Tolerance Trust in Edinburgh, St Mary’s Sexual Assault Referral Centre in Manchester and the Leeds Inter-Agency Project in Leeds National Society for the Prevention of Cruelty to Children. The group also visited the Metropolitan Police Headquarters, St Alban’s Crown Court, the Crown Prosecution Service Policy Directorate, the Home Office and the Stratford Police Station. The trip to the South African Wynberg Sexual Offences Courts occurred in 2000.
The delegates observed how the courts were using intermediaries to protect vulnerable witnesses during trial.

The group also observed the use of closed-circuit televisions, special rooms and one-way mirrors in the victim-friendly courts. The Sexual Offences Project used the study tours to justify its recommendations for change in the Namibian criminal courts system. The Sexual Offences Project’s recommendations underscored the need for the amendment of the 1977 Criminal Procedure Act in order to make room for more protection for child witnesses as they interface with the criminal justice system. This was achieved in 2003 when the 1977 Criminal Procedure Act was successfully amended by the Criminal Procedure Amendment Act 24 of 2003 (hereafter, the “2003 Criminal Procedure Amendment Act”).

The 2003 Criminal Procedure Amendment Act’s section 158A introduced special arrangements for the protection of the vulnerable witnesses and section 166 introduced the concept of the intermediary. Although section 166 does not use the term “intermediary” it is generally assumed that the person mentioned in the section through whom a witness may be cross-examined is essentially an intermediary. However in the following year in 2004, the government promulgated the Criminal Procedure Act 25 of 2004 (hereafter, the 2004 Criminal Procedure Act) which was meant to replace the entire 1977 Criminal Procedure Act with all its amendments.

The new 2004 Criminal Procedure Act’s section 193 outlined elaborate provisions sanctioning the use of intermediaries in the Namibian courts. Section 193 was distinctly similar to South Africa’s section 170A. Almost as suddenly as it had been promulgated, the 2004 Criminal Procedure Act was immediately withdrawn and replaced by its predecessor the
1977 Criminal Procedure Act. This meant that the 2003 Criminal Procedure Amendment Act was effectively re-instated and remains effective pending the re-instatement of the 2004 Criminal Procedure Act (Schwikkard, 2004). The theatrical withdrawal of the new 2004 Criminal Procedure Act was largely attributed to the fact that the Namibian government did not have the necessary resources to fully implement it.

The government’s position was that once it had secured adequate financial resources to fully implement the Criminal Procedure Act 25 of 2004, it would reinstate it. Despite the delays in the implementation of the intermediary system, child friendly courts exist in Namibia. Although the courts do not offer intermediary assistance, they have special rooms from where a witness can testify without confronting the accused. The first such court was established in Walvis in 2002 before the 2003 Criminal Procedure Amendment Act had been passed (Barnard, 2004).

The government of Namibia has observed that violence against women and children has been on the increase over the recent years. Although most cases remained unreported to the respective authorities such as the police, it is from the known figures estimated that at least one act of sexual abuse (rape) took place every hour of the day. Sexual abuse (rape) victims in Namibia have ranged from the very young (six months) to the very old (eighty-five years). In Namibia, the crime of rape occurs in a variety of places such as the home, on the street, even at school or boarding school; and they occur at all times of the day or night. This phenomenon can also be found in other countries in the Southern African Region. In response to the increase in violence against women and children in Namibia the following agencies cooperated in the implementation of the Victim Friendly Sexual Offences Courts Project in Namibia from August 1999 to December 2000:
Office of the Prosecutor-General;
Namibian Police, the Ministry of Health and Social Services;
Legal Assistance Centre;
United Nations Development Programme (UNDP);
United Nations Educational, Scientific and Cultural Organisation (UNESCO);
United Nations Children’s Fund (UNICEF);
Royal Netherlands Embassy; and
British Government’s Department for International Development.

The long term objective of the project was to work towards the elimination of violence against women and children in Namibia. This was to be achieved by strengthening the capacity of those who work with victims of violence, for example, social workers, police officers, prosecutors, magistrates and judges. This project was also aimed at ensuring that sexual abuse (rape) victims get the necessary support and that perpetrators are prosecuted. The principal aim of the project was to raise awareness about the special needs of sexual abuse (rape) victims, particularly children, among professionals in the courts, in law enforcement and in victim support.

The Victim Friendly Sexual Offences Courts Project was built on the policy framework in place in Namibia. This was in the form of the Namibian Constitution, policies, laws, international conventions and international agreements that laid the foundation for the elimination of violence against women and children. The Namibian Constitution enshrines the fundamental human rights and freedoms of the individual and protects the individual from discrimination on the basis of sex. It also guarantees a fair trial, equality of all persons before the law and the respect for human dignity during judicial procedures.
2.5.2 The South African Victim Friendly System

The recent legislative developments in South Africa have made significant contributions to the rights of vulnerable groups and victims. Two examples are the Child Justice Act of 2008 and the Criminal Law (Sexual Offences and Related Matters) Act of 2007. Although offender focused, the Child Justice Act serves to protect children in conflict with the law; many of whom will have been victims before offenders; from being re-victimised in the justice system. The Sexual Offences Act provides for victims by recognising a broader spectrum of sexual offences and providing victims with increased rights.

Besides these and other legislative developments, there are three key policy documents that attempt to address the needs and rights of crime victims in South Africa. Each was developed by a different state entity. Other government driven initiatives and legislation, some of which are referred to below, make specific provisions for vulnerable groups and contribute to victim oriented justice although they may not be explicitly directed at assisting victims.

The first important policy document is the National Crime Prevention Strategy (NCPS) developed by the Department of Justice and Constitutional Development in 1996. This document sought to present a comprehensive approach to crime control and crime prevention, and promoted victim support as a central part of this agenda. This signified an important evolution in the approach to criminal justice that kept pace with international trends. The National Crime Prevention Strategy (NCPS) was the first policy document to prioritise the victims of crime and advocated for a victim-centred approach to justice.

The processes related to the implementation of the NCPS resulted in the introduction of the Victim Empowerment Programme (VEP). Established in the late 1990s, the VEP is the
longest running effort to develop a framework for the provision of services to crime victims and to promote the prevention of victimisation. It has not, however, become official policy to date. In 2004, the Department of Justice and Constitutional Development introduced the first and only cabinet approved policy known as the Victim’s Charter.

The third document, introduced by the National Prosecuting Authority in 2005, is known as the Uniform Protocol for the Management of Victims, Survivors and Witnesses of Domestic Violence and Sexual Offences (UPVM). In an overview of victim policy in South Africa, Frank (2007) highlighted some of the problems that result from this three document system. One key problem was that there was no clear rationalisation for victim policy in South Africa as the three documents cite differing motivating factors.

In November 2007 the Department of Justice and Constitutional Development launched the Service Charter for Victims of Crime, three (3) years after it had been approved by Cabinet. The charter outlined the manner in which the criminal justice system sought to make victims its central beneficiaries. The motivation was to minimise secondary victimisation, consolidate the standards of service that victims can expect, and provide recourse when these were not met. The charter set out strategies and pledged to minimise victimisation at each stage of a victim’s interaction with the criminal justice system.

Central to the Service Charter are seven rights of victims drawn from the United Nations Declaration of the Basic Rights of Victims of Crime and Abuse of Power. These are:

- The right to be treated with fairness and respect for dignity and privacy;
- The right to offer information;
- The right to receive information;
The right to protection;

The right to assistance;

The right to compensation; and

The right to restitution.

The South African legal procedure is accusatorial in nature (Muller and Hollely, 2000). Before the introduction of intermediaries, child witnesses were commonly expected to appear and testify in court in person. They were required to give *viva voce* evidence *in camera* (the South African Criminal Procedure Act 51 of 1977, sections 153 and 154) without the assistance of any aids or persons. Child witnesses were also expected to be cross-examined in the same manner as adult witnesses. Müller and Hollely (2000) concede that testifying in court is a stressful experience for any witness. The court environment is alien with role players clad in long black gowns and speaking in language not comprehended by lay persons. The process of cross-examination is designed to be frustrating to the witness (De Maio, 2008). The South African Criminal Procedure Act 51 of 1977 was amended to introduce novel child-friendly procedures into the South African courts systems.

As early as the 1940s and 1950s, some South African courts acknowledged that courtroom confrontation traumatised child witnesses. In the cases of *Horsford v De Jager and Another* (1952); *R v S* (1948); *Jabaar v South African Railways and Harbour* (1982) and in the unreported case of *S v Basil Simmons* (1988), the traumatic effects of confrontation on child witnesses were noted. These initial acknowledgements by the courts signalled the beginning of the process that would justify the introduction of victim friendly court system a few decades later.
In the last twenty-five years a majority of South African researchers, academics, psychologists and some courts have accepted that children who testify in an adversarial environment may be re-traumatised. They have openly criticised the system for its negative handling of child witnesses. Zieff (1991) compared an adversarial trial to a “gladiatorial contest between the parties,” where children as participants are most likely to suffer and recommended that child witnesses testify in an informal setting. Hammond and Hammond (1987) pointed out that children were being unfairly subjected to a system of procedures which disregarded their limited cognitive and linguistic competencies and their emotional vulnerabilities. Davis and Saffy (2004) stated that the courtroom language and the demands of cross-examination made the process of giving evidence in court a traumatic experience for children.

Even though child witnesses gave evidence *in camera* and presiding officers had the power under common law to prevent hostile questioning, this was not enough to alleviate the stress experienced by child witnesses. Researchers Coughlan and Jarman (2002) established that the cross-examination process can be embarrassing and severely distressing to any complainant and more so for a minor. In such a situation, a child can become confused, scared and unable to understand questions. The continued dissatisfaction over the insensitive manner in which the system treated child witnesses made room for the acceptance of one of the recommendations by the South African Law Commission in 1989, that intermediaries be introduced into the court systems.

The intermediary role was introduced in 1991. South Africa’s intermediary system was a significant influence to South Africa’s neighbours especially Zimbabwe and Namibia (Wynberg Report, 2000). It would be usually in the hours and days immediately after a crime
that victims experience the most severe trauma. While many may turn to a health facility for immediate support, the most likely branch of the criminal justice system with which a victim would first engage would be the South African Police Services (SAPS). It therefore made sense that the SAPS should be well equipped to offer direct support to victims, or at least information about where they can access the necessary services. While the Service Charter (SC) covered almost any form of mistreatment, certain wording, such as ‘where relevant’ and ‘where available’, offers officials of the criminal justice system escape clauses which can be used to justify inaction. The vagueness of the wording in the SC provided a ready excuse for any public servant who failed to act in the interests of a victim. A further impediment was that the SC placed the onus on the victim to request services, rather than on government and service providers to offer these services. In addition, the charter does not give victims any specific legal rights.

The government of South Africa introduced the Victim Empowerment Programme (VEP) as a strategic focus to be driven by the Department of Social Development (DSD) in 1999. The VEP was based on the principle that good quality support services would be provided to all victims of crime. This was going to be achieved by:

- Providing victim sensitivity training to government service providers and justice system employees;
- Establishing a referral system between service providers dealing with crime victim;
- Implementing a multi disciplinary victim support programme; and
- Providing victims with information to aid their engagements with the justice system.

In 2008 the United Nations Office on Drugs and Crime (UNODC) took over the management of the VEP because the DSD had made little progress in almost a decade. Although the VEP
has been repeatedly revised, after more than ten (10) years it remains in draft form. It has never been approved as a national policy, nor has an implementation guide been developed for it. One useful outcome, however, has been that the SAPS began using the VEP in 2000.

2.5.3 The Zimbabwe Victim Friendly System

Zimbabwe’s legal system is closely linked to the South African legal system. The Constitution of Zimbabwe (1979) indicates that the law to be administered by the country’s Supreme Court, High Court and any other courts subordinate to the country’s High Court shall be the law in force in the Colony of Cape of Good Hope on 10th June, 1891. The Criminal Law (Codification and Reform) Act (Chapter 9:23) effected in 2006, sought to sever the historical tie but it is not yet clear whether it had succeeded. The Zimbabwean legal procedure is accusatorial in nature with the presiding officer deciding the guilt or otherwise of the accused. As in any other accusatorial system, the accused has the right to cross-examine his or her accusers. The accused’s right to cross-examine his State witnesses is protected by the New Zimbabwe Constitution (2013) under section 69.

From the late eighties up to the early nineties there was limited knowledge in the country on how to appropriately handle child sexual abuse victims. Sexual abuse reports were received and processed by police officers with neither training nor experience in the proper handling of such cases. As a result in the courts child witnesses were treated like adult witnesses. Child witnesses were expected to give viva voce evidence, sometimes in camera, testify without the assistance of aids in the presence of the accused and court officials and respond to cross examination questions directly.

At the level of police and investigation process the data reflected that the police had no experience in handling minors who had been sexually abused. No privacy was afforded to the victim reporting the abuse and the investigations tended to be prolonged, with the child having to repeat his or her testimony several times to
different people. Child victims of abuse were treated as if they were adults by the system. At the level of the courts children appeared in unfriendly courts and in confrontation with the abuser. The rules of evidence weighed heavily against the child. Overall these issues resulted in most abusers being acquitted since children could not talk freely about the abuse (Chinyangara, et al., 2000:33).

The young witnesses were subjected to intensive and sometimes protracted and aggressive cross examination by the accused or his attorney. Before the introduction of victim-friendly courts, criminal prosecutions in the country were mostly characterized by the unwillingness of young witnesses to testify in court even when the trials were held in-camera (Zimbabwe Intermediary Training Manual, 1997). By the early nineties, the regular procedures of the criminal justice system were gradually being perceived as inadequate to meet the needs and requirements of the child witness. It was accepted that the prosecution of child sexual abuse matters was overtly overlaid by a range of emotional stress and fear flowing from the trauma of the offence (Daniel Phiri v S ZHC 219 of 1993 and Chidodo v S HH 78 of 1998). The introduction of intermediaries in the Zimbabwean criminal courts in 1997 was meant to counter the detrimental effects of the accusatorial system on the child witness. From the onset, the goal of introducing the intermediaries was to prevent secondary traumatisation of victims

It was anticipated that the introduction of the intermediary system would ensure that a child witness would not have to confront the accused, give oral evidence from inside the main courtroom or be subjected to direct cross-examination by either the accused or the defence counsel. Magistrates and prosecutors received training on the far-reaching psychological effects which the adversarial procedure, especially confrontation and cross-examination, had upon the victim. Each group received training on how they would participate effectively in the victim friendly courts initiative. Chinyangara, et al. (2000) states the following:
The Ministry of Justice, Legal and Parliamentary Affairs, together with other government departments and NGOs, has taken the initiative of introducing victim friendly systems in all the institutions that deal with abused children. These institutions are staffed by experienced people and privacy is maintained through the establishment of separate interviewing and examination rooms. At the trial stage it is planned that the courts will be designed in such a way that the child does not see the abuser and other court personnel, such as defence lawyers and court orderly. This will involve the use of closed circuit televisions and an intermediary between the child and the trial process going on in the main court room.

Both groups were informed that their acceptance and endorsement of the role of the intermediary was integral to the success of the initiative. Unlike South Africa, Zimbabwe has significantly limited local published material on the accusatorial system and its effects on child witnesses. There is currently no published material on Zimbabwean intermediaries. Due to the country’s fiscal constraints even the Magistrates Courts, High Court and Supreme Court law cases have not been published for over five years.

The criticism of the victim friendly system’s treatment of child sexual abuse victims was spearheaded by individuals. They were in the most intriguing of fashions able to get not only the government’s attention but also managed to get the government to commit towards reform in the Criminal Justice System. Out of the three countries using the Victim Friendly System in Southern Africa, Zimbabwe is the only country in the last fourteen (14) years which has experienced significant negative changes in its economy and political structure. In 1993 the Zimbabwean High Court accepted that child sexual abuse traumatises children. In the case of Daniel Phiri v S of 1993, where an accused charged of raping a child was appealing against sentence, Justice Mubako pointed out that:

*It is important that the courts protect victims of sexual aggression who are usually women. Sexual assaults are a most reprehensible invasion of one’s body, one’s personality and dignity, the more so when it is perpetrated on young people.*
In another High Court case *Chidodo v S of 1998*, where the accused was charged with the rape of a child was appealing against sentence, Justice Blackie underscored the seriousness of sexual offences perpetrated against a minor as follows:

*Firstly and primarily, rape is a very serious offence. It is a gross violation of the rights, body and dignity of the complainant. The offence is aggravated when it is committed on a child. A severe penalty must be seen to have been given.*

The traumatic effects of sexual assaults on victims were accepted by the court in the matter of *Nyangimba v S of 2002*, an appeal against the conviction and sentence imposed by the Regional Magistrate. The perpetrator had pleaded not guilty to one count of raping a six year old girl but had been convicted and sentenced to nine (9) years imprisonment of which two (2) years were suspended on the usual condition of good behaviour. Judge Guvava, citing Spencer and Flin (1993), emphasized the insidious nature of sexual crimes against victims and how they impacted on the victims both socially and psychologically on victims. He stated that:

*It is now accepted from studies of psychologists that complainants in sexual cases are traumatised by the act of rape. From the evidence before the court the complainant not only suffered the physical trauma of the rape itself. Studies have shown that this trauma has far reaching psychological effects on rape victims (p: 5 paragraph 3)*

The impetus for reform in the manner in which the criminal justice system handled child witnesses is partly traceable to the individual efforts of Judge Malaba. As an outspoken advocate for the child-friendly court system in 1993, Judge Malaba spearheaded the formation of the Vulnerable Witness Committee. In the light of the Zimbabwean government’s tendency to ignore or dispense with any judges or presiding officers that are deemed anti-government, the government was from the onset significantly receptive to Justice Malaba’s initiatives. When Justice Malaba expressed his concern over the plight of child witnesses in the criminal courts, the government responded positively.
The VWC included representatives from various non-governmental organisations, the Zimbabwe Republic Police, the Law Society of Zimbabwe and the Ministries of Justice, Legal and Parliamentary Affairs; the then Ministry of Health and Child Welfare; and Ministry of Public Services, Labour and Social Welfare. In 1995, the VWC together with the Catholic Commission for Justice and Peace in Zimbabwe formed the multi-sectoral Victim Friendly Courts National Committee. The latter was commissioned to facilitate the introduction of victim-friendly courts and intermediaries in the country’s two major cities of Harare and Bulawayo. It was also mandated to identify the training needs of intermediaries, prosecutors, presiding officers and the police.

The Victim Friendly Courts National Committee organised study tours in 1996 and 1997 for delegates drawn from the Ministries of Health, Justice, Home Affairs and the Department of Social Welfare. The group of delegates visited the Wynberg Sexual Offences Courts in Cape Town to study the machinations of the child-friendly court system, including the use of intermediaries, special rooms, one-way mirrors and closed circuit television. After receiving positive feedback on the study trips to South Africa, the Victim Friendly Courts National Committee successfully advocated for the amendment of the Criminal Procedure and Evidence Act (Chapter 9:07) (1997) permitting the use of intermediaries, special rooms and closed circuit televisions.

Upon the introduction of the Criminal Law Amendment Act, the office of the National Coordinator for the Victim Friendly Courts ensured that most of the presiding officers and prosecutors received training on how to handle child witnesses and the new role of intermediaries. Presiding officers were urged to be flexible in adapting the rules of evidence in a manner more empathetic to child witnesses and their testimonies. They were urged to
show sensitivity to the psychological harm suffered by the child when assessing the severity of the offence. Prosecutors were urged to make use of alternative court procedures which included the use of intermediaries and special rooms. From the onset all three ministries, the Ministry of Public Services, Labour and Social Welfare, the Ministry of Home Affairs and the Ministry of Justice, Legal and Parliamentary Affairs showed significant enthusiasm and support for the introduction of the victim friendly courts and the use of intermediaries. There was even a marked struggle amongst the three ministries over who would have monopoly over the project.

The Criminal Procedure and Evidence Amendment Act (Chapter 9:07) (1997)
The Criminal Procedure and Evidence Amendment Act Part XIVA section 319A to G (p 200-205) deals with the appointment and regulation of intermediaries in the Zimbabwean courts. Part XIVA “Protection of Vulnerable Witnesses” provides that:

319A “intermediary means a person appointed as an intermediary in terms of paragraph (i) of section three hundred and nineteen B;” “support person” means a person appointed as a support person in terms of paragraph (ii) of section three hundred and nineteen B “vulnerable witness” means a person whom any measure has been or is to be taken in terms of section three hundred and nineteen B.

319B if it appears to a court in any criminal proceedings that a person who is giving or will give evidence in the proceedings is likely-

(a) to suffer substantial emotional stress from giving evidence: or
(b) to be intimidated, whether by the accused or any other person or by the nature of the proceedings or by the place where they are being conducted, so as not to be able to give evidence fully and truthfully;

The court may do any one or more of the following, either mero motu or on the application of a party to the proceedings:

(i) Appoint an intermediary for the person;
(ii) Appoint a support person for the person:
(iii) Direct that the person shall give evidence in a position or place whether in or out of accused’s presence, that the court considers will reduce the likelihood of the person suffering stress or being intimidated:

Provided that, where the person is to give evidence out of the accused’s presence, the court shall ensure that the accused and his legal representative are able to see and hear the person giving evidence, whether through a screen or by means of closed circuit television or by some other appropriate means:

(iv) Adjourn the proceedings to some other place, where the court considers the person will be less likely to be subjected to stress and intimidation;

(v) Subject to section 81 subsection (1) (a, b, c, d, e, f, g, h, i) (2) and (3) of the New Zimbabwe Constitution (2013), make an order in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act (Chapter 7:04) excluding all persons or any class of persons from the proceedings while the person is giving evidence.

Factors to be considered when deciding whether or not to protect a vulnerable witness.

319C (1) When deciding whether or not to take any measure under section three hundred and nineteen B, the court shall pay due regard to the following considerations:

(a) the vulnerable witness’s age, mental and physical condition and cultural background;

(b) the relationship, if any, between the vulnerable witness and any other party to the proceedings;

(c) the nature of proceedings;

(d) the feasibility of taking the measures concerned; and

(e) any views expressed by the parties to the proceedings, and

(f) The interests of justice.

(2) To assist the court in deciding whether to take any measures under section three hundred and nineteen B, the court may interview the vulnerable witness concerned out of sight and hearing of the parties to the proceedings:

Provided that at such an interview the merits of the case shall not be canvassed or discussed.
Court to give parties opportunities to make representations
319D Before taking a measure under section three hundred and nineteen B; the court shall afford the parties to the proceedings an opportunity to make representations in that matter.

Court may rescind measure to protect vulnerable witness
319E Without derogation from any other law, a court may at any time rescind a measure taken by it under section three hundred and nineteen B and shall do so if the court is satisfied that it is the interests of justice to do so.

Persons who may be appointed as intermediaries
319F (1) Except in special circumstances, which the court shall record, a court shall not appoint a person as an intermediary unless that person:
   (a) is or has been employed by the State as interpreter in criminal cases; and
   (b) has undergone such training in the functions of an intermediary as the Minister may approve.

(2) In appointing a support person for a vulnerable witness, the court shall select a parent, guardian or other relative of the witness, or any other person who the court considers may provide the witness with moral support whilst the witness gives evidence.

Functions of the intermediary
319G (1) Where an intermediary has been appointed for a vulnerable witness, no party to the criminal proceedings concerned shall put any question to the vulnerable witness except through the intermediary:
Subject to any directions given by the court, an intermediary -
   (a) shall be obliged to convey to the vulnerable witness concerned only the substance and effect of any question put to the witness; and
   (b) may relay to the court the vulnerable witness’s answer to any questions put to the witness.
Provided that when doing so the intermediary shall, so far as possible, repeat to the court the witness’s precise words.

(3) Where a support person has been appointed for a vulnerable witness, the support person shall be entitled to sit stand near the witness whilst the witness is giving evidence in order to
provide moral support for the witness and shall perform such other functions for that purpose as the court may direct.

Weight to be given to evidence of witness for whom intermediary or support person has been appointed

319H When determining what weight, if any, should be given to the evidence of a vulnerable witness for whom an intermediary or a support person has been appointed, the court shall pay due regard to the effect of the appointment on the witness’s evidence and on any cross examination of the witness.

Interpretation of the Criminal Procedure and Evidence Amendment Act (Chapter 9:07) Sections 319B to 319H (1997).

Section 319B

Section 319B states that the court must be convinced that a person who is testifying or about to testify is likely to experience emotional stress. The court will allow the State permission to bring in an intermediary or a support person. The inclusion of the phrase “mero motu” provides for the court’s discretion in that the court may on its own initiative, in the absence of an application by the State for an intermediary, appoint an intermediary or a support person. In practice this particular portion of the Act is used by the courts to justify an automatic appointment of intermediaries, except in cases where a child witness prefers to confront the accused in the main courtroom. Section 319B does not stipulate any age limit for witnesses who may receive intermediary assistance. Furthermore, the permission to use intermediaries is not limited to sexual offence trials only.

Section 319B (b) (iii) by implication covers the use of a special room. The court may direct that the witness shall give evidence in a position or place whether in or out of accused’s presence, in order to reduce the likelihood of the person suffering stress or re-traumatisation of being intimidated. Only one application is necessary for the application of an intermediary,
support person and access to a separate position or place. The court must at all times ensure that the accused and his legal representative are able to see and hear the witness testifying, either through a screen or closed circuit televisons.

Most of the courts use closed-circuit televisons and live-video recordings of the child and the intermediary. The intermediary wears ear-phones and uses them to communicate with the courtroom. The room is furnished and decorated in a child-friendly manner, with bright furniture and paintings on the walls. Section 319B (b) (iv) states that during trial the court may on its own initiative stop proceedings in order to relocate to a more convenient location if it appears that a witness will be less or more likely to be stressed or re-traumatised.

Section 319B (b) (iv) deals with in-camera proceedings. Subject to the New Zimbabwean Constitution’s (2013) under Section 69, the court has power to exclude some persons from the proceedings while the witness is giving evidence. Therefore, Section 319B (b) (iv) does comply with the Courts and Adjudicating Authorities (Publicity Restriction) Act.

**Section 319C**

Section 319C provides a guideline for the courts to follow in the exercise of their discretion as to whether or not provide protection to vulnerable witnesses. The guideline is significantly important in that it guides the courts as to what factors to take into account. The factors include the witness’s age, his or her mental and physical condition and cultural background. The relationship between the vulnerable witness and the accused or any other person in the case will be taken into account too. The interests of justice should also be considered. This helps ensure consistency in court procedure. The inclusion of the “cultural background” factor means that courts must ensure that the intermediary appointed is culturally matched to
the vulnerable witness. The majority of the intermediaries are multi-lingual and speak Zimbabwe’s three main languages English, Shona and Ndebele. Half of the intermediaries can also speak Nyanja, a language used by the majority of Malawi immigrant workers in the farming communities.

**Section 319D**

Section 319D authorises the courts to give any parties to the proceedings, including the accused or his legal representative, the opportunity to make presentations. What the researcher observed was that most of the cases that were being handled in the victim friendly courts, alleged perpetrators were represented by their legal representatives.

**Section 319E**

Section 319E refers to the situation where it is established that the provision of an intermediary for a child is not in the interest of justice. The court may in the middle of a trial withdraw intermediary service. The New Constitution as enshrined under section 70, states that the accused “shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court. In the event that the use of intermediaries is seen to be interfering with the alleged perpetrator’s right to examine a witness, this subsection may be invoked.

**Section 319F**

Section 319F identifies persons who may be appointed as intermediaries. An intermediary shall be a person who is a current or former State interpreter. He or she must have received intermediary training. Only in exceptional circumstances may a person, who is neither a current nor a former State court interpreter and has not received intermediary training, be
appointed as an intermediary. Section 319F does not explain what the exceptional circumstances would be. In practice the combined function of interpreter and intermediary is known and accepted in most regional courts in the country. Section 319F is however silent on the aspect of intermediary remuneration. The reasonable assumption is that this is because the majority of intermediaries are already in the employ of the Civil Service Commission as interpreters. The second subsection of Section 319F provides for the appointment of a support person. The latter may be a parent, guardian or relative of the witness. His or her duty is to provide moral support to the witness.

2.6  Empirical Review of Related Literature

2.6.1  Effects of sexual abuse on victims

Rape victims suffer immense trauma and this is seldom properly acknowledged. The effects of sexual abuse will continue to negatively affect a girl child if she is not successfully counselled for the rest of her life. Hall (1999) states that if a woman seems nervous, dependent, miserable or lacking in self-confidence either briefly or over a period of years it was quite likely that rape or sexual assault would be part of the reason why. It would be certainly not the only problem in girls’ or women’s lives.

A woman’s or girl’s own unfavourable image of herself may then be reflected by others who put her down as inadequate, weak or insane because she cannot “get herself together” (Hall, 1999). Rape happens in private. It is embarrassing and stops girls from disclosing or reporting it. The effects of not disclosing are traumatic as noted above. The formation of the Victim Friendly Legal System was a way of reducing traumatic experiences on child victims of sexual abuse. When girls who have been brave enough to disclose the sexual abuse, or if someone finds out and leads to the sexual abuse being disclosed, all efforts would be made to
ensure that as they pass through the justice system they are given enough support and professional counselling.

Sexual assault is much more an issue of power, domination, control, invasion, humiliation. It is about women losing control over their safety, losing autonomy over their bodies and often fearing for their lives while being subjected to an attack. It is this experience that creates the significant physical and emotional disturbances in victims (both short term and long term) identified as rape trauma syndrome (MacFarlane, 2004). The sexual abuse trauma syndrome is regarded as the “normal healthy and predictable response to a rape by a normal psychologically healthy person” (p 53). The symptoms of the syndrome include intrusive, involuntary and upsetting thoughts about the assault; flashback memories of the event; feelings of shame; feelings of guilt and self blame; feelings of being dirty and contaminated by the rape; feelings of anger and rage and feelings of hopelessness and powerlessness (Wynberg Report, 2001).

The sexual abuse can also trigger psychosomatic responses. Asthma and anorexia nervosa are common syndromes. Commonly there are also emotional problems, often long lasting, which are shown in various ways at different stages. Younger children may show open and even compulsive sexualised behaviour, or regress to an earlier stage with wetting and soiling. School age children may manifest sexualised behaviour less often but may have problems in school, sleeping and eating disturbances, lack of self esteem and nightmares. All these symptoms show the effect of severe disturbance of the normal patterns of development, the trauma, pain and lowered self esteem which characterise victims of sexual abuse. They do not go away with the passage of time after the abuse has ended, for a wide variety of later effects
have been pointed out, including sexual difficulties, inability to form lasting relationships, a serious lack of self confidence, marital problems and inability to be good parents.

Women who have been abused as children may be found among battering mothers. Girls who survive sexual abuse as children may find themselves attracted, tragically, by men who are or become child molesters and be unable to offer their children any protection. Repetition in the next generation is not inevitable; not all abused children grow up to be abusive parents. Nevertheless, the identification and treatment of sexually abused children becomes even more vital when it is likely to help the next generation (La Fontaine, 2003).

2.6.2 Role of professional counselling service in Victim Friendly Legal System.

It is clear that quite a lot of research has been done on the effects on child sexual abuse (rape). The emphasis on counselling would enable child victims to recover and lead as normal a life as possible. It appears as if generally abused children face problems as noted by Chapman and Gates (2005) below:

Although society reacts with predictable horror at what is done to children by sex offenders, it apparently does not share a similar concern for what subsequently may happen to them at the hands of our law enforcement and child protection systems. Whether a child has been sexually assaulted by a stranger, an acquaintance, or a member of her own family, when the incident is brought to the light the family is usually found to be undergoing a state of crisis as it works through feelings of anger, fear, shock and confusion. In the midst of such vulnerability, the criminal justice, health and social service systems (victim friendly legal system) may descend upon a child and family with such a devastating impact that its recipients are left with the feeling that the “cure” is far worse than the symptoms. Many authorities agree that the emotional damage resulting from the intervention of “helping agents” in our society may equal or far exceed harm caused by the abusive incident itself.

This only showed what happens when the child does not get the support that she deserves. Both Kabasa and Kudya (2006) also highlighted the continued trauma which children
experience after leaving the victim friendly system court, clinic and police station. These institutions points out what ought to be done. What would be required is a properly coordinated system to ensure that the treatment does not cause more harm than what the actual abuse caused. It would be in the best interests of the child that the counselling services at the Victim Friendly System be supported in full. Chapman and Gates (2005) further note that:

*The child who is usually under a great deal of emotional stress already may be required to recount the details of the case over and over at various stages in the legal process. During the process of investigation, the child may be taken to a hospital or a private physician for a medical examination. Here again the child is expected to recount the incident leading to the report. However a gynaecological exam, even when performed under the best of circumstances can be an upsetting experience. The situation can be exacerbated if the medical personnel are not trained or sensitive or willing to spend time and patience required to handle these disturbing cases.*

The Victim Friendly System has the counselling services in place but when children go to the court, they are still subjected to more traumatic experiences. The counselling services which are already available have not been fully utilised. The Victim Friendly System is well manned with professionals who know well how to handle child victims confidentially. Even under the present economic challenges in Zimbabwe, there are people trained to examine the children in a manner that does not worsen their situation. What has been happening as a result of the lack of coordination within the system is that the children who were referred to the Victim Friendly System seeking assistance were only partially counselled. It becomes difficult under the circumstances to say that the Victim Friendly System is functioning efficiently. However the blame cannot be laid on any one section of the system in particular because when the VFS was initiated, all the relevant parties were trained. What needs to be done is to interrogate the system and see what went wrong and why. This would expose the weaknesses of the system and would in turn require ways of correcting the mistakes done over the time.
2.6.3 Roles, issues and concerns of stakeholders on the victim friendly system

The Department of Social Welfare

The department of social welfare (DSW) is the body charged with coordinating the operations of the policies to do with children in as far as their protection care and welfare is concerned in Zimbabwe. This is provided for in the Children’s Protection and Adoption Act Chapter 5:06. To fulfil the demands of this act, the department of social welfare operates at two inter related levels, that is, the curative and the preventive. It has offices countrywide. Abused children are vulnerable in many ways. When a child has been abused the police are supposed to inform social welfare. Social welfare would then begin to provide professional counselling to the child and accompanies that child to the Harare Central Hospital (Family Support Trust Clinic) for medical examination. After the clinic has attended to the child, social welfare officers are supposed to continue with their supportive role and accompany the child to the police.

It is not clear that social welfare is aware of its limitations regarding its role in coordinating the concerns of sexual abuse victims and that of stakeholders in the victim friendly system in Zimbabwe. It therefore put in place a system meant to boost coordination amongst stakeholders. The Guidelines to the Management of Child Sexual Abuse were first put in place in 2003 as a way of clearly spelling out the specific roles of the different stakeholders. The Protocol for the Multi-Sectoral Management of Child Sexual Abuse in Zimbabwe of 2003 laid down detailed procedures to cover the various stages the child goes through during the preparation for court. The procedures covered both pre-trial and post-trial periods. These could then be compared with what is actually happening within the victim friendly legal system. The Guidelines showed how the various departments were expected to deal with the
minor child. These include what should happen during police investigations and also what happens at the hospital when the child would be undergoing medical examination. This involves the following:

(i) The Curative Level

The curative level is a stage whereby the department of social welfare offers the different psychosocial support to the sexually abused victims and vulnerable witnesses through professional counselling services, protective accommodation and medication where necessary. When a child is neglected, ill treated or abused the department of social welfare puts in motion measures to address the situation. The department of social welfare would offer professional counselling services to all persons of whatever age when this service was needed. It would also offer protection to vulnerable persons particularly children, which ranges from supervision while they remain in the custody of their parents, through foster placement, adoption and lastly placement in institutions. Where there has been abuse of children, it is the department of social welfare’s routine to prepare reports for the Juvenile Court and recommend a rehabilitation plan for the officer to follow with the child and his/her family (Protocol, 2003).

(ii) The Preventive Level

The preventative level is whereby the government and other stakeholders in the victim friendly system embark on awareness campaigns in different communities appraising the general populace about the need to recognise children’s rights. It is the obligation of the government of Zimbabwe to protect children and vulnerable witnesses from sexual abuse, ill treatment and neglect at all times. The department of social welfare is expected to create an awareness of children’s rights in all the communities in the country using all the legal
languages in use. The department was also expected to train children and adults to recognise potential abuse situations and ways of avoiding them in their communities with the assistance of other stakeholders in the child welfare sector.

(iii) Pre Trial Stage
This is a stage before the official court proceedings whereby the social worker is expected to provide all the necessary support to the victim of sexual abuse. A social worker provides the necessary support for the child/adult victim of sexual abuse and their family all the time. The moment a social worker receives a report from the general public, he/she would make arrangements to see the alleged victim and alert the police. In the case that a referral was made by the police, the social worker would take this as a priority case and proceed to the police station or ask them to bring the victim over for counselling. A probation officer would reassure the victim during the counselling session so as to reduce the traumatic impact of the sexual abuse on the child victim. The probation officer should be careful not to make promises they cannot keep such as “I will make sure that the accused/perpetrator is caught and sent to jail”. The probation officer should be careful not to blame the accused/perpetrator either when they are communicating with the victims. The probation officer is there to protect the interests of the victim. When the child gets to court the personnel are guided as follows:

(a) Make the victim aware that the prosecutor and intermediary would be in court to defend them and that the perpetrator may be allowed bail or may even be acquitted.

(b) Explain that the lawyers and the perpetrator may ask numerous questions and sometimes repeat themselves in an effort to establish loopholes in their story so as to win the case. Preparations for any eventuality in the outcome of the case must be made for the protection of the victim.
(c) Introduce the child victim to the anatomically correct dolls that would be used in the court and make her feel comfortable to demonstrate her story using such dolls. Preparations for any eventuality in the outcome of the case would be made for the purposes of protecting the child victim/adult. This would then become clear to the victim to clearly say out what would have happened in the courtroom.

(iv) Trial Stage

This is a stage where the criminal proceedings would have commenced in the courtroom. The victim would be expected to be formally notified of what would be happening in the court. The probation officer would then tell the victim the following steps to be expected in the trial stage:

(a) Introduce the child to the public prosecutor, intermediary and where necessary the probation officer would be in the closed circuit television room with the child victim and the intermediary. If the child feels safe and relaxed with the intermediary, the intermediary may show the child around the courtroom.

(b) In all cases of sexual abuse, neglect and ill treatment, the probation officer’s report was required in the court.

(c) In the case of sexual abuse the report was supposed to touch on the following observable behaviour

(d) Social/personal circumstances of the child;

(e) Exposure to sexually transmitted infections including HIV/AIDS; and

(f) The possibility of the need to go through an abortion procedure.
A clear rehabilitation plan for the victim was supposed to be included in the report. Where there are any victim support persons at the court the initial probation officer may hand over the child to them. Where they are not available and the child needs support in court, a different probation officer may be asked to take on the task. The initial probation officer may not be the one to take on this task because they may be asked to be a witness (Protocol, 2003).

(v) Post Trial Stage

According to the Protocol (2003), if the victim and her family are not at court on the day the matter is finalised, the prosecutor or intermediary must relay the outcome of the court proceedings and provide appropriate counselling to both victim and her family. When they are available in court, proceed to provide the necessary and appropriate counselling by following through the Rehabilitation Plan mentioned above. The victim and her family are encouraged to continue with any medical tests that will be still pending and counsel them accordingly. A social worker or professional counsellor is further encouraged to discuss with the victim and her family to guard against any future potential abuse situations, ways of avoiding them, and how to address them (Protocol, 2003).

(a) Ministry of Health and Child Care

The family support trust clinic is situated at the hospital. There is no particular emphasis by the hospital authorities to highlight the specialised role of the clinic (Kabasa, 2006). The continued existence of the clinic was mainly due to the increase in the numbers of sexually abused children and the positive response from the donor community. All the medical examination of child victims of sexual abuse would be done at the family support clinic located at Harare Central Hospital. After the child victims have been medically examined, a
medical affidavit report would be completed by the medical doctor and given to the accompanying police officer in the presence of the social welfare officer. However, it was saddening to note that the department of social welfare was not playing its part. It appeared as if the department was not really committed to the objectives of the system.

(b) Non Governmental Organisations

There are at least thirty-one (31) non-governmental organisations (NGOs), dealing with child related issues in Zimbabwe. Some of them offer professional counselling services, medication and educational assistance whilst others dealt with other issues. Of those which offer professional counselling services each one of them target a specific geographical area which does not necessarily include the family support trust clinic’s catchment area. Thus, the counselling services are a piecemeal and the NGOs accept any victims referred to them for counselling. According to Kabasa (2006), there was no proper coordination between the victim friendly system clinics at Harare Central Hospital and Parirenyatwa Group of Hospitals both in Harare and the NGOs. There was contact as and when necessary but this was not as systematic as it should be. Some of the NGOs work through their partners in assisting child victims of sexual abuse. In those circumstances, the NGO’s do not work directly with the children.

2.6.4 Stakeholders/victims experience to issues and concerns on the victim friendly system

Available literature relevant on the Victim Friendly System in Zimbabwe, one gets a feeling of despondency regarding the viability of the programme more than a decade after it was started. It goes without saying that the economic meltdown which the country experienced had its effect. Some of pioneers of the victim friendly system in Zimbabwe must have moved
on to greener pastures. This was necessitated by the government failure to provide commensurate working conditions thus creating serious gaps. This was shown in some of the stakeholders like the Department of Social Welfare. This was a government department which was tasked with the responsibility of providing professional counselling to victims of sexual abuse. Kabasa (2006) carried out a research concerning the welfare of child victims of sexual abuse (rape) at court. In her research findings, Kabasa (2006) highlighted the unfortunate position of the girl child victims and witnesses as follows:

Victims of sexual assault fit into the vulnerable witness category and are covered by these provisions. These provisions embody the whole essence of the Victim Friendly Courts. It is however interesting to note that the decision is made by the court on its own initiative or on application by a party to the proceedings.

Kabasa (2006) also confirmed that for the six (6) years that she has been a Regional Magistrate, she had not dealt with applications from victims but it is automatically the prosecutor who makes that decision which invariably sees children less than twelve (12) years automatically being afforded the use of the Victim Friendly Court. It must be acknowledged however, that these provisions show an appreciation of the need to protect vulnerable witnesses when testifying in Court. The law however has no provision for pre- and post-trial counselling in the event that the witnesses require such a service. Section 363 of the Criminal Procedure and Evidence Act Chapter 9:07 (1997) mentions the award of compensation to any person who has suffered personal injury as a direct result of the offence and this falls short of addressing psychological injury for victims of rape (Kabasa, 2006).

Reference has been made to guidelines which were meant to give the necessary guidance to the offices handling child survivors of sexual abuse. These guidelines were published in 2003 but three (3) years later, the system was still not still ensuring that the child got counselling while at the court. The system was formally recognised in 1997. What this showed was that
the gap between the agencies which support the child had continued to be there even though there were guidelines in place. The present research has established that from the view of the clinic, children are not coming back from the court for further professional counselling. The situation is therefore that these two crucial institutions whose procedures can make or break the psychological wellbeing of a child are not communicating at all. So no matter how good the guidelines may be and even if there is training, the training would be only an academic exercise if there is no system in place to enforce measures taken to counsel child survivors of sexual abuse who appear before them (Kabasa, 2006).

Even if the courts use the closed circuit television (CCTV) to take evidence, this would not be of much use to the child after she has left the Court. Magistrates needed to be empowered to refer children for professional counselling both during the trial if they deemed it necessary, and after the trial as a matter of practice. There was a serious breakdown of communication within the criminal justice delivery system in Zimbabwe. One person who continues to suffer due to this breakdown of communication is the girl survivor of sexual abuse (rape). If the system worked satisfactorily a child would be receiving counselling throughout the process (Kabasa, 2006).

Kabasa (2006) in her research stated that even regional magistrates continued to be concerned with the absence of professional counselling services. There was however hope for a better system if the expected programme of support by Save the Children Norway was successful. That programme would benefit the children more if the communication with the clinic where medication was provided was improved. This would ensure the presence of a counsellor whenever they are required and it would also avoid the duplication of roles. The presence of a professional counsellor changes the whole complexion of how a witness testifies.
It would be expected that if a child has received sufficient professional counselling service she has more hope than one who has not received it. Further, the counsellor would be right there to explain both the attitude shown at court and the reason why questions are asked in the manner that they are asked. Kabasa (2006) goes on to say: “When the Victim Friendly Courts (VFCs) were introduced it was believed the trauma of testifying in Court would be alleviated”. However, previous research has shown that this was not necessarily so (Makazhe, 2001; Ndlovu, 2003). Even in the VFC, children are subjected to lengthy and rigorous cross examination. The children are traumatised by the rape and giving evidence and to compound matters there is lack of training on child psychology, communication skills and counselling for the court officials (Kabasa, 2006).

In the research by Kudya (2006) the point was made that the emotional needs of the child were not taken care of during the period that she gives evidence. The impression created by the failure of the system seems to be that the VFS was an impediment rather than a gain in the management of child sexual abuse. Yet the management is supposed to be ‘holistic’. The same dissatisfaction was also shared by the personnel at the family support trust clinic. The clinic was the institution that was supposed to continuously monitor the progress made by the child, yet it was persistently kept out of the picture. The Department of Social Welfare appropriately defined a ‘vulnerable child’ to include a child who has been sexually abused.

In its standards of operation to guide institutions dealing with vulnerable children, the department of social welfare set out “Dimensions” of quality which are a key part of these Standards on Child Protection, for example: Standards Compassionate relations: the establishment of trust, respect, confidentiality, and responsiveness, achieved through ethical
practice, effective communication and appropriate socio-economic factors. In compassionate relations, the service provider must maintain professional relationships with children. Children must be treated with dignity, empathy and respect (Minimum Standards, 2003)

These particular guidelines targeted schools, clinics and hospitals; but they do not include the courts. Leaving out the court as one of the places to exercise the provision of quality services means isolating the child survivor and witness at this totally unfriendly place. The environment at court had to be improved if the welfare of the child is placed at the centre as suggested by department of social welfare in one of its publications (‘Children on centre stage’, a biannual publication for orphans and vulnerable children (OVC) programmers supported by the Southern Africa HIV and AIDS Information Service (SAfAIDS).

Until that happens the child remains confused at court and this only further traumatises her. Kudya (2006) further stated that survivors of sexual abuse do not get any specialist treatment while at court and that one of the problems is of matters being postponed. It also shows why it is important for witnesses to be continuously supported during the whole process. Kudya (2006) also indicated that a lot of undesirable situations arise as children go to court as witnesses. Witnesses’ attendance at court was supposed to be at the state’s expense. They are subpoenaed and provided with bus warrants and once at court they are entitled to receive witnesses’ expenses. This however was not happening on the ground. Rather, victims and witnesses were left to financially support themselves.

2.7 Chapter Summary and Gaps Justifying the Study

In this chapter literature related to the study was explored. The victim friendly legal system was anchored on different pieces of legislation. What is also evident is that Children’s
Protection and Adoption Act Chapter 5:06 is a good legal document that provides a framework for child protection, welfare and supervision. It was also highlighted that the Act does not cover child proceedings adequately. Contributions of stakeholders from the various non-governmental organisations were also explored. The conceptual framework/model of the study is deductively anchored on the United Nations Convention on the Rights of the Child as articulated under Article 19. In the present study, this UN Convention on the Rights of the Child is anchored on four pillars of the judicial system, the family, victims of sexual abuse (children) and stakeholders in the child welfare sector. The researcher observed that these stakeholders play a major role in complementing the victim friendly legal system by providing resources in terms of places of safety and medical requirements on the part of child victims. From the reviewed literature a yawning gap was identified during the assessment of perceptions of the effectiveness of the victim friendly legal system. This yawning gap was exhibited through lack of proper co-ordination of all responsible actors in the system to effectively assist the child victims of sexual abuse. Actors to the victim friendly legal system are only concerned with their own part, thereby negating the victims on issues to do with re-traumatisation. Chapter Three explores the research methodology undertaken in conducting this study.
CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

The major aim of this chapter three is to describe the research methodology and methods that were selected to be used in the study. It also provide reasons why the chosen methods were appropriate to gather the information needed to answer the questions posed by the research problem. The chapter also pays particular attention to the qualitative research methodology, the rationale for selection of the methodology, the population, the sample size, the sampling procedure, the data generation/collection methods, the analysis and interpretation of data as well as the aspects of trustworthiness and credibility of the research.

The present study used the qualitative methodology in which a variety of qualitative multi-methods were used to interpret, understand, explain and bring meaning to attitudes, perceptions and behaviour. The targeted participants (Regional Magistrates, Regional Public Prosecutors, Intermediaries and Victim Friendly Unit Police Officers) had the requisite knowledge and relevant experience about the Victim Friendly Legal System in Zimbabwe. Qualitative methodology was judged to be the best in eliciting the participant’s perceptions, feelings, attitudes, opinions, interactions, behaviours, actions. The study also involved the examination of various local, regional and international instruments that relate to the subject matter as well as the writings of various authors on the subject of child protection on victims of sexual abuse. Data generation was done using different methods that included in-depth-face-to-face interviews, observations, and documentary analysis.
3.2 Research Methodology and Paradigm of the Study

Research methodology is a strategy to philosophically interrogate the research problem, while research methods may be understood as all methods or techniques that are used for the conduct of research (Kothari, 2004:7-8). Kothari (2004:7-8) goes on to clarify the distinction between research methods and methodology by proffering that: “when we talk of research methodology we would not talk only of the research methods but also consider the logic behind the methods we use in the context of our research and explain why we are using a particular method or technique and why we are not using others so that research results are capable of being evaluated either by the researcher himself/herself or by others”.

The term “research methodology” appears to mean a number of things in educational research. The term ‘methodology’ advanced by Creswell and Clark (2007); O’Leary (2004); Lazas (2004); Seale (2006) and Silverman (2006) attempted to differentiate between methodology and method. First, O’Leary (2004) perceives methodology as the framework associated with a particular set of paradigmatic assumptions that one uses to carry out research such as scientific methods, ethnography and action research. In the same vein, Lazas (2004) views methodology as the fundamental or regulative principles which underlie any discipline such as the concept of its subject matter and how the subject matter can be investigated. Seidman (2006:34) defines methodology as “merely an operational framework within which data are placed so that their interpretation may be easily done”. By the same token, Silverman (2006:15) surmises, “methodology refers to the choices we make about cases to study, methods of data gathering, forms of data analysis, planning and executing a study”. Gobo as cited in Silverman (2006:15) suggests that a methodology comprises the following four components which are:
• A preference of certain methods among available components to us (listening, watching, reading, conversing, theory of scientific knowledge or a set of assumptions about the nature of reality);
• The tasks of science, the role of researchers and the concepts of action and social actors;
• A range of solutions, devices and strategies used in tackling a research problem; and
• A systematic sequence of procedural steps to be followed once a method has been selected.

From the preceding scholarly views, it may be deduced that a number of features stand out in one’s bid to conceptualise the term ‘methodology’. To begin with, research methodology is indicative of how a research study is going to be carried out when dealing with the research problem. It guides the assumption of the research process that might arise from the current policy and institutional arrangements of the VFLS in Zimbabwe. It also provides us with the general approach on how to study a topic. It spells out the direction to be followed when generating new knowledge. Thomas and Nelson (2001), Seale (2006) and Silverman (2006) give two types of methodologies commonly used in research namely, quantitative and qualitative. For the purpose of this study, I made use of the qualitative methodology because it allowed me to get a deeper understanding of certain behaviours, emotional feelings and attitudes of research participants in the study. Any research study is guided by an underlying philosophy in which assumptions are made about epistemology (how we know what we know) and ontology (the nature of reality). These philosophical ideas are strongly linked to specific ways of conducting research such as in this study. The social sciences distinguish between two competing paradigms (sets of basic beliefs): positivism and interpretivism.
The relative merits of these two competing methodologies and their methods have been debated in the social sciences over many years. Those taking a polarised view on the matter argue that qualitative and quantitative research methodologies are incompatible, owing to their respective ontological and epistemological positions. However, some have argued that the two methodologies are not mutually exclusive and there has been an increasing move towards mixed method studies, usually under the philosophical position of pragmatism (Bryman, 1988; Hammersley, 1992; Howe, 1988). This study adopted the qualitative research methodology.

3.2.1 The Qualitative Research Methodology and its Paradigms

Qualitative research is empirical research where data are not in the form of numbers (Punch, 2004). Similarly, Thomas and Nelson (2001) define qualitative research as one which involves intensive, long time observation in a natural setting, precise and detailed recording of what happens in the setting; interpretation and analysis of data using description, narrative, quotes, charts and tables. In the interests of this study, qualitative research is defined as a comprehensive study of the intervention strategies for the appropriate assessment of the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised.

Qualitative paradigms offer the researcher the opportunity to develop an idiographic understanding of participants and what it means to them, within their social reality, to live with a particular condition or be in a particular situation (Bryman, 1988). Thus, it facilitated my understanding of the complexity of bio-psycho-social phenomena in the VFLS in Zimbabwe and affording exciting possibilities for informing clinical practice in trauma reduction (Boyle, 1991). Qualitative research studies phenomena using a prolonged first hand
presence at the research site whereby I got a true reflection of what goes on at the site (Herndon and Kreps, 2001; Willig, 2001). In this study I made use of the face-to-face interviews, observations and document analysis to generate data.

Conducting qualitative research requires considerable reflection on the researcher’s part and the ability to make a critical assessment of participant’s comments. It involves debating the reasons for adopting a course of action, challenging one’s own assumptions and recognising how decisions shape the research study. In this study I concurred with the findings of Mason (2002) who provided the following guidelines for the qualitative researcher:

- The research should be conducted systematically and rigorously;
- It should be strategic, flexible and contextual;
- The researcher is accountable for its quality and claims;
- She/he should engage in critical scrutiny or active reflexivity; and
- She/he should produce convincing arguments.

(i) **Philosophical underpinnings of qualitative research**

The philosophical underpinnings of qualitative research are discussed in varying detail by a number of researchers in the various contexts. This can be summarised as follows: the goals of qualitative research are the usual point of departure from traditional quantitative methods; while quantitative research explores the relationships between discreet measurable variables and outcomes. Qualitative research is used to explore meanings and patterns, inconsistencies and conflicts in people’s thoughts and behaviours (Mason, 2002). In this study, I explored the meanings and patterns, inconsistencies and conflicts in people’s thoughts and behaviours in as far as how effective the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised. I was positioned centrally in
qualitative research. I was the main research instrument to the study whereby I conducted interviews, observed court sessions and sieved through relevant documents to VFLS in Zimbabwe. This positioning required a high degree of reflexivity. I was aware that my position and that of research participant’s priority knowledge and assumptions impacted upon all aspects of the research: development and design, data generation and interpretation.

Qualitative research is explicitly interpretive. I acknowledged that the analytical process involved interpreting the meanings, values, experiences, opinions and behaviours of other participants in this study. I was able to get a deeper understanding of the meanings, values, experiences, opinions and behaviours of the selected research participants. This process has been described as descriptive-inductive to distinguish it from the hypothetic-deductive means of drawing results in quantitative research. There are a variety of analytical frameworks within qualitative methodologies that range from being explicitly intuitive and non-fragmenting, such as immersion–crystallisation, to those that fragment and code data within strict frameworks, such as some types of discourse analysis and grounded theory techniques.

The interpretive and interactive nature of the relationship between the researcher and those being researched means that the analytical process necessarily involves a high degree of researcher subjectivity. The variability of this subjectivity is often managed in qualitative research through various techniques that confer validity and reliability such as triangulation, participant feedback and peer review. This interpretive and interactive quality of qualitative research is a reflection of ontological and epistemological assumptions (for example, the assumption that reality consists of facts, rather than perceptions and meanings) that often differ from those of traditional quantitative research. Qualitative research is informed by phenomelogical paradigms of interpretive research that view the world and its facts as
fundamentally interpreted and constructed by individuals within social groups. Murphy and Mattson (2000) argue that this perspective is entirely congruent with much of general practice.

Malterud (1999) for example, is adamant that evidence of reflection upon the preconceptions and theoretical frames of reference that frame the research process must be accounted for in qualitative health research. The value of reflexivity and engagement is practical in that the standard of qualitative research conducted in general practice is improved. This is achieved through a description of perceptions, behaviours, attitudes and meanings exhibited by research participants from the available data. This process is known as thick description. It moves from being prescriptive and following a ‘cookbook’ approach, to being defensible and justifiable in terms of meeting research aims. It also becomes an enterprise in creative problem solving that fosters methodological innovation. There is also the potential that, as in other health fields, notably nursing, this engagement would contribute to an academic debate that is continually extending the trans-disciplinary dialogue surrounding qualitative methodologies.

Barbour (2005) suggests that this potential is somewhat limited by the lack of a clear vocabulary in general practice at present for talking about the processes involved in theorising. There is obviously a need for engagement with qualitative methodology to be generated within the discipline of general practice itself. The difficulty lies not only in the unfamiliarity of many general practice researchers with the theory that underlies qualititative research, but also in the relative recent emergence of general practice as a discipline.
Crabtree and Miller (1989; 1992) problematise the paradigmatic underpinnings that general practice and primary care have inherited uncritically from other biomedical specialties. They argue that medicine has been reluctant to engage with theory because they have ‘Truth’. They point out that qualitative research adds a critical component to the discipline of general practice in that it challenges clinicians and researchers alike to critique the foundations of the scientific endeavour and to be reflexive and creative in practice and research.

It is apparent that much qualitative or social general practice research is certainly conducted within the philosophical and theoretical foundations and assumptions that underpin traditional biomedical quantitative research with its positivist orientation. The adoption of qualitative methods is no guarantee of researcher reflexivity or engagement with the methodological issues of qualitative research.

Many questions answered using qualitative methods do not require paradigmatic and theoretical reflection. What this means is that paradigms are just perspectives or ways of looking at reality, and they are the frames of reference that a researcher can use to organise his observations and reasoning. For example, Murphy and Mattson (1998) suggest that the choice of qualitative or quantitative methods is purely a technical matter, although they qualify this by noting that understanding the philosophical and epistemological aspects of methodology enables an informed decision to be made.

In Chapter 5, the concept of emic and etic perspective will be discussed at length in the discussion of the themes that emerged from the research findings. The emic perspective provides information on the insider’s point of view, the meaning that people attach to certain facts, events or experiences (Snape and Spencer, 2008). In the present study, the researcher
sought to understand the life of research participants in the victim friendly legal system in Zimbabwe from their perspective, in their own context and describing the system using their own words and concepts based on their perception on the effectiveness of the system. The etic perspective refers to the outsider’s point of view based on their opinions, attitudes, behaviours, perceptions, beliefs and actions about the system in place. This perspective (etic) would entail the researcher’s opinions, beliefs and perceptions about the effectiveness of victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised.

(ii) Limitations of Qualitative Research

Qualitative studies have their own share of criticisms. Firstly, the chief problem is that of making sense out of massive amounts of data emanating from document analysis, personal accounts and interviews (Willig, 2001). This study used open coding to group themes that emerged from the data generated. In the present study, open coding refers to initial phase of the coding process in the grounded theory approach to qualitative research. A code refers to an issue, topic, idea, opinion that is evident in the data generated. The data generated were analysed using conversation analysis which paved the way to interpretation.

Secondly, qualitative research has also been criticised for lacking rigour. It is often criticised for its failure to confirm or disconfirm existing theories because of its lack of sample representativeness and lack of generalisability. Blanche, et al, (2006) argue that generalisability relates to the degree to which an interpretive account can be applied to other contexts than the one being researched. The same authors (Blanche, et al, 2006) go on to posit that because of the contextual nature of qualitative research methodology, there are usually pronounced setbacks to generalisability of findings (for example, failure to interpret
certain behaviours, actions and interactions by a research participant within a certain context). In the present study, the researcher embarked on a thick description of data generated as a way of establishing a deeper understanding of meaning to actions, behaviours and interactions exhibited by the research participants.

Thirdly, the other weakness of qualitative research revolves around sampling, especially non-probability sampling (Thomas, 2003). According to Robson (2002) non-probability sampling involves the researcher employing one’s judgement to obtain a specific purpose. In this study, I purposively selected the research participants based on their skills, knowledge and experience about the VFLS in Zimbabwe. This sampling technique assisted me to gain a deeper understanding of how the VFLS operated in Zimbabwe.

3.2.2 The Quantitative Research Methodology and its Paradigms

Research methods in education (and the other social sciences) are often divided into two main types: quantitative and qualitative methods. It is presumed that when one thinks of quantitative methods, one would probably have specific things in mind. One would probably be thinking of statistics, numbers, and feeling somewhat apprehensive because quantitative methods are deemed difficult. The following definition, taken from Aliaga and Gunderson (2000), describes what quantitative research methods mean: Quantitative research is explaining phenomena by collecting numerical data that are analysed using mathematically based methods (in particular statistics).

To go through quantitative research requires defining it step by step. The first element is explaining phenomena. This is a key element of all research, be it quantitative or qualitative. When we set out to do some research, we are always looking to explain something. In social
sciences, there could be questions like ‘why do counsellors fail to assist child victims of sexual abuse?’, ‘what factors influence counsellor’s success in their work?’ and so on. The second step relates to specificity. The specificity of quantitative research lies in the fact that we collect numerical data. Whenever one embarks on any quantitative research, there should be clear evidence of numerical data in explaining the phenomena understudy. This is closely connected to the final part of the definition: analysis using mathematically based methods.

In order to be able to use mathematically based methods, data have to be in numerical form. This is not the case for qualitative research. Qualitative data are not necessarily or usually numerical, and therefore cannot be analysed by using statistics. Therefore, as quantitative research is essentially about collecting numerical data to explain a particular phenomenon, particular questions seem immediately suited to being answered using quantitative methods. For example, how many males get a first class degree at university compared to females? Has counsellor success in helping clients improved in the perception of professional counselling of child victims of sexual abuse over time? These are all questions one can look at quantitatively, as the data needed to collect are already available to us in numerical form. There are many phenomena one might want to look at, but which do not seem to produce any quantitative data. In fact, relatively few phenomena in education actually occur in the form of ‘naturally’ quantitative data.

The next step entails that most of the data that does not naturally appear in quantitative form can be collected in a quantitative way. This is done by designing research instruments aimed specifically at converting phenomena that does not naturally exist in quantitative form into quantitative data, which one can analyse statistically. Examples of this are attitudes and beliefs. One might want to collect data on child victims of sexual abuse attitudes towards
their counsellors. These attitudes obviously do not naturally exist in quantitative form (we do not form our attitudes in the shape of numerical scales).

Yet one can develop a questionnaire that asks child victims of sexual abuse to rate a number of statements (for example, ‘I think that the victims friendly legal system is very effective in assisting child victims of sexual abuse’) as either agree strongly, agree, disagree or disagree strongly, and give the answers a number (for example, 1 for disagree strongly, 4 for agree strongly). Now we have quantitative data on child victim of sexual abuse attitudes towards the victim friendly legal system. In the same way, we can collect data on a wide number of phenomena, and make them quantitative through data collection instruments such as questionnaires or tests.

The number of phenomena we can study in this way is almost unlimited, making quantitative research quite flexible. This is not to say that all phenomena are best studied by quantitative methods. As we would see, while quantitative methods have some notable advantages, they also have disadvantages, which mean that some phenomena are better studied by using different methods such as the qualitative. The last part of the quantitative research methodology definition refers to the use of mathematically based methods, in particular statistics to analyse the data. This is what people usually think about when they think of quantitative research and is often seen as the most important part of quantitative studies.

(i) **Positivist research paradigm**

Positivism is sometimes referred to as scientific method or science research, is based on the rationalistic, empiricist philosophy that originated with Aristotle, Francis Bacon, John Locke, August Comte, and Emmanuel Kant (Mertens, 2005) and reflects a deterministic philosophy
in which causes probably determine effects or outcomes (Creswell, 2003). Positivism may be applied to the social world on the assumption that "the social world can be studied in the same way as the natural world, that there is a method for studying the social world that is value free and that explanations of a causal nature can be provided" (Mertens, 2005). The positivist paradigm is based on the epistemological and ontological assumptions that one reality exists and that it can be discovered objectively. Positivism holds that an observer can take a detached position to discover generalisable laws and truths (Harré, 1981). The positivist position typically involves the collection and analysis of quantitative (or numerical) data to measure and analyse causal relationships.

Positivists aim to test a theory or describe an experience "through observation and measurement in order to predict and control forces that surround us" (O'Leary, 2004). Positivism was replaced after World War II (Mertens, 2005) by post positivism. Post positivists work from the assumption that any piece of research is influenced by a number of well developed theories apart from, and as well as, the one which is being tested (Cook and Campbell, 1979). Also, since Thomas Khun, (1962) theories are held to be provisional and new understandings may challenge the whole theoretical framework. In contrast, O'Leary (2004), provides a definition of post positivism which aligns in some sense with the constructivist paradigm claiming that post positivists see the world as ambiguous, variable and multiple in its realities "what might be the truth for one person or cultural group may not be the "truth" for another" (p.6). O'Leary (2004) suggests that post positivism is intuitive and holistic, inductive and exploratory with findings that are qualitative in nature (pp.6-7). This definition of post positivism seems to be in conflict with the more widely used definition provided by Mertens (2005).
Positivists and post positivist research is most commonly aligned with quantitative methods of data collection and analysis. Post positivists accept the critique of traditional positivism that has been presented by the subjectivists, without going so far as to reject any notion of realism. Post-positivists accept that we cannot observe the world we are part of as totally objective and disinterested outsiders and accept that the natural sciences do not provide the model for all social research.

3.3 Rationale for the Selection of the Methodology and Its Paradigm

The use of qualitative research in the present study is justifiable for a number of reasons. According to Polkinghome as cited in Rudestam and Newton (1992; 2007: 31) qualitative research methods are useful in the generation of categories for understanding human phenomena and the investigation and meaning that people give to events. In this regard, qualitative research methods enabled me to investigate strategies for appropriate intervention to the victim friendly legal system from the research participants’ points of view. Qualitative researchers are allowed to obtain feedback on their study’s findings from the research participants because qualitative research is anthropocentric (Willig, 2001) and human-centred (Creswell, 2003; 2009). By its virtue of being human centred, qualitative research permitted the researcher to source data that sought research participants’ opinions about the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse.

Qualitative research is a discovery-oriented approach (Thomas and Nelson, 2001). It provides qualitative researchers with opportunities to study specific phenomena in their natural settings (Punch, 2004; 2005; Seale, 2006). Studying things in their natural settings offer an appeal to qualitative studies (Flick, et al, 2004). In the context of this study, qualitative
research was appropriate because it permitted me to assess the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised. This has been shown in a comparative point of view with other regional countries that is alluded to in Chapter Two. For Berg (2006), qualitative research is perceived as best suited for obtaining data on attitudes, perceptions, meanings and description of social reality. Echoing similar sentiments to those of Berg (2006); Patton (2002); Denzin and Lincoln (2008), also argue that qualitative research uses a variety of methods to enhance checking and verification of information together with catering for the divergent view of given phenomena in this study.

For both Patton (2002) and Silverman (2006) qualitative researchers can study selected issues or phenomena in great length, breadth, depth and detail with greater openness since the researcher is not constrained by predetermined categories of analysis. The researcher concurs with Patton (2002) and Silverman (2006) at selected issues in the study in great length, breadth, depth and detail. In the present study qualitative research methods used allowed for the production of rich and detailed information about the phenomenon under study from the perspective of multi-level research participants (regional public prosecutors, regional magistrates, intermediaries and victim friendly unit police officers) which increased my understanding of the effectiveness of the victim friendly legal system in Zimbabwe.

Given the nature of qualitative studies, researchers usually study few individual cases. Qualitative study methods encourage that each research participant be studied holistically, as individual characteristics can only be discovered through an intensive study of that case (Kerlinger and Lee, 2000; Willig, 2001). Consequently, findings from some qualitative studies cannot be generalised because they do not generalise on the sample, but on the quality
and richness of data in the form of meaningful interpretations. In spite of lack of generalisability of qualitative research studies, they are seen to be more specific to the perspective of the research participants while the researcher acts as an expert and retains control on methodology (Patton, 2002). Interpretations about the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised are made possible by the conduct of qualitative research. In that regard, qualitative research is content bound and its study is carried out in a special way that makes it different from other studies. What I mean by content bound is that, the methods to be used in data generation and how the data is analysed differ with other methodologies.

Qualitative research uses the researcher as the primary instrument of data generation (Mason, 2002; Punch, 2004; Seale, 2006). The research participants play a central role in providing data by showing their consent and willingness to participate in the study. They respond to interview questions, and provide documents for analysis and writing personal accounts about their experiences in regard to the phenomenon under study. During the processes of data generation and analysing data, the researcher relied on his feelings, impressions, emotions, interpretations, judgements, and understanding of the phenomenon under study, that is, the assessment of the effectiveness of the Victim Friendly Legal System in Zimbabwe on the protection of child victims of sexual abuse from being further traumatised. In this study, the use of the human as the primary instrument was an advantage to the research because the human mind is much clearer of what to evaluate regardless of changing situations.

The qualitative methodology permitted interaction with the research participants so as to get an appropriate understanding of those being studied by forming a personal relationship with them. Good rapport with all research participants was achieved by making sure that they
understood the purpose of my study and its implications after participating in it. Once rapport had been established, research participants were able to provide data that revealed their impressions, judgements and opinions about the effectiveness of the victim friendly system in Zimbabwe on the protection of child victims of sexual abuse. Underscoring this position, Herndon and Kreps (2001) contend that new theories, themes, concepts and knowledge usually emerge from what research participants reveal during study. Denzin and Lincoln (2008) credit qualitative research for its ability to use a variety of methods to analyse and interpret data such as content discourse, narratives, semiotics, archival and phonemic analysis.

Qualitative research is also highly regarded by Colton and Covert (2007) who concur to the fact that it focuses on the quality rather than quantity. The same goes on to indicate that qualitative research has its philosophical roots in phenomenology and symbolic interaction. Merriam (1998) further points out the main goal of inquiry in qualitative studies are varied and these include understanding, description, discovery and hypothesis generating. Davies and Dodd (2002), Johnson and Harris (2002) and Gary (2009) highly commend the use of qualitative research in a study like the ongoing one for the following reasons. First, qualitative research has advantages over quantitative research in that researchers are closer to the fields or settings they are trying to research, that is, it is highly contextual. I employed data triangulation, multiple triangulations and person triangulation in search of successful conduct of this study.

In qualitative research, data analysis does not follow data gathering- there can be a number of iterations between the two. Data analysis started right from the first day of data generation and the start of the research report writing. Though there are various methods of qualitative
research including grounded theory, case study, narrative analysis and ethnography which all have one thing in common generally, an inductive approach (although deduction or prior questions cannot be ruled out) was used in this study. The methods of data generation of qualitative data include interview transcripts, field notes from observations, photographs, videos and unobtrusive data. The study made use of face to face interviews with (regional public prosecutors, regional magistrates, intermediaries and victim friendly unit police officers); passive observations were made in the victim friendly courts at the Harare Magistrates Courts.


Last, but not least, Patton (2002) pointed out that decisions on whether to attempt generalisation need to be built into the research method paying particular attention to sampling strategies. In this study, a multi-stage purposive sample was used and the results were not generalised on the sample because this was a qualitative study that sought to create new knowledge rather than confirming or rejecting existing knowledge. Finally, Lincoln and Guba (1989, 2000), concur that qualitative methods are critical in achieving rigour that include building credibility, transferability, dependability and conformability. The researcher observed ethical and legal considerations so as to ensure maximum acceptance and support at the research sites by the research participants.

3.4 The Research Paradigm

The design of a research begins with the selection of a topic and a paradigm. A paradigm is essentially a worldview, a whole framework of beliefs, values and methods within which research takes place. It is this worldview within which researchers work. In this study, I chose the qualitative research paradigm to inform my study. A qualitative research paradigm is a fundamental model or scheme that organises researchers’ views of something (Tashakkori and Teddlie, 2003; Bell, 2000). It informs the researchers about when, where and how to look for answers or make interpretations about phenomena.

Much more comprehensive, Thomas and Nelson (2001:203) view a research paradigm as an intellectual device that contains a scholar’s beliefs and assumptions about the real world, the
part and the evidence; his or her views to theory and data and the questions he or she pursues. In brief, what is particular in the preceding action is that a research paradigm contains and shapes particular elements that guide the researcher. These could be a research philosophy or an epistemological position within which a researcher explores new knowledge. Also a research paradigm is a worldview, general perspective, a way of breaking down the complexity of the world. In brief, it simplifies the world’s ideas, beliefs and opinions.

Implied in the above perspective of a research paradigm is the premise that it is essentially a worldview, a whole framework of the beliefs, values and methods within which research takes place. Guba (2000) holds the view that a paradigm is the net that contains the researcher’s epistemology, ontological and methodological premises which has a basic set of beliefs that guide action. Similarly, Denzin and Lincoln (2008) accentuates that paradigm comprises ethics, epistemology, ontology and methodology. In essence, whatever paradigm a researcher chooses, Guba and Lincoln (1989; 2008) contend that it has to take a position on the above issues. In a few words, it is this worldview within which researchers work. The qualitative research paradigm manifests itself in varied forms such as naturalist, interpretive, phenomenological, the biography, and grounded theory. The present study is rooted in the interpretive paradigm.

### 3.4.1 The Interpretive Paradigm

The interpretive paradigm is a qualitative research approach that regards people’s contribution to the creation of new knowledge (Potter, 2006; Creswell and Clark, 2007). Furthermore, interpretive studies seek to explore people’s experiences and their views or perspectives of these experiences (Gray, 2009:36). As a result of interpretive studies are typically inductive in nature and are often associated with qualitative approaches to data
generation and analysis (Cohen and Manion, 2002). Researchers who subscribe to the interpretive paradigm contend that there is no single dominant reality; instead, different meanings are formed which are culturally and socially determined and the role of the researcher is to understand these multiple realities (Apelgren, 2003). This philosophical position is associated with qualitative research methods such as in depth interviews, documentary analysis and observations, where the focus is on generating descriptive (textual) data.

The interpretive paradigm was used to interpret the meaning, attitudes, behaviours and actions of Regional Magistrates, Intermediaries, Regional Public Prosecutors, Victim Friendly Unit Police Officers and the National Coordinator Victim Friendly Coordinator in Zimbabwe. The assessment focused on their perceptions of the effectiveness of the victim friendly system in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised. This was done with a particular focus on strategies for appropriate intervention in Zimbabwe on the reduction of trauma on child victims of sexual abuse. This paradigm to research enables researchers to interpret existing theories in the phenomena being studied so that they might carry out their current studies from an informed position (Berg, 2006; Potter, 2006). In the case of the present study, interpretive paradigm assisted me with the scope of execution of the research. The current study is premised on the interpretive paradigm for four reasons that are listed below.

Blanche, Durrheim and Painter (2006) exhort that an interpretive paradigm is about understanding human phenomena within a certain context. From the current study, I knew the existence of the VFLSZ within the judicial system. What was not clear from the context on the VFLS was a clearly defined statement on its effectiveness on the reduction of further
traumatisation of child victims of sexual abuse. Some of the indicators for effectiveness were the clearance of cases being tried in the victim friendly courts, the number of convicted perpetrators and the separation of the child victim and the perpetrator during the court trial.

Henning, Van Resburg and Smit (2004) indicate that as a result of interpretive paradigm, knowledge is constructed, not only by observable phenomena, but by also people’s intentions, beliefs, values and reasons, meaning and self-understanding. I do concur with Resburg and Smit (2004) on the assertion that knowledge is constructed, not only by observable phenomena, but also by people’s intentions, beliefs and values. I intentionally used the purposive sampling technique to get participants who had different knowledge levels, intentions, beliefs and values with regards to the existence of the Victim Friendly Legal System in Zimbabwe. Schwandt (2000) noted that the interpretive paradigm deals with meanings and that for a researcher to understand a specific social action, one need to understand the meanings that the action subsumes.

Gephart (1999) also observes that some of the key distinct features of the interpretive paradigm are its assumptions, key forms, key theories in the paradigm, its goals, nature of knowledge or theory, criteria for assessing, research unit of analysis, research methods and types of analysis. For Denzin and Lincoln (2000), the varieties of the interpretive paradigm tend to share some key assumptions such as:

- The view towards human action as meaningful; and
- The portrayal of an ethical commitment in the form of respect for and fidelity to the lived world.
From an epistemological point of view, they share the neo-Kantian desire to emphasise the contribution of human subjectivity to knowledge, without, thereby, sacrificing the objectivity of knowledge. A study at any level is expected to be guided by a specific paradigm. Guba (1990) defines a paradigm as the net that contains the researcher’s epistemology, ontological and methodological premises, which has a basic set of beliefs that guide action. The term is also described by Denzin and Lincoln (2008) as encompassing ethics, epistemology, ontology and methodology. However, according to Lincoln and Guba (2000) whatever paradigm a researcher chooses, there are basic issues that the researcher has to deal with. These include issues such as axiology, accommodation and commensurability, control, foundation of truth, validity, voice, reflexivity and postmodern representation.

Each paradigm, according to Lincoln and Guba (2000) has to take a position on the above issues. According to Saunders, Lewis and Thornhill (2006) the interpretive paradigm denotes an epistemology that calls for qualitative researchers to understand that differences are inherently found in humans and their social roles. It underscores the need to observe ethical considerations whenever carrying out research. Furthermore, Henning et al, (2004), advance the view that under the interpretive paradigm knowledge is rarely found as a compact whole, but is rather scattered and distributed. The present study did not only take into consideration one category of participants during the data generation process. Rather, all the key categories of participants were taken into consideration. The different categories of the participants to the current study were regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers. Qualitative researchers count on their own mental processes so as to understand events, phenomena and the meaning attached to them.
Flick (2009) also observes that the interpretive paradigm acknowledges that observation is far from being infallible and is erroneous - and all theory is revisable. In the present study, I went beyond the reading of actions and meanings by interpreting them in order to make sense out actions, words and observable phenomena (Henning et al, 2006). Taking a cue from the above discussion, Guba and Lincoln (1996) observed that the interpretive paradigm has some defined criteria for assessing and evaluating research. They indicate trustworthiness and authenticity as indispensable criteria for assessing research. Guba and Lincoln (1996) go on to point out that the interpretive methodology makes use of interactive qualitative research approaches like the conversational analysis. The relevance of the interpretive paradigm in a study of this magnitude is critical. I commended it for its ability to support well the qualitative research methodology. Hence, the need for the identification of appropriate strategies for intervention to the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation.

Furthermore, I concur with Maynard’s (1989) line of thought as cited in Denzin and Lincoln (2008) that posits that “interpretive paradigm involves listening, seeing and recording how participants see things and how they do things.” This study involved rigorous scrutiny of the interpretations of the varied interactions and meanings (Thomas and Nelson, 2001; Saunders et al, 2006) attached to the experiences of those in the Victim Friendly Legal System in Zimbabwe. It has been widely eluded in the interpretive paradigm that the researcher is not perceived as being entirely objective; rather he/she is a part of the research process (Rowland, 2005). Walsham (2006: 321) said: “we are biased by our own background, knowledge and prejudices to see things in certain ways and not others”.
The interpretive stance is holistic and considers numerous variables including the context of the study (Klein and Myers, 1999). Context is regarded as critical in the case of this present study. The context reveals certain phenomena that could be revealed in another study of a similar nature that would have been conducted in another different context. Context also influences the knowledge constructed, beliefs and values with regards to the study. As outlined by Clarkson (1989: 16): “people cannot be understood outside of the context of their ongoing relationships with other people or separate from their interconnectedness with the world.” The meaning derived by the researcher is a function of the circumstances, the people involved and the broad interrelationships in the situations being researched (Saunders et al, 2007; Ticehurst and Veal, 2000). Walsham (2006: 325) further maintained that: “the researcher’s best tool for analysis is his or her own mind, supplemented by the minds of others when work and ideas are exposed.”

Unlike the positivist stance, physical law-like generalisations are not the end product. Rather understanding through detailed descriptions is sought by answering questions such as “what?”, “why?” and “how?” The interpretive paradigm emphasises qualitative research methods where words and pictures as opposed to numbers are used to describe situations. According to Van Maanen (1983: 9) qualitative methods include:

*Arrays of interpretive techniques which seek to describe, decode, translate and otherwise come to terms with the meaning, not the frequency, of certain more or less naturally occurring phenomena in the social world.*

In qualitative research, the researcher is actively involved and attempts to understand and explain social phenomena in order to solve what Mason (2002:18) calls “the intellectual puzzle”. It relies on logical inference (Hinton et al, 2003) and is sensitive to the human situation as it involves dialogue with participants/informants (Kvale, 1996). In general, the researcher collects large quantities of detailed evidence. Thus, qualitative research may
achieve depth and breadth (Blaxter et al, 1996; Snape and Spencer, 2003; Ticehurst and Veal, 2000). Further, qualitative methods are useful when the researcher focuses on the dynamics of the process and requires a deeper understanding of behaviour and the meaning and context of complex phenomena (Alvesson and Sköldberg, 2000; Snape and Spencer, 2003). It is the most appropriate approach for studying a wide range of social dimensions while maintaining contextual focus (Mason, 2002).

3.5 Description of the Site(s) of the Study

Figure 1: Map of greater Harare

http://www.classifieds.co.zw/mce_images/7430/harare_map.gif (accessed 20 February 2015)
The present study was conducted in the Harare Metropolitan Province. The assessment of the effectiveness of the victim friendly legal system was carried out at different sites within the Harare Metropolitan Province. These sites included the Harare Magistrates Court Victim Friendly System located at the Rotten Row building on the western side of the city (see Figure 2 of the Rotten Row Building that houses the Harare Magistrate Courts below). There is one victim friendly system model court that services different high and low density suburbs of Harare. Documentary analysis, face to face interviews and observations of trial sessions were done at the Harare Magistrate Courts. The other site of the study was the New Government Complex which is located in the city centre along Samora Machel Avenue. The National Coordinator of the Victim Friendly System in Zimbabwe is housed at the office of the Chief Magistrate, 3rd Floor at the New Government Complex Building.

**Figure 2: Rotten Row Building that houses the Harare Magistrates Courts**

![Rotten Row Building](http://www.classifieds.co.zw/mce_images/7545/rotten_row_building.gif) (accessed on 20 February 2015)
Save the Children, a major donor to the Victim Friendly System in Zimbabwe, was visited at their offices along 5th Avenue. This organisation is responsible for the maintenance of the victim friendly court system equipment by way of continuously repairing the closed circuit television (CCTV), televisions and recorders whenever there is a breakdown. However, permission was not granted by the authorities at the organisation to conduct the interviews with the programmes manager and the country director.

Family Support Trusts Clinic (FSTC) which is located at Harare Central Hospital is where the medication of child victims of sexual abuse is provided by government medical doctors. This FSTC is a clinic that was established to specifically give medical treatment for child victims of abuse for free. There are professional doctors and counsellors who offer the necessary support to such child victims in need of support.

3.6 Entry into the Site of the Study

As I embarked on the process of data generation from the sites of the study, I sought permission from the Judicial Service Commission, the Prosecutor General and the Commissioner General of the Zimbabwe Republic Police, to conduct my study at the Harare Magistrate Court where the Victim Friendly Court is located. Permission to conduct my study was granted by the Judicial Service Commission and the Prosecutor General. Permission to conduct the study from the Commissioner General of the Zimbabwe Republic Police was not granted. I negotiated my entry at the Harare Magistrate Court from the office of the Provincial Magistrate, who referred me to the Senior Regional Magistrate.

The Senior Regional Magistrate (SRM) was open to me by saying that he and his other Regional Magistrates were eager to assist me in my research study in spite of challenges with
time. A proposition was reached that he allocates me one Regional Magistrate per day on times they are not presiding in court. The Regional Magistrate drafted a list of the Regional Magistrates that I was going to interview and he gave me a copy.

I also negotiated my entry to the Regional Public Prosecutors (RPP) through the Office of the Harare Magistrate Court Area Public Prosecutor. Through the Area Public Prosecutor, he asked me how I wanted to conduct the interviews, and I proposed to him to be allocated two prosecutors per day at the time convenient to them. The Area Public Prosecutor (APP) agreed to my proposal and he identified four participants for me. It is from these two offices that I was allocated my research participants and their timeframes that I would be able to conduct my interviews with them. This arrangement of identifying participants whom I could interview was fine with me since, the APP was the one who was in charge of all prosecutors at the Harare Magistrates Courts. He (APP) was also the one who knew regional public prosecutors who were used to handling cases in the victim friendly courts.

Since the permission to interview Victim Friendly Unit Police Officers had been turned down by the Commissioner General’s Office, I sought guidance from my research supervisor as to how I could proceed. My supervisor asked me how critical the police was in the victim friendly legal system, and I explained to him that they were very critical to my research study. He then advised me to informally interview the police officers attached to the victim friendly unit since they were critical to my study. The effect of proceeding with informal interviews with the victim friendly unit police officers to my study was that the acceptability of the research findings by the Zimbabwe Republic Police organisation was not going to be taken seriously. The research findings would be rejected by the Z. R. Police organisation as having no relevance to their work.
3.7 The Sample and Sampling Procedure

All items in any field of inquiry constitute a ‘Universe’ or ‘Target Population’ (Kothari, 2004: 7-8).’ The study population consisted of regional magistrates serving in the Victim Friendly Legal System at the Harare Magistrate Court, Regional Public Prosecutors, Intermediaries, Police Officers in the Victim Friendly Unit and the National Coordinator of the Victim Friendly System in Zimbabwe. The accessible population in this study comprised of five (5) regional magistrates, four (4) regional public prosecutors, four (4) intermediaries, three (3) victim friendly trained police officers and one (1) national coordinator of the victim friendly system in Zimbabwe.

Gay (1976) defines a sample as the selected individuals for a study that is representative of the larger population. This study used purposive sampling technique to select the research participants who fall under the various government line ministries and non-government organisations that are involved in the child protection sector. Purposive sampling technique was employed to sample the Victim Friendly Court (VFC) that was considered for the case study.

The use of the purposive sampling technique in this study ensured that the assessment of the victim friendly legal system’s effectiveness was tested with research participants of different ages, gender and experiences of working in the system under the study. The study’s objective focused on the assessment of perceptions of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised. Representative sample in terms of generalisation to the population was not aimed for. The priority for the research was on achieving a sample size that ensured a variety and depth of experiences.
3.8 Data Generation Methods

Data collection in qualitative studies is called data generation (Seale, 2006). The data generation was conducted over a period of twelve months and in three stages. The study focused on the assessment of the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse: A case study of Harare Metropolitan Province. I visited the sampled victim friendly courts and conducted in-depth face to face interviews, went through documentary analysis of court proceedings and observations of the court sessions in particular, victim friendly courts in the Harare Metropolitan Province. Court sessions provided information on the assessment of the effectiveness of the Victim Friendly Legal System in Zimbabwe based on the clearance of cases and conviction rate of perpetrators. Court trials in the victim friendly court would take three days to complete.

In the first stage, documentary analysis was conducted on the various instruments from local, regional and international statutes on the effectiveness of the victim friendly legal system in the protection of child victims of sexual abuse. The rationale behind going through the different documents was to find out how the victims of sexual abuse are protected globally. An opportunity to find out how the victim friendly system concept started, its objectives and impact in the different criminal justice systems of different countries globally was provided through the documentary analysis stage. From the documentary analysis, I made an assessment of the effectiveness of the victim friendly legal system and established that the victim friendly system had been effectively implemented in other countries in Africa (South Africa and Namibia) whilst others (Nigeria, Botswana, Zambia, etc) had not implemented it. Evidence for this effectiveness was provided through the establishment of one stop
infrastructure facilities, and the enactment of policies that support the victims’ in both South Africa and Namibia.

The second stage encompassed the face to face interviews. Participants were drawn from regional magistrates, judges, regional public prosecutors, and intermediaries, and victim friendly unit police officers. The participants to the study were selected by the Area Public Prosecutor, Senior Regional Magistrate and the Chief Interpreter for personalised face to face interviews. The selection was in line with government procedure whenever a research is being done. The purpose of this stage was to get a deeper understanding of the different actors’ feelings, attitudes and perceptions about the effectiveness of the Victim Friendly System concept in Zimbabwe.

The last stage entailed observations of the court proceedings of cases of child victims of sexual abuse at the victim friendly courts. The observations that I conducted enabled to have a deeper insight of emotional feelings of the actor’s, victims and accused in the victim friendly system in Zimbabwe.

Before the data was analysed, the researcher transcribed all interviews and observations conducted. The process of transcribing allowed the researcher to become acquainted with the data generated (Reissman, 1993). The researcher created Microsoft Word files for the interviews, observations and documentary files. All files were protected by setting a password. All files were saved in the researcher’s portable computer for which he only has access to. In qualitative research, the researcher is the key instrument (“human instrument”). For example, when I interviewed regional magistrates, victim friendly unit police officers, intermediaries and regional public prosecutors, their non-verbal cues from those different
participants on the issues that related to the research were of utmost important and complemented the verbal output.

3.8.1 Interviewing

McMillan and Schumacher (2006) explain that interviews are response questions to obtain data from participants about how they conceive and give meaning to their world and how they explain events in their lives. An interview is a joint product of what interviewees and interviewers talk about together and how they talk with each other. The record of an interview that researchers make and use in our work of analysis and interpretation is a representation of that talk. This study provided an opportunity to the participants to talk about their experiences, understanding, feelings, behaviours and values about the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation. Therefore, interviews constituted the major method of data generation in this study. Qualitative interviews may take several forms: the informal conversational interview, the interview guide approach, and the in-depth face to face standardized open-ended interview. These types of interviews vary in terms of structure and comparability of responses in data analysis. According to Leedy and Ormrod (2005:146),

*Interviews in a qualitative study are rarely as structured as the interviews conducted in a quantitative study. Instead, they are either open-ended or semi-structured, in the latter case revolving around a few central questions. Unstructured interviews are, of course, more flexible and more likely to yield information that the researcher hadn’t planned to ask for; their primary disadvantage is that the researcher gets different information from different people and may not be able to make comparisons among the interviewees.*

In this study, the interviews were in-depth face to face interviews and the researcher had prepared a few guiding questions although they were not always asked in a very direct way. Below are the interview questions that were used to generate data from the research participants.

1. Do you think that the victim friendly legal system in Zimbabwe has been effective in the protection of child victims of sexual abuse?
2. What role, if any, does professional counselling in the victim friendly legal system contribute?

3. In your own opinion, do you think that there are the gaps in the current policy and institutional arrangements that do not complement the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?
   (a) If there are gaps on current policy and institutional arrangement of the VFLS, what is your recommendation to the government?

4. Are there any issues that have been raised by key stakeholders on the effectiveness of the victim friendly legal system towards the protection of child victims of sexual abuse from being further traumatised?
   (a) To what extent do these issues contribute to the effectiveness of the VFLS in Zimbabwe?

5. What has the response been to issues raised by stakeholders on the effectiveness of the victim friendly legal system in Zimbabwe?
   (a) In your own opinion, what is your thinking towards the effectiveness of the VFLS in Zimbabwe?

Borg and Gall (1989:451) advise researchers, especially novice researchers, to develop a guide to be used during the interview: Appendix G guide makes it possible to obtain the data required to meet the specific objectives of the study. According to White (2005:143), an interview instrument “provides access to what is inside a person’s head, makes it possible to measure what a person knows (knowledge or information), what a person likes or dislikes (values and preferences) and what a person thinks (attitudes and beliefs)”. In this qualitative study, the researcher and participants therefore can be considered to have been key instruments. The extent, to which the needed information about the effectiveness of the victim friendly legal system in Zimbabwe was
revealed, depended on the research skills of the researcher and the richness of interviewees’ responses.

The interview is one of the major sources of data generation, and it is also one of the most difficult ones to get right. In this study, open ended questions were used in the interviews with the participants. Regional Magistrates, Regional Public Prosecutors and Intermediaries were interviewed formally and Police Officers from the Victim Friendly Unit were informally interviewed. These participants were targeted, because there was need to interrogate their practice in recognising policy requirements and the general functions of the Victim Friendly Legal System in Zimbabwe. Each of the categories of the participants that were selected in this study were people who had hands-on experience with issues that were involved in the victim friendly legal system.

In qualitative research the interview is a form of discourse. According to Mischler (1986), its particular features reflect the distinctive structure and aims of interviewing, namely, it is discourse shaped and organised by asking and answering questions. The verbal accounts given by participants were audio taped and field notes taken during the completion of the interviews. The qualitative data generated from this study was subject to individual analysis and this ensured a richer and fuller understanding of the participants’ individual meanings. Yin (1986) and Nyawaranda (1998) noted the significance of interviews as follows:

- Interviews give background information of participants;
- Interviews help researchers to gain access to information that cannot be accessed through observations, for example, feelings and intentions; and
- Interviews assist in identifying other sources of evidence that is not available in observations.
From this present study, I concur with Yin (1986) and Nyawaranda (1998) on the significance of interviews when conducting a study. I noted that participants in the study neither intentionally nor unintentionally were quick to give their background information with regards to how they ended up working in the victim friendly legal system. It is from such interviews in the present study that I managed to gain access to information that would otherwise not have been obtained through observations and document analysis.

**Interview Probes**

One of the key techniques in good interviewing is the use of probes. Patton (1990) identifies three types of probes: detail-oriented probes; elaboration probes; and clarification probes. Below are brief descriptions of each interview probe.

**Detail-oriented probes.** In day to day natural conversations we ask each other questions to get more detail. These types of follow-up questions are designed to fill out the picture of whatever it is we are trying to understand. We ask these questions when we are genuinely eager to get more information surrounding the case at hand. In this study, I used detailed oriented probes during my interviews with the participants. The detailed-oriented probes assisted in getting a finer understanding of the different meanings of words and perceptions towards the VFLSZ. Questions below were targeted at all the different categories of participants who took part in this study.

- Who was with you?
- What was it like being there?
- Where did you go then?
- When did this happen in your life?
• How are you going to try to deal with the situation?

**Elaboration probes.** This is another type of probe designed to encourage the interviewee to tell us more. The researcher would indicate his/her desire to know more by such things as gently nodding the head as the person talks, softly voicing 'un-huh' every so often, and sometimes by just remaining silent but attentive. As the researcher I also asked for the participant to simply continue talking as I sought some elaboration.

• Tell me more about that.
• Can you give me an example of what you are talking about?
• I think I understand what you mean.
• Talk more about that, will you?
• I would like to hear you talk more about that.

**Clarification probes.** There are likely to be times in an interview when the interviewer is unsure of what the interviewee is talking about, what she or he means. In these situations the interviewer can gently ask for clarification, making sure to communicate that it is the interviewer's difficulty in comprehending the questions and not the fault of the interviewee.

• I am not sure I understand what you mean by 'hanging out'. Can you help me understand what that means?
• I am having trouble understanding the problem you have described. Can you talk a little more about that?
• I want to make sure I understand what you mean. Would you describe it for me again?
• I am sorry. I do not quite get you well. Tell me again, would you?
3.8.2 Observations

I went to Harare Magistrates Court which is located at the Rotten Row Building to observe how the victim friendly legal system worked. The observation method was chosen in order to verify the information that participants gave during the interviews that were conducted. Leedy and Ormrod (2005:145) argue that observations in a qualitative study are intentionally unstructured and free-flowing. This means that focus can shift from one issue to another as new and potentially significant objects and events present themselves. The advantage of generating data through observation is that the researcher generates data from various sources. Inexperienced researchers may waste time observing things that are not important, overlooking those that are central to the study. I was aware of this disadvantage, and therefore concentrated on observing core issues that were directly related to assessment of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child sexual abuse victims from further traumatisation. For example, I would seat in the VFC on the front bench where I would observe the victim and the alleged abuser directly without obstruction.

Whilst generating data using the observation technique, the following suggestions made by Leedy and Ormrod (2005) were adhered to:

- Use of the various data recording strategies, for instance, field notes and audiotapes;
- When beginning the observations, introductions to the people whose activities were to be observed were done and briefly described the study and got participants’ consent;
- During the observation period I also remained relatively quiet and friendly to anyone who approached me;

Observation can be either participant or non-participant. In participant observation, the observer works his or her way into the group he or she is to observe so that, as a regular member, he or she
is no longer regarded as an outsider against whom the group needs to guard itself (Sidhu 2003:163). In this study, the researcher was a non-participant observer. Furthermore, as I was doing my observation as part of my study, I observed (4) four victim friendly court sessions at the Harare Magistrate Court. These court sessions also formed the basis of further interviews and informal conversations, to seek for clarifications on such issues as:

- Why child victims concentration span time was short;
- Reactions of both victims and perpetrators during trials; and
- Why victims exhibited fear of the perpetrators.

In using observation as one of the data generation methods that I employed in the study, I strategically sat in the victim friendly court on the front bench and quietly observed the court proceedings. Whenever the court proceedings went on an adjournment, I would rush outside the courtroom and write down a few notes of what I would have memorised during the court proceedings. This would assist me to remember some of the proceedings. Taking down of notes inside the courtroom is not allowed. I also had some informal conversations with intermediaries, and regional public prosecutors during tea breaks and lunch hour time. I would also record relevant information to my study in my small handbook diary. The purpose of the observation was to gain additional information about the process of translation that language brokers (intermediaries) engage when their victims or perpetrators ask them to translate the content of a particular document.

The observation also allowed me to document some of the family dynamics that took place when the child was giving their evidence in the courtroom. Some of these dynamics included actions by family members of the child victim just walking out of the courtroom talking on their own. Their actions resembled anger as they appeared to differ with what the child victim
would have said. As a non participant observer, I was detached from the didactic and administrative processes of the court officials at the Harare Magistrate Court, but kept a close eye on the goings on in the courtroom during the trial sessions. I also gained a lot from the research participants with regards to their feelings, perceptions and behaviours as they did their work which at times also appeared to be traumatising them.

The parents were also observed on their reactions towards their child victim and the alleged accused person. The purpose of my observation during the court sessions was to take note of research participants’ feelings, perceptions, thoughts and behaviours during a case trial of a child victim. This was relevant to my study since my focus was on an assessment of perceptions of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation.

3.8.3 Document Analysis

Document analysis was used to support the in-depth face to face interview method and observations, which were the main data generation tools. Among the documents that were analysed were policy documents and international statutes. It was important to analyse the contents of these documents so as to verify the information obtained using other methods of data generation. Chiyongo (2007) explains that triangulation is used in order to verify the responses given during the study. According to Gay (1996), the use of other data generation strategies (triangulation) acts as a safeguard to detect serious observer effects too.

Document analysis is also another valuable data generation instrument in qualitative research (Anderson and Kanuka, 2002). Document data provides additional source for analysis and interpretation of the phenomenon under study (Eisner, 1991). It is commonly referred to as
Document analysis (Seale, 2000; Silverman, 2006; Sidhu, 2001). Document analysis is a process that involves reading and interpreting items such as letters, agendas, announcements and minutes of meetings and other written reports of events. (Yin, 2008). The documents can provide insights into the policy and philosophy of the victim friendly system in Zimbabwe, regionally and internationally.

These documents gave me insights into the aims and objectives of the establishment of the victim friendly legal system in Zimbabwe. These documents were used to make an assessment of perceptions of the effectiveness of the victim friendly system in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised. All these documents assisted me to develop useful insights into the victim friendly legal system in Zimbabwe. In this study, document analysis served three purposes namely:

- To develop insights into the rationale behind the establishment of the victim friendly legal system in Zimbabwe particularly focusing on aims and objectives;
- To assess the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation; and
- To develop an understanding of the perspectives that are reflected in these documents, as they relate to the victim friendly legal system in Zimbabwe.

The analysis of the documents bulleted above also assisted me to compare data generated through the in depth face to face interviews, observations and with information found in these documents. This was consciously done in order to enable me to compare and contrast intervention strategies to the effectiveness of the victim friendly legal system in Zimbabwe in protecting child victims of sexual abuse from being further traumatised. The strategic aspects that guided the conduct of document analysis revolved around the following details of the research participants who went through the victim friendly legal system:

- Age;
- Gender;
- Experience;
- Family status;
- Professional Qualifications; and
The rationale for employing this data generation tool was to achieve a better and more substantive picture of reality by verifying many of the issues encountered during the study (Colton and Covert, 2007).

3.8.4 Analysis and Interpretation of Data

(i) Analysis- during/in the process of data generation

According to Gay (1996:245), “the raw data for quantitative study are numbers, for example, test scores.” In a qualitative study the raw data consists of words and possibly visual material such as photos. These data include primarily field notes, often supplemented by documents, observations conducted and interview transcripts. Rudestam and Newton (1992:31) also point out that “qualitative research implies that the data are in the form of words as opposed to numbers.” In this qualitative study, the data generated was reduced to themes or categories.

The individual face to face interviews were first transcribed to provide a complete record of the interview discussion. The researcher then analysed the content of the interview discussion by looking for trends and patterns that reappeared within different individual participants who were interviewed. Lungwangwa et al, (1995) confirm that the qualitative raw data from interviews, field notes from the interview discussions and content analysis should be subjected to the constant comparative analysis technique in order to reach the most significant themes of the topic under study. White (2005) also observes that other considerations would be that which relate to consistency of comments and specificity of responses in follow up probes that would be conducted by the researcher.
In this study, I collected documents related to the VFLSZ. According to Gay (1996:243), “observation is often supplemented by the collection of relevant documents (such as minutes of meetings and memoranda) and in-depth interviews.” Furthermore, LeCompte and Preissle (1993:196) point out that “participant observation is usually combined with other means of gathering data-surveys, such as interviews in their various forms, and document collection.” Therefore, as a way of generating more facts on the VFLSZ and verification of data generated from interviews, I collected and reviewed several documents. These included Section 319 of the Criminal Procedure and Evidence Act (Chapter 9:07) (1997) which gave rise to the establishment of the VFLSZ. Section 319 of the said Act (CP and E Act) was later complemented by the two Protocols on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003; 2012) that gave clear guidelines on how the Victim Friendly Legal System operates.

According to Leedy and Ormrod (2005:145-143), content analysis is a detailed and systematic examination of the contents of a particular body of material for the purpose of identifying patterns, themes, or biases. These materials include books and other policy document in place for the victim friendly legal system. Content analysis was used, for instance to establish its quality. In analysing the content of the documents, I undertook the following steps:

- Identified the specific body of relevant material to be studied;
- Defined the qualities or characteristics to be examined from the study; and
- A closer scrutiny of the available the material according to its characteristics or qualities.
Furthermore, I examined the printed materials for the VFLSZ that had been purposively selected. In analysing these study materials, I focused on the characteristics of good victim friendly legal system. In this study, like in other qualitative studies, I started analysing data during the time data were being generated. This is in agreement with White (2005:186), who says that “analysis of qualitative data takes place simultaneously with data generation, the first step being that of managing the data so that they can be studied.” He further states that the cyclical process of data analysis focuses on: becoming familiar with the data and identifying main themes in them (reading); examining the data in-depth so as to provide detailed descriptions of the setting, participants and activities (describing); categorising and coding pieces of data and physically grouping them into themes (classifying); and interpreting and synthesising the organised data into general conclusions (interpreting). This is best represented in the diagram below:

**Figure 3: Steps in analysing qualitative data**

(Source: Gay and Airasian, 2000 (2005:186))

I analysed data from in-depth interviews, observations, documents and study materials and came up with significant themes and narratives. The data analysis was therefore interpretative, involving the categorising of the results. The major aim was to write objective accounts which I experienced in the field. In order to do this, I was guided by the Tesch’s
eight-step method of analysing qualitative data (Babbie and Mouton 2004; Creswell 1994; De Vos, 1998):

- Got a sense of the whole. I achieved this by reading all the transcriptions carefully and jotted down ideas that came to his mind.
- Selected one transcript and went through it, asking what it was about. I considered underlying meanings and wrote thoughts down in the margin.
- Made a list of all topics. Clustered similar topics together and then arranged the groups into columns under major and unique topics.
- Took the list and went back to the data. Abbreviated the topics as codes and wrote the codes next to appropriate segments of text. Determined whether new categories and codes emerged.
- Used descriptive words to categorise topics.
- Made a final decision about the abbreviations for each category and alphabetized the codes.
- Gathered data belonging to each category and did a preliminary analysis.
- Identified and reflected on relationships between categories, as those were the themes that formed the findings on the effectiveness of the VFLSZ in the protection of child victims of sexual abuse from further traumatisation.

The analysis of data obtained from interviews was therefore done through identifying common themes from the participants’ description of their experiences about the effectiveness of the victim friendly legal system in Zimbabwe. Irrelevant information was separated from relevant information in the interviews. Relevant information was arranged into phrases or sentences which reflected a single, specific thought and these phrases or
sentences were further grouped into categories that reflected the various aspects of meanings. It was those various meanings which were used to develop an overall description as seen by the participants (McMillan and Schumacher 2001:464).

Data analysis is used to determine the presence of certain words or concepts within data generated or set of data generated. Researchers quantify and analyse the presence, meanings and relationships of such words and concepts, then make inferences about the messages within the data, the writer(s), the audience, and even the culture and time of which these are a part. According to Hartley (1994, 2004) data generation and analysis are developed together in an iterative process, which can be strength as it allows for theory development which is grounded in empirical evidence.

Besides, a careful description of the data and the development of categories in which to place behaviours or process have proven to be important steps in the process of analysing the data. The data generated was organised around key themes that emerged. Yin (2003a) maintains that data analysis consists of examining, categorising, tabulating, testing or otherwise recombining both quantitative and qualitative evidence to address the initial propositions of a study. In general, data analysis means a search for patterns in data gathered (Neumann, 1997). Neumann (1997) states that once a pattern is identified, it is interpreted in terms of a social theory or the setting in which it occurred and that the qualitative researcher moves from the description of a historical event or social setting to a more general interpretation of its meaning.

In fact, the ultimate goal of the data analysis is to uncover patterns, determine meanings, construct conclusions and build theory (Patton and Appelbaum, 2003). According to Yin
(2003a) there are three general analytic strategies for analysing case study evidence: relying on theoretical propositions; thinking about rival explanations; and developing a case description.

(ii) Data analysis after exiting site(s) of study

After exiting the site of study, I continued analysing data that I had generated using triangulation process of the interviews, observations and document analysis with regards to the participants’ responses. Yin (2003a) contends that any of these strategies can be used in practicing five specific techniques for analysing case studies: pattern matching, explanation building, time-series analysis, logic models and cross-case synthesis. Finally, checking the findings with the case study participants can be a valuable part of the analysis and can enhance trustworthiness (Hartley, 2004).

This study followed the single case study design where the data generated was analysed case by case through thematic analysis (Stake, 2006). Thus, interviews, observations and documents were analysed based on themes that emerged under each category of the participants in the study, that is, interviews, observations and document analysis. Themes salient across in the case were kept as well as those that were extremely different. For the thematic analysis, I followed Braun and Clarke (2006) step-by-step guidelines.

Braun and Clarke (2006) used the word guidelines to highlight the flexibility of this qualitative analytic method. These guidelines are (1) familiarising yourself with your data; (2) generating initial codes; (3) reading throughout each transcript and making an analysis of the data; (4) reviewing themes; (5) defining and naming themes; and (6) producing the report. Stake (2006) describes three different case procedures for a case study. For this qualitative
study, I followed the merging of findings procedure. According to Stake, the researcher whose priority was to merge the findings across cases used this particular method. This method allowed me to make generalisations about the case study method that had been used.

After exiting the site of the study, I further employed what Denzin (1978) coined analytic induction or what Fox (1969) termed “manifest level” analysis. Fox (1969) termed it “manifest level”, to describe the presentation of data generated in raw form. At this level, I transcribed the responses of the participants and also the details of my observations (including observations obtained from document analysis).

(iii) **Data Interpretation**

The interpretation of the research data that I had generated was done in Chapter Four of this study. Interpretation, as posited by Meloy (1993), is a process by which the researcher tries to make sense of his/her data. Wolcott in Vakalisa (1995) agrees with Meloy (1993) when he defines interpretation as a “threshold in thinking and writing at which the researcher transcends factual data and cautious analysis and begins to probe into what is to be made of them”. In this study, the interpretation of the data generated took three forms as suggested by Vakalisa (1995). These forms were:

- To infer meanings, “not necessarily spelt out in the data generated”;
- To link data generated with what the documents analysed said; and
- To give meaning of what “I personally made of the data generated, my own perceptions of the situations that I had observed” (Vakalisa, 1995: 127).
3.9 Trustworthiness and Credibility

The trustworthiness of qualitative research generally is often questioned by positivists, perhaps because their concepts of validity and reliability cannot be addressed in the same way in naturalistic work. Nevertheless, several writers on research methods, notably Silverman (2001), have demonstrated how qualitative researchers can incorporate measures that deal with these issues, and investigators such as Pitts (1994) have attempted to respond directly to the issues of validity and reliability in their own qualitative studies. According to White (2005), “trustworthiness” refers to the quality of the research. This study is considered trustworthy because the findings were based on a well-founded research paradigm as well as relevant participants and context. In this regard, I tape recorded the interviews and had field notes, which were available for scrutiny. To ensure trustworthiness, I considered Lincoln and Guba’s method (1985), which consists of the following criteria for establishing trustworthiness: credibility, dependability, transferability and confirmability.

As the area of qualitative research increases, social and behavioural scientists critique the trustworthiness of studies that use such methodology. Thus, qualitative researchers would utilise various validation strategies to make their studies credible and rigorous (Creswell and Miller, 2000). Credibility for this present study was achieved using the validation strategies of triangulation, researcher reflexivity, and thick rich description. The data was triangulated with the various research instruments that were used in the data generation process (face to face interviews, observations and document analysis). Thick rich description was also achieved by presenting the participants’ voices under each theme and by providing detailed description of each of the cases.
3.9.1 Credibility

The credibility criteria involve establishing that the results of qualitative research are credible or believable from the perspective of the participant in the research. From this perspective, the purpose of qualitative research is to describe or understand the phenomena of interest from the participant's eyes; the participants are the only ones who can legitimately judge the credibility of the results. Credibility in qualitative research means the results of a qualitative study are believable and trustworthy from the perspective of a participant or subject in the research itself. The fact that qualitative research attempts to describe or explain the event, group or phenomenon of interest from the perspective of participants, the participants who form the subjects of the study are best situated to judge the credibility of the findings in a qualitative study.

One of the key criteria addressed by positivist researchers is that of internal validity in which they seek to ensure that their study measures or tests what is actually intended. According to Merriam (1998), the qualitative investigator’s equivalent concept, that is, credibility, deals with the question, “How congruent are the findings with reality?” Lincoln and Guba (1989) argue that ensuring credibility is one of most important factors in establishing trustworthiness. The following provisions may be made by researchers to promote confidence that they have accurately recorded the phenomena under scrutiny: “The adoption of research methods well established both in qualitative investigation in general and in information science in particular”.

Yin (1994) recognises the importance of incorporating correct operational measures for the concepts being studied. Thus, the specific procedures employed, such as the line of questioning pursued in the data generation sessions and the methods of data analysis, should
be derived, where possible, from those that have been successfully utilised in previous comparable projects. In terms of investigation of information-seeking behaviour, the work of Dervin (1997) has proved particularly influential in this regard.

From their study of the information needs of Seattle’s residents, Dervin et al. (1997) initially invited participants to reflect on situations where they needed help; where they did not understand something; where they needed to decide what to do or, where they were worried about something. Dervin’s respondents described in detail a particular instance within one of these categories. Similar strategies have been used subsequently by Chen and Hernon (1982); Poston-Anderson, Edwards and Shenton (1993) amongst others. In the present study, credibility was enhanced by making sure that what the research participants said was appropriately captured during the interviews. I revisited some research participants to clarify certain issues that would have arisen during the data generation process thereby adding value to the credibility of the research findings. I made use of triangulation as a way of ensuring the credibility of research findings.

3.9.2 Dependability

The traditional quantitative view of reliability is based on the assumption of replicability or repeatability. Essentially, it is concerned with whether we would obtain the same results if we observe the same thing twice. But we cannot actually measure the same thing twice and by definition if we are measuring twice, we are measuring two different things. In order to estimate reliability, quantitative researchers construct various hypothetical notions (for example, true score theory) to try to get around this fact. The idea of dependability, on the other hand, emphasises the need for the researcher to account for the ever-changing context within which the research occurs. In this present study, the researcher was responsible for
describing the changes that occurred in the setting and how these changes affected the way the research outcome. For example, I had to revisit some of the appointments that I had planned with the participants in my study due to work commitments of those participants.

In addressing the issue of reliability, the positivist employs techniques to show that, if the work were repeated, in the same context, with the same methods and with the same participants, similar results would be obtained. However, as Fidel, Marshall and Rossman (1999) noted, the changing nature of the phenomena scrutinised by qualitative researchers renders such provisions problematic in their work. Florio-Ruane (1991) highlights how the investigator’s observations are tied to the situation of the study, arguing that the published descriptions are static and frozen in the ethnographic present. Lincoln and Guba (1989) stress the close ties between credibility and dependability, arguing that, in practice, a demonstration of the former goes some distance in ensuring the latter. This may be achieved through the use of overlapping methods, such as the focus group and individual interview. However in the present study, I used the individual face to face interviews, document analysis and observations as a way of ensuring that research findings were credible and dependable.

Furthermore, I went on to address the dependability more directly, wherein the processes within the study were reported in detail. This was done as a way of enabling future researchers to repeat the work, if not necessarily to gain the same results. Thus, the research design was viewed as a “prototype model”. Such in-depth detail allowed future scholars to assess the extent to which proper research practices had been followed. By so doing, this enabled future research scholars to develop a thorough understanding of the methods used in this present study and their effectiveness.
3.9.3 Transferability

Merriam (1998) writes that external validity is concerned with the extent to which the findings of one study can be applied to other situations. In positivist work, the concern often lies in demonstrating that the results of the work at hand can be applied to a wider population. Since the findings of a qualitative project are specific to a small number of particular environments and individuals, it is impossible to demonstrate that the findings and conclusions are applicable to other situations and populations. Erlandson et al. (1993) note that many naturalistic inquirers believe that, in practice, even conventional generalisability is never possible as all observations are defined by the specific contexts in which they occur.

A contrasting view is offered by Stake (1994) and Denscombe (1998), who suggest that, although each case may be unique, it is also an example within a broader group and as a result, the prospect of transferability should not be immediately rejected. Nevertheless, such an approach can be pursued only with caution. Gomm, Hamersley and Foster (2000) recognise that it appears to belittle the importance of the contextual factors which impinge on the case under study. Bassey (1981) proposes that, if researchers believe their situations to be similar to that described in the study, they may relate the findings to their own positions.

Lincoln, Guba and Firestone (1989) are among those who present a similar argument, and suggest that it is the responsibility of the investigator to ensure that sufficient contextual information about the fieldwork sites is provided to enable the reader to make such a transfer. They maintain that, since the researcher knows only the “sending context”, he or she cannot make transferability inferences. In recent years such a stance has found favour with many qualitative researchers. After perusing the description within the research report of the
context in which the work was undertaken, readers must determine how far they can be confident in transferring to other situations the results and conclusions presented.

It is also important that sufficient thick description of the phenomenon under investigation is provided to allow readers to have a proper understanding of it, thereby enabling them to compare the instances of the phenomenon described in the research report with those that they have seen emerge in their situations. Authors disagree on the nature and extent of background information that should be offered but few would dispute the need for “a full description of all the contextual factors impinging on the inquiry”, as recommended by Guba (1989).

Nevertheless, the situation is complicated by the possibility noted by Firestone (1993), that factors considered by the researcher to be unimportant, and consequently unaddressed in the research report, may be critical in the eyes of a reader. Many investigators stop short of the course of action advocated by Denscombe (1998) that the researcher should demonstrate how, in terms of the contextual data, the case study location(s) compare(s) with other environments. This reluctance is based on the fact that the process would demand a considerable knowledge of the receiving contexts of other organisations, and the researcher is in no position to comment on what Merriam (1998) calls the typicality of the environment(s) in which the fieldwork took place.

The work of Cole and Gardner (1979), Marchionini, Teague and Pitts (1987) highlights the importance of the researcher’s conveying to the reader the boundaries of the study. This additional information must be considered before any attempts at transference are made. Thus information on the following issues should be given at the outset:
• The number of organisations taking part in the study and where they are based;
• Any restrictions in the type of people who contributed data;
• The number of participants involved in the fieldwork;
• The data generation methods that were employed;
• The number and length of the data generation sessions; and
• The time period over which the data was generated

It is easy for researchers to develop a preoccupation with transferability. Ultimately, the results of a qualitative study must be understood within the context of the particular characteristics of the organisation or organisations and, perhaps, geographical area in which the fieldwork was carried out. In order to assess the extent to which findings may be true of people in other settings, similar projects employing the same methods but conducted in different environments could well be of great value. Kuhlthau, Gomm, Hamersley and Foster (2000) recognise that, it is rare for such complementary work to be undertaken. Nevertheless, the accumulation of findings from studies staged in different settings might enable a more inclusive, overall picture to be gained. A similar point is made by Gross (1998), in relation to her work on imposed queries in school libraries. She writes of the multiple environments in which the phenomenon of her interest takes place and believes her study to provide a baseline understanding with which the results of subsequent work should be compared. Borgman and Pitts (1994) acknowledged that, understanding of a phenomenon is gained gradually, through several studies, rather than one major project conducted in isolation.
Even when different investigations offer results that are not entirely consistent with one another, this does not, of course, necessarily imply that one or more is untrustworthy. It may be that they simply reflect multiple realities, and, if an appreciation can be gained of the reasons behind the variations, this understanding may prove as useful to the reader as the results actually reported. Such an attitude is consistent with what Dervin (1997) considers should be key principles within information-seeking research, namely: to posit every contradiction, inconsistency and diversity not as an error or extraneous but as fodder for contextual analysis. This should be questioned whether the notion of producing truly transferable results from a single study is a realistic aim or whether it disregards the importance of context which forms such a key factor in qualitative research.

### 3.9.4 Confirmability

Patton (2000) associates objectivity in science with the use of instruments that are not dependent on human skill and perception. He recognises, however, the difficulty of ensuring real objectivity, since, as even tests and questionnaires are designed by humans, the intrusion of the researcher’s biases is inevitable. The concept of confirmability is the qualitative investigator’s comparable concern to objectivity. Steps must be taken to help ensure as far as possible that the researcher’s work’s findings are the result of the experiences and ideas of the participants/informants, rather than the characteristics and preferences of the researcher. The role of triangulation in promoting such confirmability must again be emphasised in this context to reduce the effect of researcher/investigator bias. Miles and Huberman (1994) consider that a key criterion for confirmability is the extent to which the researcher admits his or her own predispositions.
To this end, beliefs underpinning decisions made and methods adopted should be acknowledged within the research report, the reasons for favouring one approach when others could have been taken explained and weaknesses in the techniques actually employed admitted. In terms of results, preliminary theories that ultimately were not borne out by the data generated should also be discussed. Much of the content in relation to these areas may be derived from the ongoing reflective commentary (Miles and Huberman, 1994). Once more, detailed methodological description enables the reader to determine how far the data generated and constructs emerging from it may be accepted. Critical to this process is the audit trail, which allows any observer to trace the course of the research step-by-step via the decisions made and procedures described. The audit trail may be represented diagrammatically.

Two such diagrams may be constructed. One may take a data-oriented approach, showing how the data eventually leading to the formation of recommendations was generated and processed during the course of the study. This is what is typically understood by the term, audit trail. In addition the manner in which the concepts inherent in the research questions gave rise to the work to follow may be tracked. The theoretical audit trail, should be understood in terms of the whole of the duration of the project, may be depicted in another context (Miles and Huberman, 1994).

3.9.5 Triangulation.

Triangulation involves the use of different methods, especially observation, document analysis and individual face to face interviews, which form the major data generation strategies for qualitative research. This present study made use of the triangulation on data that had been generated from observations, individual face to face interviews and document
analysis conducted during the research period. According to Guba, Brewer and Hunter (1989), the use of different methods in concert compensates for their individual limitations and exploits their respective benefits. Where possible, strategies for ensuring trustworthiness in qualitative research projects supporting data may be obtained from documents to provide a background to and help explain the attitudes and behaviour of those in the group under scrutiny as well as to verify particular details that participants have supplied.

Opportunities were seized by the researcher in the present study to examine other documents that I was referred to by participants during the actual interviews where these provided more light on the behaviour of the people in question. Another form of triangulation may involve the use of a wide range of participants. This is one way of triangulating via data sources. Here individual viewpoints and experiences can be verified against others and, ultimately, a rich picture of the attitudes, needs or behaviour of those under scrutiny may be constructed based on the contributions of a range of people. Van Maanen (1998) urges the exploitation of opportunities to check out bits of information across participants. Such corroboration may, for example, take the form of comparing the needs and information-seeking action described by one individual with those of others in a comparable position. In addition, the researcher/investigator may draw participants from both users of an information service and the professionals who deliver it.

3.10 Ethical and Legal Considerations

Before and during the study, I took into consideration the importance of observing the ethics of research. I sought the permission of the research participants to audio tape them during the interviews and I also assured them that the tape recordings would be destroyed after the data had been analysed. I promised to show them my analysis of data in order to allow them to see
if what they had told me was representative of their views on the matter and that I had captured and interpreted them correctly. Counsellors have long considered confidentiality as the cornerstone of the counselling/therapeutic relationship with clients. The American Counselling Association Code of Ethics (1995) makes direct reference to the client having the right to expect confidentiality, admonishing counsellors to respect their client’s right to privacy and avoid illegal and unwarranted disclosures of information.

Mental health professionals know that ethics and laws sometimes conflict on issues of confidentiality, and with children who might have been sexually abused. The American School Counsellor Association Ethical Standards (1998) posit that each person has the right to privacy and thereby the right to expect the counsellor-counselee relationship to comply with all laws, policies, and ethical standards pertaining to confidentiality. Counsellors can quickly get squeezed between the pressures of statutes, rights of family members, professional ethics, and personal integrity.

I guaranteed the research participants to recognise the ethical principle of confidentiality as a cornerstone of the study. Due consideration was given to the preservation of the victims information. Where there was need to divulge information pertaining to the victim, informed consent was sought from the victim through their parents or legal guardians. The researcher also took into consideration other ethical principles such as transparency, beneficence and integrity. The best interests of the victims of sexual abuse in the study took precedence in order to reduce re-traumatisation in the disguise of conducting the research study.

In the interviews, the power dynamics of the interviewer and interviewee (Limerick et al, 1996) had to be taken care of. I dismantled the power relationships by behaving like someone
who was more knowledgeable about the VFLSZ than the participants. I assured participants that I was also learning about the VFLSZ through the study assessing whether the VFLSZ was an effective system in the protection of child victims of sexual abuse from further traumatisation. I was not there to impose my own opinion about the system. Furthermore, I also assured the participants that their real names would not be revealed in the final report of the study, but that pseudonyms would be used (see Table 1 in Chapter Four). I clearly stated to the research participants that during the audio tape recording in the interview, they were open to instruct me to stop at any time the recording on those issues which they felt were too sensitive. Participants in the study gave me their consent to audio tape the interviews whilst also taking some field notes of their responses.

3.1.1 Chapter Summary

This chapter highlighted a number of procedures, which the researcher followed in conducting this study. An explanation was given concerning the participants in the research, the methods of data generation and how data was generated analysed and interpreted. The data generation methods consisted of in-depth face to face interviews, observations and the analysis of relevant documents. It was stated that qualitative analysis was not quantifying qualitative data but rather a non-mathematical process of interpretation, carried out for the purpose of discovering concepts and relationships in the raw data, in this case data on the assessment of perceptions of the effectiveness of the victim friendly legal system in Zimbabwe. I also considered ethical issues to in the study. Furthermore, the research methodology that was used in carrying out the study was also presented. Qualitative methodology and the interpretive paradigm were used. A sample of seventeen (17) participants was part of the study including officials from the various government line ministries in Harare Metropolitan Province. Purposive sampling was used to select the sample. The chapter also outlined the
establishment of trustworthiness and credibility of the study, data management and data presentation and analysis. In the next chapter four, data presentation, analysis and interpretation of research findings and the discussion of emerging themes from the study are presented.
CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.1 Introduction

This chapter presents the data presentation, analysis and interpretation of research findings of the study pertaining to “An assessment of the effectiveness of the Victim Friendly Legal System in Zimbabwe” in the context of the research questions and objectives of the study as indicated under section 1.4 in chapter one. The views of interviewees’ and data that were generated from observations and documentary analysis constitute the focal points of this chapter. Presentations of the findings of this chapter are anchored upon answering the expanded research questions introduced in Chapter One.

The content of the in-depth face to face interviews, observations and information from the relevant documents was analysed using a code-category-theme process (McMillan and Schumacher 2006; 2000) in order to obtain comprehensive data analysis. The data from the interviews were therefore, analysed using the priori coding or preset categories, which implied that data coding began with a list of categories. The comparative overview of the findings was then discussed to identify the common aspects of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation.

The study targeted participants who worked in the VFLSZ. These participants included intermediaries, regional public prosecutors and regional magistrates drawn from the Harare Magistrates Court. Victim friendly unit police officers who were interviewed in this study were drawn from ZRP Budiriro, ZRP Highlands and ZRP Harare Central. These police
officers were informally interviewed at Harare Magistrates Court. Interviews that were conducted with the Victim Friendly Unit Police Officers were done informally due to the fact that the requisite authority to interview them from the Office of the Commissioner General of the Police had been refused.

The national coordinator of the VFLSZ who operates under the Chief Magistrate’s office was also interviewed at his office located at the New Government Complex in Harare. However, interviews that were conducted with regional magistrates, regional public prosecutors, intermediaries and the national coordinator for the victim friendly system were done formally. The requisite authority had been granted by the Judicial Service Commission. The researcher posed questions as indicated under Appendix G where different answers were sought in relation to the research title.

4.2 Background information of the research participants

The background information of the research participants who took part in the study would be described in this chapter including their professional categories, qualifications, experience, age and gender. In Chapter Three, I presented the research methodology used for the study as the qualitative. The method which I used was the case study. In-depth interviews (face to face) were used as the major source of data generation, and complemented it with observations and documentary analysis. The documentary analysis and interpretation comprised the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2012), Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe 2nd Edition (2003), the Lancaster House Constitution (1979), the New Zimbabwe Constitution (2013), Section 319 of the Criminal Procedure and Evidence Act (9:07) and the Guide to Criminal Law in Zimbabwe (2005).
The research participants were of a mixed bag in as far as their professional status (regional magistrates, regional public prosecutors, intermediaries, national coordinator of the victim friendly court and victim friendly unit police officers) was concerned. (see Table 1 on page 177). The names of the research participants used in this study as indicated on Table 1 on page 177 were pseudonyms. This was done to safeguard the research participants’ identities for the purposes of the requirements of the ethical principle of confidentiality as required in research work (Florio-Ruane, 1989; Nyawaranda, 1998). The identity of the research participants and their privacy should be safeguarded by the researcher at all times during the research process. All the seventeen (17) research participants were given pseudonyms of trees and animals commonly found in Zimbabwe.

I sought consent from the research participants’ to interview them. The rationale behind seeking for research participants’ consent before interviewing them was to secure their acceptance to take part in the study. Clarification was done to the research participants on issues that they were not clear about before the interview. I conducted three interviews with different participants per day and these interviews varied in terms of the duration of time taken to complete them. In terms of the gender composition of the research participants in the study, it was made up of the following categories:

a. Regional Magistrates: three (3) males and two (2) females;

b. Regional Public Prosecutors: two (2) males and two (2) females;

c. Intermediaries: two (2) males and two (2) females;

d. Victim Friendly Unit Police Officers: one (1) male and two (2) females; and

e. National Coordinator Victim Friendly Court: one (1) male.
From the above categorisation of the sample that was used in the study, in terms of the gender variation, there was almost an equal representation. Table 1 below shows the composition of the participants who took part in the study.

**Table 1: Composition of research participants in the study.**

<table>
<thead>
<tr>
<th>Participants (Pseudonyms)</th>
<th>Category</th>
<th>Qualifications</th>
<th>Experience</th>
<th>Age</th>
<th>Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Musasa W.</td>
<td>Regional Magistrate</td>
<td>Bachelor of Laws Honours Degree</td>
<td>7 years</td>
<td>52 years</td>
<td>M</td>
</tr>
<tr>
<td>Mutohwe E.</td>
<td>Regional Public Prosecutor</td>
<td>Certificate in Prosecution</td>
<td>8 years</td>
<td>38 years</td>
<td>M</td>
</tr>
<tr>
<td>Mutondu T.</td>
<td>Regional Public Prosecutor</td>
<td>Certificate in Prosecution</td>
<td>6 years</td>
<td>35 years</td>
<td>M</td>
</tr>
<tr>
<td>Nhunguru C.</td>
<td>Regional Magistrate</td>
<td>Bachelor of Laws Honours Degree</td>
<td>12 years</td>
<td>57 years</td>
<td>M</td>
</tr>
<tr>
<td>Nzou N.</td>
<td>Regional Magistrate</td>
<td>Bachelor of Laws Honours Degree</td>
<td>8 years</td>
<td>46 years</td>
<td>F</td>
</tr>
<tr>
<td>Mupangara V.</td>
<td>Regional Magistrate</td>
<td>Bachelor of Laws Honours Degree</td>
<td>6 years</td>
<td>47 years</td>
<td>M</td>
</tr>
<tr>
<td>Shumba S.</td>
<td>Regional Magistrate</td>
<td>Master of Science in Women’s Law Degree</td>
<td>14 years</td>
<td>52 years</td>
<td>F</td>
</tr>
<tr>
<td>Ruzhowa R.</td>
<td>Regional Public Prosecutor</td>
<td>Certificate in Prosecution</td>
<td>6 years</td>
<td>40 years</td>
<td>F</td>
</tr>
<tr>
<td>Muzhanje T.</td>
<td>Regional Public Prosecutor</td>
<td>Certificate in Prosecution</td>
<td>9 years</td>
<td>39 years</td>
<td>F</td>
</tr>
<tr>
<td>Muonde H.</td>
<td>Intermediary</td>
<td>Certificate in Language Interpretation</td>
<td>5 years</td>
<td>32 years</td>
<td>F</td>
</tr>
<tr>
<td>Bere G.</td>
<td>Intermediary</td>
<td>Bachelor of Arts in Media Studies</td>
<td>9 years</td>
<td>38 years</td>
<td>M</td>
</tr>
<tr>
<td>Nguruve F.</td>
<td>Intermediary</td>
<td>Certificate in Language Interpretation</td>
<td>4 years</td>
<td>34 years</td>
<td>M</td>
</tr>
<tr>
<td>Mumango C.</td>
<td>Intermediary</td>
<td>Certificate in Language Interpretation</td>
<td>2 years</td>
<td>30 years</td>
<td>F</td>
</tr>
<tr>
<td>Musawu B.</td>
<td>Victim Friendly Unit Police Officer</td>
<td>Certificate in Basic Counselling Skills</td>
<td>11 years</td>
<td>34 years</td>
<td>M</td>
</tr>
<tr>
<td>Mutsubvu V.</td>
<td>Victim Friendly Unit Police Officer</td>
<td>Certificate in Basic Counselling Skills</td>
<td>9 years</td>
<td>30 years</td>
<td>F</td>
</tr>
<tr>
<td>Mupuranga B.</td>
<td>Victim Friendly Unit Police Officer</td>
<td>Certificate in Basic Counselling Skills</td>
<td>11 years</td>
<td>31 years</td>
<td>F</td>
</tr>
<tr>
<td>Mbizi N.</td>
<td>National Coordinator of the Victim Friendly System</td>
<td>Bachelor of Science Honours in Development Studies</td>
<td>18 months</td>
<td>41 years</td>
<td>M</td>
</tr>
</tbody>
</table>
The interview questions listed in Table 2 on page 179, were asked the research participants during the interviews conducted by the researcher on the different dates and times. In depth face to face interview questions were used. Responses from the participants on the questions posed to them differed from each category of the research participants in terms of their specific roles in the victim friendly legal system in Zimbabwe. I also made use of interview probes that were identified by Patton (1990) during the interviewees’ process. These included: detail-oriented probes; elaboration probes; and clarification probes.

The usage of the three types of probes as posited by Patton (1990) allowed me to get more detail from the research participants, thereby getting a clearer picture of the VFLSZ. Interviewees were all encouraged to elaborate or tell more about the VFLSZ without fear or favour. Where I felt that more clarification was needed, I probed further from the interviewee to get a clearer understanding of the meaning, behaviour, and attitude.
Table 2: Interview questions schedule guide questions for research participants

<table>
<thead>
<tr>
<th>QUESTIONS</th>
<th>RM</th>
<th>RPP</th>
<th>INTERMEDIARY (I)</th>
<th>VFUPO</th>
<th>NCVFS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Do you think that the victim friendly legal system in Zimbabwe has been effective in the protection of child victims of sexual abuse from further traumatisation?</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>2. What role, if any, does professional counselling in the victim friendly legal system contribute?</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>3. (a) In your own opinion, do you think that there are gaps that exist in the current policy and institutional arrangement that do not complement the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>4. (a) Are there any issues that have been raised by key stakeholders on the effectiveness of the victim friendly legal system in Zimbabwe towards the protection of child victims of sexual abuse from being further traumatised?</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>5. (a) What has the response been to issues raised by stakeholders impacted on the operations of the victim friendly legal system in Zimbabwe?</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>(b) In your own opinion, what is your thinking towards the effectiveness of the VFLS in Zimbabwe?</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
</tbody>
</table>

**Key:**
- RM = Regional Magistrate
- RPP = Regional Public Prosecutor
- I = Intermediary
- VFUPO = Victim Friendly Unit Police Officer
- NCVFSZ = National Coordinator of the Victim Friendly System in Zimbabwe
- ✔ = Questions posed to research participants
4.3 Research findings

The findings of this research were presented and discussed according to the research methods used. The research methods used were the in-depth face to face interviews, observations and analysis of relevant documents such as *Criminal Procedure and Evidence Act (Chapter 9:07)* (1997), *the Lancaster House Constitution (1979)*, *the New Zimbabwe Constitution (2013)*, *the two Protocols on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003, 2012)* and *A Guide to Criminal Law in Zimbabwe*. Themes that emerged from the study were divided into two categories, that those concerning positive aspects and those concerning negative aspects.

Themes concerning the positive aspects of the effectiveness of the victim friendly legal system in Zimbabwe were: capacity building for the victim friendly legal system staff members; recognition on the need for professional counselling services to child victims of sexual abuse; embarking on community awareness campaigns on the role of victim friendly (court) legal system procedures; and establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe. Themes concerning the negative aspects of the non-effectiveness of the victim friendly legal system in Zimbabwe were: inadequate victim friendly court equipment; challenges on policy, the current and institutional arrangements of the victim friendly system in Zimbabwe; problems of safer houses; and interference by family members in trying to influence the victim in court.

4.3.1 Findings from Interviews

As I have mentioned in Chapter Three under section 3.8.1 above, in-depth face to face interviews were conducted with regional magistrates, regional public prosecutors, intermediaries, victim friendly unit police officers and the national coordinator of the victim
friendly legal system in Zimbabwe. These interviews with regional magistrates, regional public prosecutors and intermediaries took place at the Harare Magistrates Courts whilst the interview with the national coordinator victim friendly legal system took place at the office of the Chief Magistrate’s Office located at the New Government Complex in the city centre.

The interviews with the regional magistrates, regional public prosecutors and intermediaries were all formally conducted as permission to conduct the study was officially granted from the responsible authorities, that is, Office of the Chief Magistrate and Office of the Prosecutor General in charge of the National Prosecuting Authority in Zimbabwe respectively. The interviews conducted with all the research participants lasted between twenty (20) to forty (40) minutes per participant. English language was the medium of communication that I used with the research participants.

Interviews that were conducted with victim friendly unit police officers were conducted informally. This was due to the fact that the application for permission to interview victim friendly unit police officers that I had sought from the Office of the Commissioner General of the Zimbabwe Republic Police had been rejected. The impact of the denial from the Office of the Commissioner General of the Zimbabwe Republic Police to the evidence that I expected to generate was minimal. It was minimal in the sense that the police organisation would reject the perceptions of the individual members whom I would have used as not representative of the official position of the police organisation. I decided to conduct these interviews informally after consultation with my supervisor who granted me permission as victim friendly unit police officers viewpoints were vital to the study.
Police officers in the victim friendly unit were critical to the research in the sense that, all official reports of a criminal nature in Zimbabwe should be reported to the police. The police force as enshrined in the Lancaster House Constitution (1979) under Section 93 subsection (1); (2); (3) and (4) as well as the New Constitution of Zimbabwe Amendment (No. 20) Act 2013 under Section 219 subsection 1 (a) are the only force that is entitled to detect, arrest, protect, investigate and prevent crime in the country. It is the Zimbabwe Republic Police that investigates allegations of a criminal nature. After their investigations, they (police) compile a criminal docket which they present to the criminal court (magistrate court) for prosecution purposes. Thus, in the victim friendly legal system, all victims of sexual abuse (children or adults) have to pass through the police. Their statements and witness statements are recorded detailing what would have happened to them at the hands of the alleged perpetrator.

The following were the research questions as indicated under section 1.4 in Chapter One that were directed to the interviewees. These questions were not necessarily posed in such a direct manner as given below since the interviews were not formally structured. Responses from the research participants in this study were consolidated by the researcher.

**Question 1: How effective is the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation?**

**Answer:** With regards to the effectiveness of the victim friendly legal system in Zimbabwe, regional magistrates interviewed were in agreement to the fact that the victim friendly legal system was effective in the protection of child victims of sexual abuse from further traumatisation. In other words, the regional magistrates were of the view that this negative perception of the system was due to the failure of the communities to understand the way it
worked and other procedures involved. One of the regional magistrates interviewed categorically said:

_There is lack of cooperation with the victims in court due to the varied community perception of the legal system in Zimbabwe. You will find that victims would like to be only heard, and the moment you try to also listen to the perpetrator, they have a feeling that their case is now being swept under the carpet. Victims and the communities that we operate from do not understand the correct procedures of the legal system in our country and instead of them asking, they immediately jump to conclude that corruption has taken place. It’s really a tall order to remove this negative perception from the community and victims towards the victim friendly system (Shumba, a regional magistrate)._ 

I also noted that this community perception of the system as ineffective could have emanated from the failure by the Judicial Service Commission to adequately sensitise the general populace from different communities on the court procedures when you report a case against someone that will be of a criminal nature. For instance, whenever the regional magistrate poses a question to the perpetrator, such a question was perceived negatively with the victims and their relatives as if the magistrate would be exonerating the perpetrator from the crime committed. The regional magistrates also said that the community had this perception that whenever someone appears before the court, that person should be convicted and sentenced to prison. Regional magistrates in the study all agreed that community members do not understand how the criminal justice system in Zimbabwe operated, thereby raising false alarms on corruption at times.

_During trial proceedings, whenever the cross examination of the victim by the perpetrator is being done, community members perceive that as harassment of the victim by the perpetrator. What the community forgets is that under the New Constitution of Zimbabwe (2013), under section 50, states that any perpetrator of crime also has rights just like the victim which they are entitled to in court. This has created fissures between courts and the victims’ relatives who are for a win-win situation only forgetting that the perpetrator is also for a win-win situation (Nhunguru, a regional magistrate)._ 

I further noted that community members do not take lightly cases that would have been thrown out by the courts for lack of evidence. I personally witnessed a case in which one of
the regional magistrates acquitted the perpetrator due to insufficient evidence to nail the perpetrator. This did not actually go down well with the victim and her relatives out of rage started to shout at court officials as being biased and corrupt. Some of the victims’ relatives were almost close to manhandling the perpetrator who was later whisked away by the police.

Regional Public Prosecutors (RPP) concurred that there was a need to embark on awareness campaigns so as to educate communities on how the system and criminal justice system in Zimbabwe operates. They also felt that the community was labelling them as corrupt without evidence, hence the need to engage communities on a larger scale and educate them on how the victim friendly system operates. RPP also concurred that community members do not understand the job of a prosecutor, thereby leaving them to allege false corruption on them.

One regional public prosecutor said:

There is still more that needs to be done to educate these people from the various communities on how the victim friendly legal system operates. I also felt let down by the responsible authorities who fail to come up with procedure manual that could be given to different communities so as to sensitise them on how the system. I was humiliated by one victim who accused me of being corrupt just because the alleged perpetrator in her case had been acquitted (Muzhanje, a regional public prosecutor).

Intermediaries (I) (Bere, Nguruve and Mumango) had the consensus that the community perceived the criminal justice system negatively due to various reasons. Some of the reasons elucidated by the intermediaries were that of accusation of corruption by court officials and lack of confidence in the personnel doing the job in the court. Victim Friendly Unit Police Officers (Mupuranga, Mutsubvu and Musawu) who took part in the study were in agreement that community perception towards the victim friendly legal system in Zimbabwe was generally negative. One of the victim friendly unit police officer said:

The negative perception that the victim friendly legal system was getting from community members and victims of sexual abuse was due to the fact that the community no longer had trust with their police officers and court officials whom they now see people who are very corrupt; thereby defeating the whole purpose of them to
report cases of sexual abuse. However, there were some communities that viewed police officers from the victim friendly unit as effective when it comes to their work. Such community members would even provide transport for victims of sexual abuse whenever the police station concerned does not have a vehicle to take them to court (Musawu, victim friendly unit police officer).

The National Coordinator of the Victim Friendly System in Zimbabwe concurred with what regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers had said about the community. He said:

The community perceived the criminal justice system in Zimbabwe differently. For instance, some members of the communities were not aware of how the criminal justice system in Zimbabwe operates. This had resulted in the negative perception of the whole system when such people read in the media of people being acquitted on rape cases. We are going to embark on awareness campaigns so as to conscientise communities about how the criminal justice system works. By so doing, this would also assist in building the image of the criminal justice system in Zimbabwe. Communities were not really aware of the judicial processes. The media at times had sensitised the community thereby resulting in the negative perception (Mbizi).

The national coordinator of the victim friendly system in Zimbabwe went on to say that he was working with the embassy of one country to come up with at least thirty (30) billboards spelling out what the criminal justice system entails. This embassy is one of the cooperating partners to the victim friendly legal system. These billboards would start at the courts like Harare Magistrates Court before they cascade to other courts in different communities of the country. This would dispel the misconception about the criminal justice system operations. Information on how the members of the public would be educated would include how to appeal and launch their complaints with Judicial Service Commission when they are not satisfied in the manner that they would have been handled. The national coordinator also stated that he hoped that before end of the year 2014, the billboards would be in place for the benefit of the members of the communities.
Question 2: What role, if any does professional counselling in the victim friendly legal system in Zimbabwe contributes?

Answer: There was a general consensus amongst the research participants (RM, RPP, I and VFUPO) on the fact that professional counselling had a role to play in the victim friendly legal system in Zimbabwe. They (research participants) said that due to the traumatic exposure of the sexually abused child victims, there was need for professional counsellors to be engaged early so as to manage the victim’s trauma. They also stated that they had seen some positive outcomes in some of their trials where victims would have been afforded the opportunity to see a professional counsellor.

One of the Regional Magistrates said that professional counselling was both needed at pre trial stage and post trial stage. She went on to say:

At the pre-trial stage, sexually abused victims should be taken through the procedures of the criminal justice system in as far as how a trial in court proceeds. This role would be done with an intermediary who also builds a relationship that fosters trust between them (intermediaries) and the victims. Professional counsellors from organisations such as Childline would be used in the pre-trial stage, whereupon they work hand in hand with victims. Victims would be empowered by the professional counsellors to say exactly what would have happened during the court trial to the magistrate (Nzou, a regional magistrate).

Professional counselling at the post trial stage was difficult to enforce in the victim friendly legal system in Zimbabwe. At law, the courts role end after the completion of the case trial. Victims would then be expected to look for their professional counsellors whom they would work with in managing the traumatic experiences. The fact that trauma would continue to affect the victim; this may psychologically inhibit the optimal functioning of the victim in their future life activities. The researcher also discovered that professional counselling is one of the intervention strategies that could be used to minimise the impact of psychological trauma on the sexually abused victims during the course of trials and investigations of such
cases. Through professional counselling, child victims of sexual abuse are empowered to say it all without fear.

Re-traumatisation of child victims of sexual abuse had contributed to their non cooperation in court. Child victims of sexual abuse require professional counselling services. The impact of sexual abuse on children results in the development of negative behaviours and attitudes. These included suicidal behaviour tendencies, falling into depression, reduction of self esteem and prostitution.

Regional Public Prosecutors who also took part in the study were in agreement with the fact that professional counselling was a necessity in the victim friendly legal system in Zimbabwe. They even confirmed that due to the traumatic experiences of the victims after the abuse, some of the child victims were failing to present their cases before the courts, thus resulting in the court acquitting the perpetrator. One regional public prosecutor said:

> Professional counselling though not appreciated by many people in Zimbabwe has played a pivotal role in the reduction of traumatic experiences on sexually abused victims. Counselling services provided to some sexually abused child victims by Childline who had their cases done here did assisted victims to stand up and eloquently narrate their stories in court without fear of the perpetrator. However, I bemoan the failure to provide post trial stage counselling to victims. Something has to be done to change this situation as some victims have continuously suffered psychologically from the abuse (Mutohwe, a regional public prosecutor).

Intermediaries were also in support of the need to have professional counselling in the victim friendly legal system as a necessary intervention strategy in the reduction of further traumatisation of sexually abused child victims. They also said that counselling should be done at both pre and post trial stages as it would assist victims to gain strength to move on in their lives. One intermediary said:
It is unfortunate that some people do not value the role of professional counselling services. To us in the system as intermediaries, we are so proud that Childline was offered an office here at the Harare Magistrates Courts to provide counselling services on both child and adult victims. Truly speaking, I have noted a big difference on a victim who has gone through the pre-trial stage of counselling and the one who has not been afforded such an opportunity. Most of the victims would have been empowered to stand up and tell the court what would have happened to them confidently (Muonde, an intermediary).

Victim friendly unit police officers concurred that the introduction of professional counselling in the victim friendly legal system was long overdue. One of them said:

Professional counselling would assist sexually abused child victims in the management of traumatic experiences. I feel that as a police officer, there are certain times that sexually abused child victims would not open up to us due to fear. Hence, the availability of professional counsellors in the victim friendly legal system had assisted us in our work as we can refer such children to professional counsellors. Some cultural orientation of sexually abused child victims had resulted in these child victims failing to disclose anything to police officers what would have been done to them. This would make the victim friendly unit police officer duty, difficult to accomplish due to lack of cooperation from the victims (Musawu).

Family relatives of the sexually abused child victims whom I had informal conversations with at the Harare Magistrates Court, expressed their willingness to take their child victims to professional counsellors for counselling services. They said that they would be assisted very well in a professional manner as compared to some police officers who were rude to them.

The national coordinator of the VFLSZ was fully supportive of the role professional counselling plays on the child victims of sexual abuse. He said due to the victim’s traumatic experience at the hands of the perpetrator, professional counsellors were required to manage such traumatic exposure. He also stated that Childline was doing a good job at the Harare Magistrate Court by offering professional counselling services to victims of child sexual abuse at both the pre trial and post trial stages.
Question 3: What are the gaps in the current policy and institutional arrangement that do not complement the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?

Answer: Most of the research participants in their categories acknowledged that there were gaps in terms of the funding of the VFLSZ. The current situation on the ground was that the system was relying on donor funding. Government was only availing human resources and the infrastructure, but the essential equipment such as closed circuit television (CCTV), recorders and amplifiers was the duty of the donor to fund. This compromised the independence of the VFLSZ as some observers would then tend to say the system is serving the interest of the donor organisation instead of serving the interests of the Zimbabwean populace. One Regional Magistrate said:

*Some key witnesses were failing to attend court due to lack of financial resources. It is disturbing to note that even though the Criminal Procedure and Evidence Act (Chapter 9:07) states that when witnesses are summoned to court, they should be reimbursed their transport and food expenses, however they were not being reimbursed their transport and food expenses. If such witnesses come from faraway places, they are entitled to accommodation at the expense of government but they were not being accommodated. Government was not funding witnesses who testify in the court. This role had been taken over by UNICEF (Nhunguru).*

I noted that there were some challenges in the funding process of child victims witnesses due to some delays that take place at the courts. For instance, some cases would fail to start on the stipulated dates and times, thereby resulting in witnesses being sent back without giving their testimonies. The research participants (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) concurred that there were gaps in the current policy and institutional arrangement in the VFLSZ. Research participants (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) went on to say that the government was not really doing practical things on the ground with regards to supporting the system with adequate equipment and financial
resources. Privacy and confidentiality of victims was at times compromised as people ended up trying to do with the available resources.

I realised that the available legislation in place complemented the efforts of the victim friendly legal system though it was cumbersome to move from one ministry to another ministry in search of assistance. The national coordinator felt that there were some gaps on the policy when it comes to complementing the system. He said:

*The two Protocols on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003, 2012) documents were not policy documents that were really supported by any government legislation. There is need to have these two protocols document to be regularised to become a binding policy document in government. I would also want to acknowledge that efforts were being made with cooperating partners such as Save the Children, Plan International and UNICEF to lobby for the two protocols document to be recognised as policy document by government (Mbizi).*

Furthermore, I noted that these cooperating partners were complementing the victim friendly legal system in various ways. For example, Save the Children was complementing the victim friendly legal system by paying the salary of the national coordinator of the victim friendly system in Zimbabwe, Plan International was building court stations across the country and UNICEF was catering for the witness expenses as well as the monitoring component of the system. UNICEF had also provided a vehicle for the national coordinator of the victim friendly legal system to enable him to move from one court station to another in the country.

**Question 4: What issues have been raised by key stakeholders on the effectiveness of the victim friendly legal system in Zimbabwe towards the protection of child victims of sexual abuse from being further traumatised?**

**Answer:** The research participants (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) were in agreement that, at times the fear or continuous traumatisation of the sexually abused child victim when giving evidence in
court was another problem. What was evident was that there would be a delay in the completion of a case trial in the court. The delay in the completion of the case trial would then raise issues of complaints and concerns on the effectiveness of the justice delivery system in Zimbabwe. There was also concurrence amongst the research participants (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) to the fact that victim friendly courts should also be accessed by adult victims of sexual abuse. For instance, some adult victims would also fear to give their evidence face to face with the perpetrator. Some adult victims would feel that the court is re-traumatising them when they gave their evidence facing the alleged perpetrator. One regional magistrate said:

In one of the case of an adult victim of rape that I presided over, that victim would collapse on seeing the perpetrator in the court. She would regain her consciousness after being given first aid, but she would collapse again in the dock as soon as she faces the alleged perpetrator. This would result in delays to meet the three (3) day stipulated time frame for case completion in judicial service commission code of conduct (Nhunguru).

One regional public prosecutor said:

Adult victims are not put in the private room away from the main courtroom where usage of CCTV is done. The CCTV system was only designed for young sexually abused children who faced challenges in eloquently presenting their case freely in the face of the alleged perpetrator. When it is adult rape victim giving her evidence, all members of the public are ordered to go out of the courtroom. Only court officials, that is, the presiding magistrate, public prosecutor, intermediary, court orderly (police officer), prison guard, the victim and the perpetrator are the only ones who remain in that courtroom. This was considered necessary to reduce the victim’s trauma (Ruzhowa).

Inadequate victim friendly court equipment was one issue that was highlighted by the research participants (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) and other stakeholders in the VFLSZ. Regional Magistrates concurred that the victim friendly court equipment at the Harare Magistrate Court was inadequate. One of the regional magistrates said:
Only two courts out of the ten (10) functional regional courts are well equipped. At this time that you have visited me in pursuit of your studies you can see that the equipment in these two courts that are well equipped is working. If you then look at the number of cases that I am supposed to handle in the victim friendly court that is well furnished you will be shocked as to how I will do it without the functional court. What then it means is that I am forced to postpone some of these cases waiting for the servicing of such court equipment. Just imagine the period it takes to have this equipment. The servicing of the malfunctioning of the victim friendly court would take at least three months. In other instances, I would improvise the victim friendly court by removing all the other members of the public from the court. Only court officials and the parties involved in the case before the court would remain in that court (Musasa).

Regional Public Prosecutors expressed concern on the number of victim friendly courts at the Harare Magistrate Court. One of them said:

You find that there are ten (10) functional regional courts here at Harare Magistrates Court. However we scrounge for space in the only two (2) adequately equipped victim friendly courts. This has resulted in the backlog of cases increasing due to inadequate courtrooms that are well equipped. Government should take a leading role rather than waiting for the donor to furnish other eight (8) courts here at the Harare Magistrates Courts (Ruzhowa).

Victim Friendly Unit Police Officers were dissatisfied with transport arrangements at their organisation at times. One of the victim friendly unit officers said:

We fail to take sexually abused children to hospital for medical examination due to lack of a vehicle at our respective police stations. I bemoan the lack of vehicles to carry victims and perpetrators to court at times. Carrying victims and perpetrators in the same vehicle defeats the whole purpose of protecting children (Musawu).

Victim friendly unit police officers as major stakeholders in the victim friendly legal system further expressed their concern over the inadequate of the victim friendly court equipment at the Harare Magistrate Court. They felt that this was hampering their work efforts whereby cases are postponed due to the unavailability of a functional victim friendly court. Office space was another challenge that police officers raised. They said that at times, it was difficult for them to preserve the privacy and confidentiality of the victims due to insufficient office space at their respective stations. For instance, perpetrators were made to seat on the
floor whilst the victim seats on the bench facing each other in one room. Conducting an interview where you would want to ensure privacy and confidentiality was a big challenge due to office sharing with other police officers. The victims ended up re-traumatised.

**Question 5: How has the response to issues raised by stakeholders impacted on the operations of the victim friendly legal system in Zimbabwe?**

**Answer:** The responses to issues raised by stakeholders (regional magistrates, regional public prosecutors, victim friendly unit police officer, intermediaries, and NGO’s such Childline, Family Support Trust Clinic) on the operations of the VFLSZ were varied in nature. One of the responses to some of the issues raised by the different stakeholders was the notion to embark on community awareness campaigns whereby regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers would educate members of the public in the different communities on the role of victim friendly legal system procedures. There was a general consensus from the regional magistrates interviewed with regards to embarking on vigorous community awareness campaigns so as to conscientise members of the community on the role of the VFLSZ.

Apart from presiding over these sexual abuse cases and other serious crimes such as robbery, car theft, etc, regional magistrates chaired the victim friendly legal system subcommittee meetings on a monthly basis. They review cases that would have been tried at the lower court to ascertain the appropriateness of sentences, convictions and acquittals given to perpetrators of different crimes. Community awareness campaigns were also being used as educative platforms on the dangers of committing different crimes such as rape, murder and carjacking. One regional magistrate said:
Community awareness campaigns have assisted us in reducing our workloads at the courts. You find that when people are forewarned about the dangers of committing crimes, they show self-restrain towards committing crimes (Mupangara)

I noticed that the research participants in this study were concerned with the issues that had been raised by the different stakeholders in the victim friendly legal system. Efforts were being made to try and protect those sexually abused child victims from further traumatisation by completing case trials within three days time, referring all sexually abused child victims to professional counsellors both at pre-trial and post-trial stages.

4.3.2 Findings from Observations

I visited Harare Magistrates Courts where I was taken on a guided tour of the Victim Friendly Court Rooms by the Principal Intermediary. I observed a fifty minute court session and was only allowed to observe trial proceedings without writing anything. Silence in the court was emphasised by the presiding magistrates. Mobile phones were all put on silent and eating of food in the courtroom was not allowed.

I only managed to observe two (2) court sessions that were sitting in the Victim Friendly Court Room. A visit to the separate room where the sexually abused child victim would be seated was done. This room is well connected to the main courtroom with cameras and microphones. It is from this separate room where the child victim talked to the presiding magistrate, regional public prosecutor and defence lawyers in the main courtroom. I also observed that the room had two couches. These couches are used as seats by the child victim and the intermediary as they talked to the main courtroom. Both the victim and the intermediary had earphones that they used to communicate with those in the main courtroom.
There were also various anatomically correct dolls of both sexes in that room. I was informed on how the different anatomically correct dolls were used by the sexually abused child victims: to identify the organ which the perpetrator would have used on the victim; to test the victim as to whether they could positively identify a male doll and a female doll; and to demonstrate the exact position of how the sexual abuse would have happened to the courtroom, so as to determine whether there was any sexual abuse that would have taken place. Apart from the anatomically correct dolls in that room, I saw that there were also other toys like animal and human figures. These dolls and toys were used to maximise the child victim’s ability to recall events as they narrated their story to the court.

In the main courtroom of the Victim Friendly Court, there was also a twenty nine (29) inch colour television set, amplifier and a recording machine. All these things were operated by a technician. Through the television set, the researcher saw the other separate room where the victim sat. Only the child victim and the intermediary were seen through the television set as they communicated with the court officials in main courtroom. The intermediary is the one who translated the English language from either the presiding magistrate, regional public prosecutor, defence lawyer and the perpetrator to the child victim into Shona and vice versa. The child was interrogated through the intermediary; thus prevented any trauma that might be caused by the rough manner of the perpetrator.

I was not granted permission to take photos in the courtroom by the Principal Intermediary. He said that taking of photos in court was not allowed under the Magistrate Court Act (Chapter 7:10). Considering the number of Victim Friendly Courts at Harare Magistrates Court against the volume of cases that needed to be heard in those two courts, I was left wondering how then the VFLSZ could be effective without adequate facilities. Nevertheless,
I observed from the behaviours and attitude of the court officials who work in the VFLSZ that they were committed to their work. They endeavoured to do the best they could with those little resources available.

These research findings from the observations differed with the findings that emerged from the interviews that I conducted. The differences could be attributed to the fact that, observations during the court situation bring to the fore realism whereas observations done simultaneously with interviews bring to the fore some false pretences. The insider’s viewpoint during observations was done simultaneously with the interviews might have been distorted to please the researcher. However, my outside viewpoint during observations in the real court sessions brought an insight into the reality of what happens in the victim friendly court situation during a trial. Such differences from the data generated from these two research instruments (interviews and observations) in qualitative research clearly convey two perspectives of significance to the study. The perspectives conveyed from these two instruments were the emic and etic perspectives. From the interviews, research participants conveyed their own perceptions of the system, that is, the insider’s viewpoint. The researcher’s perception was exhibited in the etic perspective, that is, the outsider’s viewpoint of the VFLSZ.

4.3.3 Findings from the analysis of relevant documents

I analysed the relevant documents. They revealed that the most significant intervention strategy in the sexual abuse of children was to manage further traumatisation of the victims through professional counselling. In a study that was conducted by Kabasa (2006) and Kudya (2006), they both acknowledged that sexually abused child victims continued to experience
traumatic exposure even after they would have left the police station, court and clinics.

Chapman and Gates (2005) posited that:

> Although society reacts with predictable horror at what is done to children by sex offenders, it apparently does not share a similar concern for what subsequently may happen to them at the hands of our law enforcement and child protection systems. Whether a child has been sexually assaulted by a stranger, an acquaintance, or a member of her own family, when the incident is brought to the light the family is usually found to be undergoing a state of crisis as it works through feelings of anger, fear, shock and confusion. In the midst of such vulnerability, the criminal justice, health and social service systems (victim friendly legal system) may descend upon a child and family with such a devastating impact that its recipients are left with the feeling that the “cure” is far worse than the symptoms. Many authorities agree that the emotional damage resulting from the intervention of “helping agents” in our society may equal or far exceed harm caused by the abusive incident itself.

Professional counselling services should be availed to the victim at both the pre-trial and post-trial stages of the criminal justice system. Available literature confirmed that when such processes have been done, victims would be empowered psychologically so that they could move on with their lives. The review of related literature also indicated that though the philosophy behind the victim friendly legal system was Eurocentric, there was evidence that with time, the system would be of assistance in the African context.

Closer analysis of the various documents that I perused through, it showed that theoretically the VFLSZ was a brilliant system. This was spelt out under Section 319 of the Criminal Procedure and Evidence Act (Chapter 9:07) which gave rise to the establishment of the system. Section 319 of the said Act (CP and E Act) was later complemented by the two Protocols on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003; 2012) that gave clear guidelines on how the Victim Friendly Legal System and other stakeholders were supposed to operate. The main objective of the victim friendly legal system in Zimbabwe was to protect child victims of sexual abuse and other vulnerable witnesses in the criminal justice system from further traumatisation.
On analysing the two Protocols on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003, 2012), I noticed that these documents had different emphasis. The 2003 Protocol emphasised the description of stakeholders’ roles and responsibilities with respect to the delivery of medical, care, support and judicial services to survivors of sexual violence and abuse. The 2012 Protocol reflects a strong commitment by government and other stakeholders in fighting sexual abuse and violence. This protocol is also committed to improving the well being of children and adult survivors of sexual abuse in Zimbabwe. I also realised that the 2012 Protocol had been expanded in its scope to include girls and women who share the brunt of sexual violence as evidenced by Zimbabwe Demographic and Health Survey of 2010/2011 published by the National Statistics Agency (ZIMSTAT, 2012).

Having looked at the various documents in place, I concluded that the VFLSZ was generally a good concept on paper. In terms of its practicability, there was still more that needed to be done. I further agreed with the views enunciated by other research participants to the study who argued that the system was not yet effective when it comes to protecting child victims of sexual abuse.

The amendment to Section 319 of the Criminal Procedure and Evidence Act (Chapter 9:07) was aimed at addressing the needs of all witnesses deemed as vulnerable witnesses during criminal proceedings in the Victim Friendly Legal System (Court). The specific provisions of the amendment included:

- Having a support person during court proceedings;
- Availability of closed circuit television (CCTV) in all victim friendly courts;
• Use of an intermediary, a specialist interpreter to work with victims and vulnerable witnesses;

• Establishment of the Multi-Sectoral Victim Friendly Court Sub-Committees, referred to in the Protocol as the National Victim Friendly System Committee (NVFSC) and Subcommittees (VFSCC);

• Use of anatomically correct dolls for child victims and witnesses;

• Waiver of witnesses expenses by government;

• In camera trial;

• Allowing judicial staff to behave less formally before and during trial; and

• Conducting awareness raising campaigns in the communities.

I noted that the above stated specific provisions as spelt under Section 319 of the Criminal Procedure and Evidence Act (Chapter 9:07) were being complied with in the criminal justice system in Zimbabwe. I however saw that the provision on witnesses’ expenses by government was not being honoured as indicated on paper. Rather, non-governmental organisations (Plan International, Save the Children and UNICEF) had assumed the government role. The availability of CCTV equipment was now the responsibility of non-governmental organisations, yet on paper it was supposed to be the government playing a leading role.

The book on “the Guide to Criminal Law in Zimbabwe” was analysed in relation to the system as part of the Criminal Justice System. It was clear that the VFLSZ complemented the purpose of the Criminal Justice System. The Victim Friendly Legal System was complementing the Criminal Justice System by ensuring that vulnerable witnesses and victims of sexual abuse are protected from further trauma during court trials. The main
purpose of the Criminal Law is to prevent socially intolerable conduct such as sexual violence or, at least, to hold unacceptable conduct within socially acceptable boundaries. The prevention of socially intolerable conduct was a collective responsibility of all community members at large.

Burchell and Milton (1997) posited that the criminal law is a social mechanism that is used to coerce members of society, through threat of pain and suffering, to abstain from conduct which is harmful to various interests of society. Its objective is to promote the welfare of society and its members by establishing and maintaining peace and order. Child sexual abuse victims require all communities to speak with one voice when such cases which are morally unacceptable in society happen. The Guide to Criminal Law in Zimbabwe document clarifies how the criminal justice system operates.

4.4 Discussion of the Themes That Emerged From the Research Findings

Themes that emerged from the research findings of this study as presented above in this chapter are discussed here. These themes emerged from the in-depth face to face interviews, observations and documentary analysis that I conducted. In order that meaningful conclusions were reached in this study, themes that emerged were examined in the light of the theoretical and methodological lenses that I discussed in chapters two and three in relation to the objectives of the study (see section 1.5). Themes that emerged were divided into two categories, that is, those concerning positive aspects and those concerning negative aspects. Themes concerning the positive aspects of the effectiveness of the victim friendly legal system in Zimbabwe were: capacity building for the victim friendly legal system staff members; recognition on the need for professional counselling services to child victims of sexual abuse; embarking on community awareness campaigns on the role of victim friendly (court) legal
system procedures; and establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe. Themes concerning the negative aspects of the non-effectiveness of the victim friendly legal system in Zimbabwe were: inadequate victim friendly court equipment; challenges on policy, the current and institutional arrangements of the victim friendly system in Zimbabwe; problems of safer houses; and interference by family members in trying to influence the victim in court.

In this discussion of the themes, I would present the emic and etic perspectives during the analysis of those themes that emerged. Chisaka (2008) posited that in qualitative research, two purposes stand out. Firstly, the emic perspective allowed research participants to convey their own perceptions. This represented the insider’s viewpoint regarding the situation under study. Research participants’ perceptions were captured under the emic perspective. This is the original or firsthand data, which the readers may need to be exposed to, so that they are afforded an equal opportunity to vicariously interrogate the original source of information/data generated.

Secondly, the etic perspective allowed the conveyance of the researcher’s perception of the research participant narrative. This represented the perspective, which is the outsider’s viewpoint, regarding the experiences of the insiders. I used the etic perspective in interpreting the meaning of what research participants were saying. This interpretation of meaning from the research participants developed a deeper understanding of the perceived meaning of research participants’ perception under investigation. Neuman (1997) posited that the meaning that the researcher gives begins with the viewpoint of the research participants being studied. The researcher would interpret the data generated by finding out how such research participants see the world, how they define the situation, or what it means to them. This stage
of interpretation is referred to as the etic perspective (Hoberg, 2002; Chisaka, 2007). The aim in such interpretation of research participants’ viewpoints was to understand the meaning of social behaviour and attitude of the participants under study in the victim friendly legal system as perceived by the research participants themselves. I was to ascertain the personal reasons and motives for the actions performed by each category of the research participants in the study.

4.5 Themes concerning the positive aspects on victim friendly legal system in Zimbabwe

4.5.1 Capacity building for the victim friendly legal system staff members.

One of the themes that emerged from the research findings was to do with the need to capacity build staff members in the victim friendly legal system in Zimbabwe. This theme was echoed from all the categories of research participants in the study. It has been widely accepted that capacity building is important to every professional person (category) in the victim friendly legal system, especially due to evolving scientific knowledge, integration of new policies and lessons learned from practice. Coincidentally, working with and understanding children requires a set of skills, attitude and knowledge such as child psychology, child development and communication skills tailored to age, gender, cultural orientation and maturity of the child in question. Therefore, all categories of the research participants should all aim to build the capacities of their personnel, from the initial level, specialised level, and in-service level or education level, on how to interact with children.

From the data generated from the regional magistrates who were participants in the research, the researcher noted that four (4) of these regional magistrates were experienced people in
their jobs. These regional magistrates ranged from seven (7) years of service to fourteen (14) years. Only one regional magistrate has only ten (10) months in the regional court and he was in an acting capacity. I further discovered that the regional magistrate who had only ten (10) months in the regional bench had served in the lower magistrate courts for six (6) years. Thus, all these regional magistrates qualified to be on the regional magistrates’ bench according to the Magistrate Court Act (Chapter 7:10). This Act allows any magistrate who would have served as a magistrate for six (6) years at the lower court to be appointed on the regional magistrate bench.

With regards to academic qualifications of regional magistrates, there were four (4) of the who had first degrees in law obtained from local and international universities. One female regional magistrate had a master’s degree in law obtained from a local university. The appointment of magistrates is done under section (1) subject to subsection (a); (b) and (c) of section 182 of the New Constitution of Zimbabwe (2013) which states that; the Judicial Service Commission may appoint any person to hold magisterial office. A magistrate on appointment in terms of subsection (1) of section (7) shall, before exercising any of the functions of his office, in open court take the following oath:

I..... Do promise and swear that I will faithfully, impartially and diligently execute to the best of my abilities the duties of the office of magistrate. So help me God.

The Magistrate Court Act (Chapter 7:10) sets the minimum qualification for a magistrate as a diploma qualification. The diploma is offered by the Judicial College located at Domboshawa in Mashonaland East Province. The diploma is done in eighteen (18) months. Having looked at the current regional magistrates’ bench, I concluded that it was well manned by competent people who had the relevant educational qualifications in the work they were doing.
However, the regional magistrates bemoaned the inadequacy of regional magistrates at the Harare Magistrates Court. One of them said:

*Our capacity to effectively deliver on our mandate is now being hampered by high staff turnover, thereby resulting in us being overloaded with cases to preside over in court. I would like to lobby to the authorities that the Victim Friendly Court be adequately resourced with regional magistrates, regional prosecutors and intermediaries who are all were trained in the handling of cases of sexual abuse and violence against women (Nzou)*

Regional Public Prosecutors (RPP) in the study had served in their profession for some years. These ranged from six (6) up to eight (8) years. These were professionals who had accumulated vast experience in the department of National Prosecuting Authority. There was a general feeling that some of the RPP were not qualified and lacked experience needed in the victim friendly legal system. Dealing with minors required competent prosecutors who had the requisite experience to deal with children in the court.

The main duties of a regional public prosecutor included the presentation of state cases in court for trial before a magistrate. Prosecutors were like lawyers for the complainant (victim) and they represent the state, not the perpetrator of a crime. Prosecutors were responsible for deciding which case had a *prima facie* status that warranted going for a full trial to determine the full facts of the case in court. *Prima facie* refer to whether facts on the charge sheet and outline of state case presented constitute a crime committed. Some of the cases regional public prosecutors handled included rape, armed robbery, murder and carjacking. Regional Public Prosecutors were also assessors of cases presented to them from the police. This is one role which is critical to their duties. RPP makes sure that witnesses are well secured from further victimisation by the perpetrator and their relatives.
I noticed that regional public prosecutors familiarised themselves with victims and perpetrators through short interviews in their offices before they get in court. Such short interviews allowed them to get facts clear as to what happened before, during and after the abuse. These short interviews prepared prosecutors to make presentations in court that are clear and concise.

Regional Public Prosecutors (Mutondo, Ruzhowa and Muzhanje) were also concerned with high staff turnover in their department. They expressed their dissatisfaction with nepotism which was being spearheaded by their superiors. They said that some of the regional prosecutors were not experienced to handle cases that involved children neither were they eligible to work in the regional court. No due consideration was being put in place to train such inexperienced prosecutors into the demands of working in the victim friendly court system.

*It is very disheartening to see that a junior prosecutor being deployed to work in the victim friendly system at the expense of an experienced prosecutor. Furthermore, some of these junior prosecutors adequately lack victim friendly court training, to such an extent that they end up losing cases which victims should have won. There is also the issue of high staff turnover, whereby experienced prosecutors are leaving the department in search of greener pastures. This has resulted in gaps being created which then compels us to be overloaded with too many cases to work (Muzhanje).*

Intermediaries who were interviewed had working experiences that ranged from two (2) up to nine (9) years of service. The researcher noted that the unit had experienced personnel who could do their work at hand without much difficulty. The main duties of intermediaries were to familiarise with both victims (children or adults) and interpretation of cases in the court from any local language into the English language, which is the medium of communication in the criminal justice system in Zimbabwe.
Victim friendly unit police officers who were interviewed had vast experience in their work. Their years of service in the victim friendly unit section ranged from nine (9) to eleven (11) years. Main duties of victim friendly unit police officers included investigating, detecting and prevention of rape crimes, indecent assault, aggravated indecent assault, sodomy and domestic violence cases. Victim friendly unit police officers also provided escort of victims to Family Support Trust Clinic and Adult Rape Clinic to secure medication after an abuse. Victims of sexual abuse should be medically examined and treated within seventy two (72) hours. Within this timeframe, victims would be given pills that would stop the transmission of HIV from the perpetrator to the victim. This process is widely known as post exposure prophylaxis (PEP). The other duty of the victim friendly unit police was to arrest the perpetrator and bring them to court for trial within forty eight (48) hours.

The Zimbabwe Republic Police is a significant stakeholder in ensuring that children have access to justice. Accordingly, training the police force on children’s rights is essential to help states to fulfil their obligations under the Convention of the Rights of Children. Training institutions in Zimbabwe for the police force, that is, Morris Depot, Chikurubi and Ntabazinduna provide a course on children’s rights, counselling and victim friendly legal system in their training curriculum, with the length of the course ranging from one (1) hour to a month. In addition, existing family and child protection units are open to the idea of working together in the enhancement of protection strategies for children in the different communities in the country.

The national coordinator joined the Victim Friendly Legal System in Zimbabwe in August 2013. When I conducted the interview with him on the 18th February 2014, he had served in the system for less than one year. Main duties of the national coordinator in the victim
friendly legal system included the coordination of activities in the system throughout Zimbabwe with other partners from the nongovernmental organisations and those in government. His other duties entailed, calling for meetings, fundraising for the victim friendly system. The issue of conducting community awareness campaigns is left to the subcommittees of the system on how the criminal justice system in the country operates.

The other challenge pertained to capacity building of the system. There is need for constant capacity building in terms of training the staff manning the system courtrooms. The national coordinator of the system bemoaned the inadequacy of professionally trained staff working in the victim friendly legal system, saying that he would strive to have all the staff trained. By having trained staff in the system, it would enhance the quality of service delivery to both victims and perpetrators.

I observed that capacity-building/training at the national level could be supported by national and international partners. Bottle necks in government policies appeared to hamper such efforts. There was a lot of suspicion on the activities of these partners from the central government, thereby resulting in capacity building of the victim friendly legal system failing to take off. I also noted that some of the key stakeholders in the system had initially benefitted from the training provided by UNICEF in the early years of the inception of the system. Furthermore, I observed that international, regional and inter-country workshops on children’s rights on matters relating to justice are significant opportunities to exchange best practices, challenges, and possible solutions that would improve the victim friendly legal system operations in Zimbabwe.
4.5.2 Recognition on the need for professional counselling services to child victims of sexual abuse.

Theme number two that emerged from the research findings was on the need to recognise that professional counselling services to sexually abused victims was required to manage the trauma experience effectively. All the research participants, that is, regional magistrates, regional prosecutors, intermediaries and victim friendly unit police officers were in concurrence to the fact that professional counselling had a role to play in the victim friendly legal system in Zimbabwe. They also stated that they had seen some positive outcomes in some of the trials where victims would have been afforded the opportunity to see a professional counsellor. They all cited Childline as one organisation that was voluntarily offering professional counselling services at the Harare Magistrates Court.

Some of the regional magistrates (Shumba, Nzou and Musasa) concurred to the fact that professional counselling was both needed at pre-trial stage and post-trial stage. They said that at pre trial stage, sexually abused child victims were taken through the procedures of the criminal justice system in as far as how a trial in court proceeds. This role was done by an intermediary who builds a relationship that fosters trust between him (intermediary) and the sexually abused child victims. Professional counsellors from organisations such as Childline were used in the pre-trial stage, whereupon they worked hand in hand with the child victims. Sexually abused child victims were empowered by the professional counsellors to say exactly what happened during the court trial to the magistrate.

Professional counselling at the post-trial stage had been proved to be difficult in the victim friendly legal system. At law, the courts only end after the completion of the trial. Sexually abused child victims were expected to look for their professional counsellors whom they
engage in managing the traumatic experiences after the trial completion. I observed through the reviewed related literature that trauma continued to affect the victim, thereby psychologically inhibiting the optimal functioning of that sexually abused child victim in their future life activities. Professional counselling is one of the intervention strategies that could be used to minimise the impact of psychological trauma on the victims of sexual abuse during the course of trials and investigations of such cases. Through professional counselling, child victims of sexual abuse are empowered to say it all without fear.

One regional public prosecutor (Muzhanje) said re-traumatisation of sexually abused child victims had contributed to their non cooperation in court. Child victims of sexual abuse require professional counselling services. The impact of sexual abuse on children results in the development of negative behaviours and attitudes. These included suicidal behaviour tendencies, falling into depression, reduction of self esteem and prostitution. Regional Public Prosecutors were generally in agreement to the effect that professional counselling was a necessity in the victim friendly legal system. They even confirmed that due to the traumatic experiences of the victims during the abuse, some of the child victims were failing to present their cases before the courts, thus resulting in the court acquitting the perpetrator. One regional public prosecutor, stated:

*Professional counselling though not appreciated by many people in Zimbabwe, it has played a pivotal role in the reduction of traumatic experiences. Counselling services provided to some victims by Childline who had their cases done here did assisted victims to stand up and eloquently narrate their stories in court without fear of the victim. However, I bemoan the failure to provide post-trial stage counselling to victims. Something has to be done to change this situation as some victims have continuously suffered psychologically from the abuse (Mutohwe).*

Intermediaries (Bere, Nguruve and Mumango) were in agreement that professional counselling was necessary in the victim friendly legal system. They said that counselling
should be done at both pre- and post-trial stages as it would assist victims to gain strength to move on in their lives. One intermediary stated

_It is unfortunate that some people do not value the role of professional counselling services. To us in the system as intermediaries, we are so proud that Childline was offered an office here at the courts to provide counselling services on both child and adult victims. Truly speaking, I have noted a big difference on a victim who has gone through the pre-trial stage of counselling and the one who has not been afforded such an opportunity. Most of the victims would have been empowered to stand up and tell the court what would have happened to them confidently (Muonde)._

Victim friendly unit police officers (Mupuranga, Mutsubvu, and Musawu) concurred that professional counselling was really needed so as to assist in the management of traumatic experiences of the victims. Police officers felt that at times child victims would not open up to them due to fear. Hence, the availability of professional counsellors in the system had assisted them in their work as they could refer such children to professional counsellors. Some victims due to their cultural orientation had been told not to disclose anything to police officers. This would make the victim friendly unit police officer duty difficult to accomplish due to lack of cooperation from the victims. The national coordinator of the system was fully supportive of the role professional counselling plays on the child victims’ of sexual abuse. He said that, due to the victim’s traumatic experience at the hands of the perpetrator required professional counsellors to manage such traumatic exposure. He also saluted Childline as an organisation for volunteering to do voluntary counselling on those sexually abused victims at the Harare Magistrates Courts

4.5.3 Community awareness campaigns on the role of victim friendly (court) legal system procedures.

The need to embark on vigorous community awareness campaigns sensitising members of the public on the role of the victim friendly court system procedures emerged as another major theme from the research findings. Community awareness was aimed at improving the
community perceptions towards the victim friendly legal system when it comes to how cases of those sexually abused child victims are handled. From the research findings, I noted that community members had developed negative perceptions towards court officials and police officers, whom they perceived as corrupt. There was a general view from community members that it was a waste of time to report a case of sexual abuse to the police and courts.

Regional magistrates (Musasa and Shumba) said by doing community awareness campaigns, they were also dispelling certain myths about how the criminal justice system works. Community awareness campaigns were also being used as educative platforms on the dangers of committing different crimes such as rape, murder and carjacking. Regional Public Prosecutors (Mutondo and Ruzhowa) were in concurrence that there was a need to embark on awareness campaigns so as to educate communities on how the system and criminal justice system in Zimbabwe operates. They also felt that the community was labelling them as corrupt without evidence; hence there was a need to engage communities on a larger scale and educate them on how the victim friendly system operates. Regional public prosecutors also concurred that community members do not understand the job of a prosecutor, thereby leaving them to allege false corruption on them.

**4.5.4 Establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe.**

Another theme that emerged from the research findings was the call for the establishment of one stop shop infrastructure development of the VFLSZ. One stop shop infrastructure is whereby all the main actors (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) in the system are housed. It was a general consensus
from (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) that the VFLSZ cannot be left to court officials alone.

One regional magistrate (Shumba) said:

_The system should embrace all friendly stakeholders in the child sector environment. I appreciate the role that was being played by other government departments such as the Zimbabwe Republic Police Victim Friendly Unit, Ministry of Health and Child Care, that is, Family Support Trust Clinic (FST) and Adult Rape Clinic (ARC)._ 

Child victims were medically examined at Family Support Trust Clinic by professional doctors who are experienced in working with children. Also at Family Support Trust Clinic, there are professional counsellors who offer child victims counselling services before they see the doctor for medical examination. Adult rape victims are also medically examined at the Adult Rape Clinic at Parirenyatwa Hospital. There are also professional counsellors who provide them with counselling services. All the services provided by these two medical institutions are free of charge. Save the Children funds these institutions. Childline also provide counselling services at the Harare Magistrates Court to the child victims of sexual abuse. This non-governmental organisation (Childline) has an allocated office at the courts where both child and adult rape victims are taken for pre-trial and post-trial counselling service free of charge.

The Victim Friendly System is multi-sectoral in nature. It includes all players in the child sector forum within Zimbabwe. The Harare Victim Friendly System Sub-committee meets on the last Friday of each month to deliberate on issues and concerns affecting the effective business conduct of the system. This sub-committee is chaired by any regional magistrate and they rotate to chair that committee. Regional magistrates concurred that each month; stakeholders to the committee raised issues and concerns about the system operations. Some
of the issues raised in these meetings included the failure by other departments in government to adhere to the ethical principles of privacy and confidentiality of the victims.

One regional magistrate (Shumba) mentioned that when victims and perpetrators are brought to court by police, they are all packed in one vehicle. What then it implies is that victims are re-traumatised when they come face to face with their alleged abusers. There were also concerns about how the investigations at times were handled by the police at their workplaces. Police only raised the issue of inadequate resources such as office space and motor vehicles. All these issues were resolved amicably leaving each stakeholder contented with what the other department was doing. This strengthened the victim friendly legal system operations to the benefit of the victims and perpetrators. Regional Public Prosecutor (Mutohwe) said:

*We have other stakeholders such as the Zimbabwe Republic Police Victim Friendly Unit, Ministry of Health and Child Care (Family Support Trust Clinic and Adult Rape Clinic) and Nongovernmental Organisations such as Childline whom we work within the victim friendly system. These stakeholders during the subcommittee meetings complained about the inadequacy of resources in their respective ministries and organisations. For example from the police side, instead of bringing each document in the crime docket in triplicate, they bring only one copy and they would cite lack of resources (Mutohwe).*

There was a general feeling amongst police officers that government, through the Judicial Service Commission, needed to do more to improve the effectiveness of the victim friendly system if ever it wanted to be rated amongst other systems in Southern Africa. They went on to say that in as much as stakeholders were doing something, government should take a leading role. There was a feeling that the criminal justice system was compromised if stakeholders from non-governmental organisations were left to run the system. Police officers
who also took part in the study bemoaned the lack of training workshops, which they felt kept
them well abreast with the developments in the system. One of the police officers said:

*Other stakeholders are playing a critical role in the victim friendly legal system in
Zimbabwe. However these stakeholders were now complaining saying that
government should adequately fund the victims and witnesses expenses if ever the
system was going to be effective in the protection of child victims of sexual abuse.
Some of the stakeholders in the victim friendly legal system were not happy with the
quality of data forms that we as the police were using to capture the data of the
victims. These forms were presenting challenges to these other stakeholders such as
Plan International, Save the Children and UNICEF when it comes to identification of
particular aspects such as the disability status of the victims or perpetrators. On the
current forms in use there was no space for such aspects (Mutsubvu).*

The co-operating partners were also complaining that the victim friendly system court
equipment was becoming expensive to maintain. There was a general feeling that these
machines would easily lose data when the power goes off, thereby deleting all the recorded
information. The one stop shop was noble but was very expensive to maintain. Thus, the call
from stakeholders in the victim friendly legal system to say that government should take over
the running and servicing of these court machines as per their mandate. Other stakeholders
would then follow behind whilst the government takes a leading role. The current situation
was not good for the system at all.

4.6 Themes concerning negative aspects on the victim friendly legal
system in Zimbabwe

4.6.1 Inadequate victim friendly court equipment.

Inadequacy of functional victim friendly court equipment was another theme that emerged.
This inadequacy of the requisite court equipment downgraded the effectiveness of the system.
Research participants (regional magistrates, regional public prosecutors, intermediaries and
victim friendly unit police officers) concurred that the victim friendly court equipment at the
Harare Magistrate Court was inadequate. They said that only two (2) courts out of the ten
(10) functional regional courts were well equipped though the equipment in one of the courts was not functioning at the time when I conducted the interview. They also said that at times they were forced to postpone some of the cases waiting for the servicing of such court equipment.

Furthermore, research participants expressed their dissatisfaction on the time taken to repair the malfunctioning equipment of the victim friendly court. The repair would take at least three (3) months. This delay resulted in the regional magistrates improvising the victim friendly court by adopting another courtroom where all the other members of the public are removed from that court. Only court officials and the parties involved in the case before the court were allowed to remain.

4.6.2 Challenges on the current policy and institutional arrangements of the victim friendly legal system in Zimbabwe.

The issue about policy and the current institutional arrangements of the victim friendly legal system emerged as a theme. Research participants in their categories acknowledged that there were challenges on policy and the current institutional arrangements of the VFLSZ. Some of these challenges raised were on the funding of the VFLSZ which they felt was tantamount to defeating the independence of the judiciary in the country. Government only availed human resource manpower, but the essential equipment such as CCTV, recorders and amplifiers was the duty of the donor to fund. This scenario compromised the effectiveness of the VFLSZ in the protection of sexually abused child victims from further traumatisation. Reviewed related literature indicated that the policy on the independence of the judiciary was compromised when it comes to the effectiveness of the system under study.
The fact that some witnesses failed to attend courts due to lack of financial resources to fund such witnesses as revealed in my research findings under chapter four. Apart from the Criminal Procedure and Evidence Act (Chapter 9:07), which states that witnesses when they are summoned to court, they should be reimbursed their transport and food expenses, the current policy was in contravention to the legislation in place that clearly spelt out what should be done.

The other challenge on policy and institutional arrangement of the Victim Friendly Legal System in Zimbabwe was on accommodation of victims. For instance, when a witness come from faraway places, they are entitled to accommodation at the expense of government. However, the situation prevailing on the ground was that witnesses were not getting any accommodation from government. What was evident from the research was that government was not funding witnesses who testify in the court yet policy was clear as indicated in the Criminal Procedure and Evidence Act. This role had been taken over by UNICEF. This was a clear sign of the ineffectiveness of the victim friendly legal system in Zimbabwe in the protection of victims of child sexual abuse.

The available legislation complements the efforts of the victim friendly legal system in Zimbabwe. The national coordinator of the VFLSZ felt that there were some gaps on the policy when it comes to complementing the system. He said the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003, 2012) were not policy documents that were supported by government legislation. He also said that there was need to have the protocol document to be regularised to become a policy document.
4.6.3 Challenges of safer houses.

Problems pertaining to the need for safer houses also emerged as theme. Regional Magistrates who took part in the research noted that there were problems of safer houses in place that would accommodate victims and other vulnerable witnesses as they attend court sessions at the Harare Magistrates Court. The available policy documents and institutional arrangements that complement the victim friendly legal system in Zimbabwe provided that safer houses for victims be availed. Regional magistrates were all in concurrence to the effect that there were no safer houses that had been provided for victims with the system. The unavailability of safer houses had resulted in the continuous traumatisation of the victims. Regional magistrates (Musasa and Nzou) mentioned that victims continued to be traumatised by their perpetrators. This was more rampant in cases where the perpetrator is a close family member. One regional magistrate highlighted an incident thus:

*The victim had actually been raped by an uncle who was residing with her at the same house. The victim had difficulties to express herself well because she would be threatened with death if ever she was going to incriminate the perpetrator at court (Musasa).*

Provision of safer houses to victims and other vulnerable witnesses in the criminal justice system was now long overdue. When victims and vulnerable witnesses are provided with safer houses when they attend court, this would protect them (victims) from threats of perpetrators as well as unnecessary interference from relatives at home. This, in another way, hindered the effectiveness of the victim friendly legal system in Zimbabwe on the protection of child victims of sexual abuse from further traumatisation.

Regional Public Prosecutors were not happy with the unavailability of safer houses to accommodate victims of sexual abuse and other vulnerable witnesses who come from far-
away places such as Goromonzi, Marondera, Domboshawa, etc to testify in court. One of regional public prosecutors went on to say:

*Some sexually abused child victims and other vulnerable witnesses ended up sleeping on the streets in the city centre without food waiting to attend their court cases. In such a situation where victims and other vulnerable witnesses end up sleeping on the streets, this has resulted in the community thinking that the victim friendly legal system was not effective and friendly to their cause when it comes to protecting sexually abused child victims from further traumatisation. The system is neglecting them (victims), hence the negative perception on the system being raised in the communities (Muzhanje).*

The intermediaries who participated in the research concurred with regional magistrates and regional public prosecutors on the issue of the need to set up safer houses for victims and other vulnerable witnesses. One of intermediaries went on to say:

*More could have been done in the victim friendly legal system so that it could be effective in the way that we would have loved it to be. The need for the availability of safer houses for sexually abused victims and those other vulnerable witnesses was now long overdue and it was time that the authorities should act (Nguruve)*

Victim Friendly Unit Police Officers also expressed their dissatisfaction on the unavailability of safer houses to accommodate victims and other vulnerable witnesses. One victim friendly police officer bemoaned the situation that prevails at police stations, where victims and vulnerable witnesses are made to sleep on Charge Office benches and offices. She went on to say:

*This situation further traumatises the sexually abused victim and their witnesses due to the incessant asking of questions by other police officers. This also distorts the objectives of the victim friendly legal system, ethical principles of confidentiality and privacy (Musawu).*

I noted that victim friendly unit police officers ended up getting emotionally affected by the unavailability of safer houses and I quoted one incident:

*“What do they expect us to put these victims when its late in the evening. Something should be done by the authorities to provide safer houses for victims and witnesses because it ends up stressing us. Our duty is to arrest and prepare dockets for court.”*
The need for safer houses cannot be overemphasised, as victims and their witnesses continued to be traumatised by the same criminal justice system that should have protected them.

4.6.4 Interference by family members in trying to influence the victim in court.

The issue on the interference by family members in influencing the victim was another theme that emerged from my research findings. Regional Magistrates and Regional Public Prosecutors concurred that there was interference by family members in influencing the victim in court which they had observed. Regional Magistrates raised similar challenges of interference by family members of both victims and perpetrators in trying to influence the victim in court. However, the severity of interference in trying to influence the victim in court varied from one case to another.

Some of the interference strategies that were employed by the family members of the victim side were that of ordering the victim to remain silent to any question posed to her during the court trial. This sign and symptom of interference by family members would only come to light whereby research participants observed sudden changes in the attitude and behaviour of the victims. It was through referring such sexually abused victims to professional counsellors during the trial stage whereby victims would confirm that they were under the influence of their family members to exonerate the alleged perpetrator. All research participants felt that some of the cases that were being brought before the courts involved an element of greedy, jealousy and fixation. One regional magistrate said:

As I was busy with my trial proceedings, I noticed that the sexually abused victim was now showing signs of remaining silent whenever a question was posed to her. I immediately adjourned the trial proceedings and called the regional public prosecutor and the defence lawyer to my chambers where I told them that I had
noticed some behaviour changes on the victim. I further told them that I was going to refer the victim to a professional counsellor. On the day that I resumed the proceedings, I was shocked to hear from the professional counsellor telling the court that victim had told her that she was being influenced to change her statements by her family members. I called on the alleged family member to desist from interfering with the victim as they would be charged for interference with state witness (Nhunguru, a regional magistrate).

Regional magistrates also expressed their dissatisfaction with some family members who interfered with the victims. The interference would be made to the victim whilst at home to the effect that if she would testify in court against their instructions, the victim would be punished, for example, not being given food. One regional magistrate said:

After I had observed certain behaviours of the child victim in a case that I was presiding over, I adjourned the case and ordered the intermediary to bring the child victim into my chambers. When I politely asked the victim about her family background, she told me a sad story that her real parents had passed on. She even told me with her tears flowing down her cheeks that her guardians had threatened to starve her at home if ever she was going to nail the perpetrator who had paid them some money in return to his freedom (Nzou, a regional magistrate).

On the alleged perpetrators,’ regional magistrates raised the red flag on perpetrators who do not present themselves at the court on the trial date to defend their position. Family members of the perpetrator would interfere with the victim’s family members saying that they are not feeling well so as to get their sympathy. When the perpetrator’s family members receive such sympathy from the victim’s family members, they would in turn influence the victim to withdraw the charges against the perpetrator in return for some money or marriage to that perpetrator. Such influence would buy time for the victim to withdraw the case in court and set the perpetrator free. This would also result in the delay of the trial proceedings to be completed on time. Such scenarios would at times result in some witnesses failing to attend court when they take note of delays being done. At other times, victims’ relatives would also then fail to understand the reasons behind such delays even though the court would have explained to them. The court would always remind those in attendance that Section 50 of the
New Zimbabwe Constitution (2013) accorded rights to the alleged perpetrators of crime just as the same victims also have rights in the same constitution that the court has to respect.

I further observed that the failure by the perpetrator to appear in court on a date they are required to stand trial through either faking or not faking sickness was normal behaviour as normal by any human being facing an allegation. The reviewed literature in chapter two showed that when fear grips a person, they are bound to either commit suicide or run away to an unknown place as a way of hiding from facing reality. According to the behaviourist and humanistic perspectives, such behaviours are normal to any individual facing allegations of such a nature.

From both the family members of the perpetrators’ and the victims,’ there is evidence of interference in the court case proceedings whereby the victim’s family would be enticed to receive money in return for the freedom of the perpetrator. For instance, some relatives engage with the perpetrators relatives to pay money in return for them to influence the withdrawal of a case before court. Regional magistrates were in concurrence that interference on various cases by the victim’s relatives and those of the perpetrators had created challenges to their work. One of the Regional Magistrates underscored this:

I was surprised to hear from the victim saying that she was no longer interested in having the perpetrator convicted as her parents had reached an agreement with the perpetrators relatives for him to marry her (Nhunguru, a regional magistrate).

The Regional Magistrate said he rejected the submission or request from the victim by telling her that the criminal justice system does not proceed in that way. The Regional Magistrate adjourned the case and referred the victim for professional counselling. On the date that he had proposed to continue with the case, he discovered that the victim and her relatives were not present at court. The alleged perpetrator turned up since he was in remand custody.
Efforts were made to locate the victim, but there was no trace of the victim’s whereabouts. He finally removed the perpetrator from custody whilst tasking the police to hunt for the victim’s parents.

Regional Public Prosecutors confirmed that there were a lot of problems of interference and influence that they faced from victim’s relatives, where at times they would influence the outcome of a case. The interference and influence by family members on the victim was now an issue that was disturbing the justice delivery system in the country. The problems of interference and influence of the victims in the court ranged from making false reports against perpetrators, seating of kangaroo courts in the community where money was paid to the victim’s relatives or threats of death to victim by the perpetrator.

Regional public prosecutors also said that most of the cases that were being brought before courts were no longer genuine. Regional prosecutors also stated that they were facing challenges related to the pressure of political interference particularly with the cumbersome burden of prosecuting trumped-up sexual abuse allegations against, human rights defenders and opposition political activists. They concurred that some of the cases were being fabricated to settle certain scores. One regional public prosecutor stated:

*We are now failing to make our own decisions on cases that are brought to them from police stations. Rather, we end up sending cases into courts that do not deserve to go there because of interference from our authorities at times. Our role to make independent opinions was taken away from us. Regional magistrates have ended up blaming us on wasting court time by allowing undeserving cases to come before them (Mutondo, a regional public prosecutor).*

Regional Public Prosecutors mentioned that there were now some kangaroo courts that were being set up in the different communities to resolve sexual abuse cases. In such kangaroo courts, there was now a lot of interference and influence on the victim so as to exonerate the
perpetrator during the court trial proceedings. Perpetrators’ relatives would engage the family members of the victim where they pay each other so as to cover up the case or influence the victim to exonerate the perpetrator in return for money or marriage. The regional public prosecutors expressed their dismay at the community elders who were taking part in such mediation processes of interference and influence on the judicial processes of the country. They went on to call for stiffer penalties.

One regional public prosecutor (Ruzhowa) said that she had encountered a case where a victim confirmed to her during the assessment stage of her case that she had actually been threatened with death by the perpetrator’s mother who was a traditional healer. The prosecutor went on to say that the victim showed signs of fear of the perpetrator’s mother and was going to make a false statement to the court. In her own words, the regional public prosecutor said:

I asked the victim to tell me exactly what had happened and she said that she had been sexually abused by the perpetrator in the presence of his mother. The perpetrator’s mother is a traditional healer and she threatened to kill her if ever she was going to report the matter to the police. She said since she was in a confused state, she reported the case to police and since then, she had been having sleepless nights from the perpetrator’s mother to such an extent that she took away her panties (Ruzhowa, a regional public prosecutor).

Intermediaries (Muonde and Bere) interviewed concurred with regional magistrates and regional public prosecutors on the problems of interference by family members of either the victim or the perpetrator in influencing the victim in the court to deny the allegations against the perpetrator. Intermediaries also stated that dealing with child victims was a tall order in court due to the interference of relatives especially from the victim’s side during the court proceedings. Other incidences highlighted were of victims refusing to cooperate or breaking down into tears thus disturbing court proceedings. One intermediary said:
Whilst I was seated with the victim in the private and separate room from the main courtroom, I was shocked to see that the victim no longer wanted to talk to me after I had told her that people in the main courtroom were now seeing us. I tried to delay the start of the proceedings hoping that the victim would change her behaviour and start talking but she remained silent. She never responded to any question that the regional magistrate, regional public prosecutor and the defence lawyer asked her. It was really shocking to me (Mutondo, an intermediary).

Intermediaries also said that some victims and vulnerable witnesses in the victim friendly legal system were not being given the opportunity to come to the court on the trial date. One intermediary said:

I had an experience of having one sexually abused victim who told me that her relatives had said that they did not have transport fare to take her to court to hear her case. In one incident that I also experienced in 2013 was that of one sexually abused victim who was told that her case was over at the court in her absence. I noted that this was a form of interference on the part of the victims’ relatives, who because of having gained something would do anything in their powers to influence the victim’s case outcome at the court. Worse still, this interference was being made worse due to the failure by the government system to reimburse victims and witnesses their travelling expenses and food expenditures when they attend court. Section 319 of the Criminal Procedure and Evidence Act (Chapter 9:07) provides that victims and witnesses should be reimbursed their transport and food expenses when they attend to a court session (Bere, an intermediary).

Victim Friendly Unit Police Officers who were interviewed in the research study confirmed that they were aware of interference on sexual abuse cases that related to child victims. One of the female police officers said:

As a mother, I was disheartened by one of my fellow workmates who interfered in one case that I had investigated very well. That fellow workmate had actually received some money and other material gifts from the perpetrator who was a businessman so that he could influence the victim to lie in the court. I was shocked to see the victim rejecting the official statement which I had recorded from her, saying that she was in love with the perpetrator. It was really bad for me. The interference and influence given on the victim to lie in the court was just a tip of an iceberg with regards to interference. How I came to know about this bribery of my colleague was through the victim who said that she had been told by the perpetrator that he had finished the job with another police officer who shared the same office with me. That on its own incensed the victim to negatively perceive me as someone who was working in cahoots with my office workmate to have her case thrown out (Musawu, a victim friendly unit police officer).
Another victim friendly unit police officer (Mbizi) stated that he was at times left dumbfounded at the rate of interference on sexual abuse cases that involved children. The interference would result in the victim refusing to open up in the court what she would have said to the police station. In so doing, the whole case would be thrown out for want of evidence. On further probing the officer, he agreed that the issue of bribery was not new to the police force. He went on to further say:

*This need for money has killed the moral responsibility of family members to protect their children and the community at large. Furthermore, some of my fellow police officers have been so addicted by this insatiable desire of needing money at the expense of victims who would have approached our offices seeking justice from those who would have wronged on them (Mbizi, a victim friendly unit police officer).*

The other form of interference that was noted by the victim friendly unit police officers interviewed in this study was that of death threats directed at victims of sexual abuse. They (Musawu and Mutsubvu) went on to state that most of the cases that they had handled, issues of death threats had been raised by some victims of abuse upon which they would immediately summon the perpetrator to their offices and warn him about the consequences of their threats on the victim or on themselves. In one incident, the victim friendly unit police officer had to detain one perpetrator on the death threats allegations. The perpetrator was first convicted on the death threats case before the sexual abuse case was prosecuted.

Another victim friendly unit police officer (Mupuranga) said that the other challenge came from the family members of the victims who at times would interfere with police investigations. As a result of such interference, critical evidence would be lost resulting in the case being thrown away at the court for lack of evidence. Some of the family members would engage the perpetrator and demand monetary compensation from them. After getting such payment, victims were either sent away to the rural areas or told not to say anything to the police.
Victim friendly unit police officers (Mupuranga, Mutsubvu and Musawu) raised some challenges to their work from victims, perpetrators and relatives of victims or perpetrators. They went on to say that victims were their biggest challenge. Some of the victims refused to cooperate with them after submitting their reports. The victims even refused to talk or come to the police station for statement recordings or get the medical affidavit report from the hospital. Police officers felt that this was hinged on a perception that police officers were corrupt.

When I looked at the impact of the interference on the sexual abuse cases as said by the victim friendly unit police officers (VFUPO), I saw the interference as a psychological strategy of the perpetrator to divert the court’s attention from the case at hand. When you psychologically play around with a child victim’s mind, the impact of the perpetrator’s words would be so adverse. Thus, victims end up withdrawing their cases. In other words the whole issue about interference to sexual abuse cases is about mind games to lure the victim to withdraw or run away before the case gets to be concluded. My perception is supported in the reviewed literature in chapter two, (section 2.3.1) where the humanistic theory asserted that whenever a human being has been cornered, he/she will try to use psychology of the mind games such as inducement of death threats and fear to get out of the case at hand.

The national coordinator of the VFLSZ said:

“Interference on cases of child victims of sexual abuse by family members was now a thorny issue in the judicial system of the country. The period I had been in the office, I have heard several cases of interference by relatives of the victim or alleged perpetrator. I concur with regional public prosecutors who mentioned that some family members of both the victim and perpetrators were getting into kangaroo courts in their communities where they agree for some settlements in return for case withdrawal at courts.”(Mbizi).
This, according to the national coordinator was now a challenge to the system as a whole. From the national co-ordinator’s sentiments, I noted that the interference on child victims of sexual abuse cases was across the whole criminal justice system. Interference could be done by police officers, intermediaries, magistrates, regional public prosecutors or family members of the victims and perpetrators.

4.7 Chapter Summary

Data presentation, analysis, interpretation of the research findings and discussion of the emerging themes from the study that were generated from the interviews conducted with regional magistrates, regional public prosecutors, intermediaries, victim friendly unit police officers and the national coordinator victim friendly system in Zimbabwe were presented in this chapter. Findings from observations and analysis of relevant documents were also presented in this chapter. These findings revealed a number of issues concerning the effectiveness of the Victim Friendly Legal System in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation. For example, corruption allegations being levelled on court officials and police officers, lack of cooperation from victims of sexual abuse (children and adults), inadequate victim friendly court equipment, community perceptions about the victim friendly legal system and problems of interference on court cases by family members of both the victim and perpetrators were highlighted in this chapter. The research findings were also similar to those obtained through documentary analysis. The research participants from the different categories of their professions perceived the community as lacking confidence in the current Criminal Justice System due to a number of reasons.
The research findings were also in agreement with information discussed in the reviewed literature in Chapter Two. Aspects such as trauma, threats of death, empowerment and psychological impact of sexual abuse were considered to be important in the management of trauma experiences that victims get to be exposed to as expressed by the interviewees. Interestingly the interviewees who took part in the study concurred there was need for recognition of professional counselling services to the victims of child sexual abuse as an intervention strategy to manage trauma. The research findings also revealed mixed perceptions by the interviewees as to whether the Victim Friendly Legal System in Zimbabwe was effective or not in the protection of child victims of sexual abuse from further traumatisation.

Themes that emerged from the study were derived from the in-depth face to face interviews, observations and analysis of relevant documents. The information that was generated from the in-depth face to face interviews with regional magistrates, regional public prosecutors, intermediaries, victim friendly unit police officers and the national co-ordinator victim friendly system in Zimbabwe revealed a number of issues concerning the effectiveness of the Victim Friendly System in Zimbabwe in the protection of child victims of sexual abuse. It is from these different categories of research participants that the themes presented in this chapter were derived. The themes were similar to those I observed from the review of related literature to the study on the aspects such as trauma, role of professional counselling in the victim friendly legal system, community perceptions on the system and issues of the stakeholders in the victim friendly legal system in Zimbabwe. In Chapter Five, the summary, conclusions and recommendations to the study are presented.
CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

In this chapter a summary of the research findings, conclusions and recommendations of the study are presented. The background to the study, research questions and objectives which anchored the study, followed by the conceptual and theoretical frameworks pertaining to the study, the significance of the reviewed literature to the current study, the research findings from the interviews, observations and the documentary analysis conducted and finally the discussion of themes that emerged from the research findings from the study. This section is followed by some conclusions drawn from the research questions that were posed in Chapter One. Finally, recommendations pertaining to the effectiveness of the victim friendly legal system in Zimbabwe, followed by specific recommendations for the different stakeholders in the Victim Friendly System such as the Zimbabwe Republic Police, Judicial Service Commission, and the National Prosecuting Authority are presented.

5.2 Summary of findings

This summary of research findings served as a synthesis, whereby presentation of the key findings of this research thesis as a coherent and logical whole would be done before embarking on responding to the research questions and later making recommendations. In summarising the research findings from my study, I followed the order as indicated in the introduction of this chapter, that is, section 5.1 above.
5.2.1 Background to the study

Bearing in mind the limited documented history of VFLSZ in the protection of child victims of sexual abuse from further traumatisation, I was compelled to undertake a study that provided detailed information concerning the effectiveness of the VFLSZ. This resulted in the creation of a clearer picture on the assessment of the effectiveness of the victim friendly legal system in Zimbabwe and how it could be improved in the protection of child victims of sexual abuse and vulnerable witnesses from further traumatisation.

The assessment of the effectiveness of the victim friendly legal system was limited to the Harare Magistrate Court, Zimbabwe Republic Police Victim Friendly Unit Section, Regional Magistrates, Regional Public Prosecutors, Intermediaries and the Office of the National Coordinator Victim Friendly System in Zimbabwe. These institutions were the ones that were dealing with cases that involved child victims of sexual abuse for some time as indicated under sections 1.1 and 1.7. There were five (5) research questions as per section 1.6 in chapter one which emerged from the motivation for this research study and which directed this study and these were as following:

- How effective is the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation?
- What is the role of professional counselling services in the victim friendly legal system in Zimbabwe?
- What gaps, if any, exist in the current policy and institutional arrangements that do not compliment the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?
• What issues have been raised by key stakeholders on the effectiveness of the victim friendly legal system in Zimbabwe towards the protection of child victims of sexual abuse?
• How has the response to issues raised by stakeholders impacted on the operations of the victim friendly legal system in Zimbabwe?

5.2.2 Conceptual and Theoretical Frameworks

I saw it necessary for a study of this magnitude to be placed within the relevant conceptual and theoretical frameworks. Chapter Two, therefore, focused on the concepts and theories that underpinned the study. The conceptual framework to the present study was underpinned by the United Nations Convention on the Rights of the Child. This conceptual framework was based on the usage the convention as a yardstick to the protection of child victims of sexual abuse as articulated under Article 19. Several theories such as the behavioural theory, cognitive-behavioural theory, crisis intervention, systems theory, assessment theory and evidence-based practice and evaluation were also assessed in relation to the study. I settled for two theories that informed this study and these were the humanistic theory and trauma theory.

The reviewed related literature focused on the assessment of the effectiveness of the VFLSZ in the protection of child victims of sexual abuse from further traumatisation. Themes revealed were concerned with positive and negative aspects about the effectiveness of the system in Zimbabwe. Themes concerning the positive/effectiveness of the victim friendly legal system in Zimbabwe were: capacity building for the victim friendly legal system staff members; recognition on the need for professional counselling services to child victims of sexual abuse; embarking on community awareness campaigns on the role of victim friendly
(court) legal system procedures; and the establishment of one stop shop infrastructure development in the victim friendly legal system in Zimbabwe.

Themes concerning the negative aspects of the effectiveness of the victim friendly legal system in Zimbabwe were: inadequate victim friendly court equipment; challenges on the current policy and institutional arrangements of the victim friendly legal system in Zimbabwe; challenges of safer houses; and interference by family members in trying to influence the child victims in court.

5.2.3 Review of Related Literature

The review of related literature which focused on the victim friendly legal system revealed the structure of the victim friendly systems in other countries such as Namibia and South Africa, the role of professional counselling in the victim friendly legal system, the role of other stakeholders and victims experiences to issues and concerns on the victim friendly legal system. I also reviewed literature on the international and regional instruments in different places that included the United Nations Convention on the Rights of Children (1989), the African Charter on the Rights and Welfare of the Child (1990), The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005), The United Nations Guidelines on the Role of Prosecutors (1990), The International Association of Prosecutors (1995), Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and The Declaration on Gender and Development by the Southern Africa Development Committee (1997).
From the reviewed literature in relation to the VFLSZ, there was concurrence in terms of the objectives and aims of the system regionally and internationally. Victim Friendly Legal System was an intervention strategy that had been globally seen as an effective agent in the protection of sexually abused child victims from further traumatisation. The effectiveness of the system however, differed from one country to another. The implementation of the VFLSZ as a complementary strategy to the CJSZ had been hindered by the non-existence of relevant legislation.

5.2.4 Research Methodology Aspects

This study required an in-depth qualitative approach that covered many aspects of the victim friendly legal system (see section 3.2). I used the in-depth face to face interviews (open-ended), made observations and analysed relevant documents to generate data that was related to the victim friendly legal system in Zimbabwe in the institutions under investigation.

In order to answer the research questions, I saw it relevant to make use of the qualitative methodology (see section 3.2.2). Triangulation of the methods of in-depth face to face interviews, observations and document analysis (see sections 3.8.1; 3.8.2 and 3.8.3) was done by the researcher. The researcher conducted in-depth face to face interviews with regional magistrates, regional public prosecutors, intermediaries, victim friendly unit police officers and the national coordinator of the victim friendly system in Zimbabwe.

In-depth face to face interviews allowed me to probe further from the interviewees’ issues that I felt needed some elaboration and clarification. The case study method was employed in the study. The research only focused on the Harare Magistrates Court where regional magistrates, regional public prosecutors and intermediaries were drawn. Furthermore, the
Interviews were conducted with regional magistrates; regional public prosecutors, intermediaries and the national coordinator of the VFLSZ were all done in a formal way. Interviews with the victim friendly unit police officers were done using the informal method. This was due to the fact that permission to officially interview them (victim friendly unit police officers) had been denied by the Office of the Commissioner General of Police.

5.2.5 Data Analysis and Findings

The generated data that was analysed included the researcher’s field notes on observations, documents such as the two Protocols on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2003; 2012) editions, Section 319 of the Criminal Procedure and Evidence Act (Chapter 9:07), A Guide to Criminal Law in Zimbabwe, the Lancaster House Constitution (1979) and the New Zimbabwe Constitution (2013). The researcher would quickly dash outside the courtroom during the adjournment of court and briefly write a few notes from his memory of what would have happened. This was because during the court session, there are no notes that are allowed to be written. Themes that emerged from the research findings were discussed in chapter five (see sections 4.2.1; 4.2.2; 4.2.3; 4.2.4; and 4.3.1; 4.3.2; 4.3.3; 4.3.4). The emerging themes with regards to the positive aspects on the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse were as follows:

a. Capacity building for the victim friendly legal system staff members

There was a general consensus by the different categories of the research participants on the need to capacity build the staff members working in the victim friendly system. This would improve the effectiveness of the system in as far as protection of child victims of sexual abuse from further traumatisation was concerned. Furthermore, through the capacity building
of staff members, the needs of children could be easily understood as soon as possible before further traumatisation has happened (see section 4.5.1).

b. Recognition on the need for professional counselling services to the child victims of sexual abuse

The need for professional counselling services to the child victims of sexual abuse could not be overemphasised. All the research participants were in agreement of the counselling services at the courts. The fact that traumatic experiences cannot be easily forgotten by having the perpetrator sent away to prison would not mean that the child victim adapts easily back to her normal way of leaving. Both pre-trial and post-trial counselling was encouraged by the research participants to the child victims of sexual of abuse so as to avoid re-traumatisation (see section 4.5.9).

c. Community awareness campaigns on the role of victim friendly (court) legal system procedures.

The study revealed that there was need to embark on vigorous community awareness campaigns by the victim friendly system in Zimbabwe through the different subcommittees. This would assist in the removal of negative perception about the system from the members of the communities. Research participants also agreed that the current and existing situation was not favourable to the effectiveness of the system in the eyes of the communities (see section 4.5.4).

d. Establishment of a one stop shop infrastructure development in the victim friendly legal system in Zimbabwe

Research participants felt that it was significant that the government establishes a one stop shop infrastructure for the victim friendly system in Zimbabwe. They went on to say that with
a one stop victim friendly system, there was a chance that re-traumatisation of child victims of sexual abuse would be reduced significantly. They also said that the current and existing institutional arrangement of the victim friendly system was traumatising child victims of sexual abuse (see section 4.5.6).

Weaknesses of the victim friendly legal system in Zimbabwe were:

a. **Inadequate victim friendly court equipment.**

The research study further revealed that there were inadequate victim friendly court equipment at the Harare Magistrates Court to effectively serve child victims of sexual abuse in privacy and maintaining confidentiality. The research participants in the victim friendly system would end up improvising the victim friendly court so that they could proceed with court trials that would have been set down on the dates. The researcher also noted that out of the ten (10) functional regional courts at the Harare Magistrate Court, only two (2) courts were adequately furnished with all the necessary victim friendly court equipment.

b. **Challenges on the current policy and institutional arrangements of the victim friendly system in Zimbabwe.**

The study revealed that there were problems with policy, the current and existing institutional arrangements of the victim friendly system in Zimbabwe. Some of the challenges that were highlighted by the research participants included the unavailability of a clear legislation on the victim friendly system and the continuous donor funding of the victim friendly system activities were to some extent compromising the effectiveness of the system.
c. Challenges of safer houses

The study also revealed that there were problems of safe houses which the victim friendly system was encountering. Research participants alluded to the fact that there were some victims of child sexual abuse who were resorting to sleeping on the streets of Harare due to the non-availability of safer houses to accommodate them as they attend court. This scenario had resulted in some victims failing to attend court on time though the provisions of section 319 of the Criminal Procedure and Evidence Act provide that it is the duty of the State to provide safer houses to victims and other vulnerable witnesses as they attend to court (see section 4.5.3).

d. Interference by family members in trying to influence the victim in court.

The research study revealed that the victim friendly legal system was facing problems of interference by family members in influencing the victim in court. Research participants’ were all in concurrence that child victims of sexual abuse were being influenced to change their stories during court trials as a way of exonerating the alleged perpetrator from going to prison. Family members were noted to be interfering with the victims were at times they would threaten them with death or deny them food at home if they do not abide by what they would have instructed them to say in the court (see section 4.5.2)

To overcome the weaknesses concerning the effectiveness of the victim friendly legal system in Zimbabwe, specific recommendations for each of the major departments in institutions providing the victim friendly legal services in Zimbabwe are provided in section 5.4.3 below.

5.3 Conclusions

There were mixed reactions amongst research participants on the effectiveness of the victim friendly system in Zimbabwe. Interestingly, some of the regional magistrates who were
interviewed in the study were contented that the victim friendly legal system in Zimbabwe was better at Harare Magistrates Court than in other parts of the country. They also concurred that there was room for improvement to make this system effective in terms of servicing both the victims and the perpetrators to their satisfaction. There were also other regional magistrates who felt that the system was effective in the protection of child victims of sexual abuse from further traumatisation. They went on to say that since the inception of the victim friendly system in Zimbabwe in the year 2000 up to date, there was a significant improvement in the way cases involving sexually abused child victims had been handled from the police up to the courts. Privacy and confidentiality of victims was now an ethical requirement as compared to the year’s 2000 going backwards.

The increase in the number of victim friendly courts from thirteen (13) in 2006 to the current twenty six (26) courts countrywide; clearance rate of case trials within three days and the conviction rate of perpetrators were some of the indicators of the effectiveness of the system. Furthermore, in the analysis of the regional magistrates’ views on the effectiveness of the system, I noted that in terms of certain behaviours, attitudes and perceptions on the system, there was a remarkable change from which the community and other stakeholders had accepted. The general acceptance of the system into the criminal justice system in Zimbabwe had been tremendous though there is still room for improvement.

Research participants (regional magistrates, regional public prosecutors, intermediaries and victim friendly unit police officers) concurred that stakeholders in the victim friendly legal system in Zimbabwe were bringing value, trust and credibility to serving both victims and perpetrators of crime. They also said that there was room for improvement in the current set up of the system. Rather, they were of the view that apart from the other shortcomings in
terms of resources, safer houses, and transport services, high staff turnover and inadequate financial funding of the system from the central government, the victim friendly legal system was effective in the protection of child victims of sexual abuse from further traumatisation.

Stakeholders were also very complimentary to the victim friendly legal system objectives in Zimbabwe. They also agreed that there was still room for improvement in those areas where the system was not performing well to the expectations of laid down objectives of the system as enunciated under section 319 of the Criminal Procedure and Evidence Act that gave rise to the creation of the system in Zimbabwe.

Intermediaries also emphasised that stakeholders such as victim friendly unit police officers, regional public prosecutors and regional magistrates were key to the effectiveness of the victim friendly legal system in Zimbabwe. They also said that non-governmental organisations such as Childline were assisting the system by providing professional counselling services to victims, thereby lessening the trauma experienced by victims at the hands of the perpetrators. Research participants agreed that stakeholders in the system were doing their best in complementing the victim friendly legal system in the protection of child victims of sexual abuse.

The general view of intermediaries was that theoretically the victim friendly legal system was good, but practically it was not as effective as they wanted it to be. There were shortfalls in the system such as the availability of transport to victims and witnesses, non availability of safer houses, and high staff turnover. This had resulted in huge backlogs of cases being created in the system that are taking long to close.
Victim friendly unit police officers also agreed that all the stakeholders were necessary in the victim friendly legal system. These stakeholders would act like quality control checkers in the criminal justice system, whereupon they could be called upon to assist where the need arises, such as Childline which was providing professional counselling services at the Harare Magistrate Court. Police officers were all in agreement that stakeholders in the victim friendly legal system were in a huge way complementing the efforts of the system in the protection of child victims of sexual abuse cases in Zimbabwe.

The general view of the victim friendly unit police officers was that the victim friendly legal system in Zimbabwe was effective in the protection of child victims of sexual abuse. They said that the system had changed the face of the victims with regards to how they are supposed to be treated. They all agreed that victims would be re-traumatised from the day they would have reported their case up to the court. There was no privacy and confidentiality that would be provided to the victims. However the coming on board of the victim friendly system concept brought a big sigh of relief to their work and victims of sexual abuse.

The national co-ordinator was in agreement that stakeholders in the victim friendly system were complementing the efforts of the system to effectively protect child victims of sexual abuse and vulnerable witnesses in the criminal justice system. The national co-ordinator said that the system was really effective in the protection of the child victims of sexual abuse. He also said that there was still room for improvement in the current institutional and policy arrangements of the victim friendly system in Zimbabwe. The victim friendly system was actually working albeit some of the challenges that are in place.
The national co-ordinator also alluded to the fact that there were only fifty two (52) courts which were being manned by only twenty six (26) regional magistrates. There was a shortage of manpower in the available courts. This scenario would be addressed in the near future so as to avoid backlog of cases that would take long to complete due to manpower and inadequately furnished courts for the victim friendly system.

It is therefore my conclusion to this study on the assessment of perceptions of the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from being further traumatised that I categorically declare that the system has been effective in the protection of child victims of sexual abuse from being further traumatised.

5.4 Recommendations

The recommendations contained in this section are aimed at contributing to the assessment of perceptions of effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation that was conducted at the Harare Magistrate Courts. These recommendations take into account the realities of the Zimbabwean political, social and economic environment in which victim friendly legal system is working. In this section, I make my recommendations following the four (4) different categories that include: general recommendations for the victim friendly legal system in Zimbabwe, a model for the victim friendly legal system in Zimbabwe, recommendations for policy makers, specific recommendations to different actors in the victim friendly system and recommendations for further research.
5.4.1 General recommendations for victim friendly legal system in Zimbabwe

This section deals with general recommendations which could improve the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further traumatisation. Government should come up with a more comprehensive approach towards providing children with the protection they need. This would necessitate for more constitutional changes, where the government commits itself to uphold the protection of children’s rights, and to embracing of all international instruments that promote children’s rights.

A call to the government to comply with the New Zimbabwe Constitution (2013) under section 327 subsection (2) (a) (b) and re-commit itself to all the regional and international instruments the country has acceded to when the Lancaster House Constitution (1979) was in force using section 111B. It is true that the current New Constitution has provided hope for the effective measures that the government has shown in protecting children in line with the regional and international instruments available. Government should also come up with pieces of legislation that really support the victim friendly legal system adequately apart from only relying on the criminal justice system structure in place.

5.4.2 A Model for the victim friendly legal system in Zimbabwe

In view of the reviewed literature, the analysis of the in-depth face to face interviews, observation, and analysis of relevant documents and conclusion of this study, I propose a model that would be suitable for the victim friendly legal system in Zimbabwe with regards to the protection of child victims of sexual abuse from further traumatisation.
Figure 4: A child victim centered model for the victim friendly legal system

**Policy Makers (Government)**
- Clear policy that directly complements the system
- One stop shop infrastructure development
- Provision of adequate victim friendly courts equipment
- Capacity building of human capital in the criminal justice system

**Other Stakeholders**
- Community awareness campaigns
- Quality assurance of completed cases

**Victim Friendly Court (VFC)**
- Fairness of court trials
- Provision of privacy and confidentiality to victims
- Audit trail of cases tried and completed on time
- Pre and Post Test Counselling Services
- Capacity building of human capital in the criminal justice system

**Medical Examination**
- Evidence based treatment

**Zimbabwe Republic Police (VFU)**
- Thorough investigations of sexual abuse cases
- Audit trail of cases investigated and completed on time
- Provision of privacy and confidentiality to victims
- Capacity building of human capital in the criminal justice system

**Home**
- Effective victim support system
- Provision of privacy and confidentiality

Source: Researcher’s Own model
5.4.3 Recommendations for policy makers

In view of the reviewed literature in this study, the analysis of the in-depth face to face interviews, observations, and documentary analysis that was done and the conclusion of the study, I propose the following recommendations:

(i) Enactment of the victim friendly legal system policy.

The study has consistently shown that Zimbabwe requires a victim friendly system policy to guide the victim friendly legal system activities at all levels of criminal justice system. Although the 2003 and 2012 Protocols on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe were good documents that only bound together the different departments in the different line ministries, these documents were not policy documents. The establishment of a clear victim friendly system policy would pave way for the central government to fund the system rather than wait for donors as the current situation on the ground showed.

(ii) Establishment of a one stop shop infrastructure in the victim friendly system.

The government needs to invest more in the construction of appropriate victim friendly system court structures such as the establishment of a one stop shop infrastructure. With the one stop shop infrastructure, there would be separate waiting rooms that prevent the child victim or vulnerable witnesses coming into contact with the alleged perpetrator in the court corridors. The intermediary interacts with the child in the separate room where he or she can familiarise with the child victim before getting into the main courtroom. This familiarisation with the child victim in the separate room with an intermediary assists in the establishment of a good rapport with the child. The child would be adequately prepared for court so that she or he can easily tell the presiding officer (magistrate) his or her story without fear or favour.
With a one stop shop infrastructure in place, re-traumatisation of victims as they seek for justice delivery would be reduced drastically. It is reduced in the sense that all the relevant actors or role players are easily located under one roof. This reduces the time taken to complete the court trial proceedings before child victims forget what would have been done to them by the alleged perpetrator. Furthermore, professional counselling services should be commenced as soon as possible so that the victim can easily feel secure and regain his or her self esteem quickly.

(iii) **Provision of transport, meals and accommodation to victims and vulnerable witnesses.**

The way most child victims and vulnerable witnesses from urban police stations, rural or remote areas are brought to court is traumatic. Victims and vulnerable witnesses are brought to court sometimes in the same police vehicle as the alleged perpetrator. Government should be committed to provide the necessary transportation for child victims and vulnerable witnesses from the police. It is always an unfortunate scenario for child victims to be exposed to their alleged perpetrators when they are actually supposed to be protected from them.

Child victims and vulnerable witnesses could easily experience re-traumatisation on the hands of authorities that are at law expected to protect them from further abuse and traumatisation. Proper accommodation and meals must be provided for the child and his or her care-givers. The failure by the government to provide safer houses for victims and vulnerable witnesses has resulted in some victims sleeping on the streets or corridors of Harare. Some victims and vulnerable witnesses fail to attend court due to lack of transport,
meals and accommodation when they visit the court. There is great need for government to comply with section 319 of the Criminal Procedure and Evidence Act Chapter 9:07.

(iv) Improved working conditions for the staff in the criminal justice system (victim friendly legal system).

Salaries and working conditions need to be reviewed across the board for presiding officers (magistrates), prosecutors, police officers (victim friendly unit) and intermediaries. Poor salaries lead to corruption and bribery and this compromise the effectiveness of any system. The victim friendly legal system is not an exception. Children need to be protected from corrupt presiding officers (magistrates), police officers, intermediaries and prosecutors. As I have highlighted in Chapter 4, the community perceived the victim friendly system as fraught with corruption. Such negative perceptions against a system that should protect communities does not bring credibility to the rest of the judicial system in the country.

5.4.4 Specific recommendations to actors/role players in the victim friendly legal system.

In view of the reviewed related literature to the study, the analysis of the interviews and observation, and conclusion of this study, the researcher wishes to make the following specific recommendations:

- There should be mandatory training and sensitisation of the police, the prosecutor and the presiding officer (magistrate) on child development, child language skills, the psychological effects of sexual abuse, child trauma and the role of the victim friendly legal system in Zimbabwe.

- Acceptance of the role of the different actors/role players to the victim friendly system by the community and what it represents means that different actors/role
players would not consider themselves as outsiders seeking to usurp part of their authority.

- Provide support systems that work effectively. The engagement of support from stakeholders in the child sector forum and other relevant legal bodies must be considered. Such support would strengthen the effectiveness of the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse from further abuse and traumatisation.

- Provision of awareness campaigns. This enables the community members to understand more the context in which the victim friendly system operates in Zimbabwe. The victim friendly system should not be perceived as a system that is fraught with corruption. Victim friendly system should be perceived as a system that is there to effectively protect child victims from any form of abuse and further traumatisation of such child victims.

5.4.5 Recommendations for further research.

In spite of this study’s depth, the findings from the study have resulted in further questions’ arising that concerns the Victim Friendly Legal System in Zimbabwe. There are therefore prospects for further research concerning the assessment of the effectiveness of the victim friendly legal system in Zimbabwe. I make the following suggestions for further research as indicated below:

- A comparative analysis of the victim friendly justice delivery systems in the SADC countries on its effectiveness on the reduction of trauma on child victims of sexual abuse.
• The fact that this study was only conducted at Harare Magistrates Court, the assessment of the effectiveness of the victim friendly system could be generalised across other twenty-six (26) victim friendly courts in place and this aspect provides room for further research on the system’s effectiveness across the twenty-six (26) districts in the country

• An assessment of the effectiveness of the victim friendly legal system in the preservation of identities of child victims of sexual abuse.

I believe that this study could assist in addressing the challenges of effectively protecting child victims of sexual abuse from further traumatisation in Zimbabwe. This would be done using the victim friendly legal system as an intervention strategy. Furthermore, I believe that the challenges which were revealed concerning the effectiveness of the system in the protection of child victims of sexual abuse need to be addressed earnestly and urgently in order to improve the quality of the system in the country.
REFERENCES


Internet Sources

Hubbard, D. “Children in Court: Protecting Vulnerable Witnesses”.

Horn, N. “International human rights norms and standards: The development of Namibian case and Statutory Law”.


Silungwe, A.M. “High Court of Namibia Vulnerable Witnesses” Project”.


LIST OF APPENDICES

APPENDIX A: COMPLETED CASES

SOUTH AFRICA

S v Aaron Mokoena Case No. CC 7 of 2007
S v Albert Phaswane Case No. CC 192 of 2007
S v Basil Simmons Unreported DCLD 84/88
S v Booi 2005(1) SACR 599
S v Mayiya 1997(3) BCLR 386 (C)
S v Motaung CC79/05 High Court (SECLD)
S v Ndawo 1961(1) SA 16 (N)
S v Stefaans (1999 (1) SACR 182 (C)

ZIMBABWE

Chidodo v S ZHC 78 of 1998
Daniel Phiri v S ZHC 219 of 1993
Nyamimba v S – ZHC 204 of 2002
S v Mupfudze 1982 (1) ZLR 271 (S
Torongo v S ZSC 206/96
APPENDIX B: STATUTES USED BY OTHER COUNTRIES

NAMIBIA

The Constitution of the Republic of Namibia 1990
The Criminal Procedure Act 25 of 2004
The Criminal Procedure Act 51 of 1977
The Criminal Procedure Amendment Act 24 of 2003

SOUTH AFRICA

The Children’s Act 38 of 2005
The Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007
The Domestic Violence Act 116 of 1998
The Government Notice No R.1374, 30 July 1993 issued by the Minister of Justice
(Proclamation in Government Gazette no 15024, as amended by Government no 17822 of 28 February 1997, and amended by Government Gazette no 22435 of 2July 2001)
The Prevention of Family Violence Act 133 of 1993
The South African Criminal Law Amendment Act 135 of 1991
The South African Criminal Procedure Act 51 of 1977

ZIMBABWE

Children’s Protection and Adoption Act Chapter 5:06
Criminal Law (Codification and Reform Act) Chapter 9:23
Criminal Procedure and Evidence Act Chapter 9:07
The Education Act [Chapter 25:04]
The Guardianship of Minors Act No. 34 of 1961 as amended through Act No. 9 of 1997

[Chapter 5:08]

The Lancaster House Constitution 1979

The New Zimbabwe Constitution 2013
APPENDIX C: INTERNATIONAL INSTRUMENTS

The United Nations Universal Declaration of Human Rights of 1948

The Convention on the Rights of the Child of 1989

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985

The Declaration on Gender and Development by SADC of 1997

The International Covenant on Civil and Political Rights 1966

The United Nations Guidelines for Action on Children in Criminal Justice of 1997

The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 2005

The United Nations Guidelines on the Role of Prosecutors of 1990


The United Nations Standards and Norms in the Field of Crime Prevention and Criminal Justice of 1996

World Fit for Children Resolution of 2002
APPENDIX D: REGIONAL INSTRUMENTS


The Declaration on Gender and Development by SADC of 1997

The Africa Common Position of 2001
## APPENDIX E: BUDGET

<table>
<thead>
<tr>
<th>Number</th>
<th>Activity</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Stationary, secretarial services, and toner cartridges</td>
<td>$800-00</td>
</tr>
<tr>
<td>2.</td>
<td>Transport expenses</td>
<td>$1,800-00</td>
</tr>
<tr>
<td>3.</td>
<td>Fieldwork and stipend fees</td>
<td>$2,500-00</td>
</tr>
<tr>
<td>4.</td>
<td>Miscellaneous</td>
<td>$500-00</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td></td>
<td>$5,600-00</td>
</tr>
</tbody>
</table>
## APPENDIX F: TIMEFRAME

<table>
<thead>
<tr>
<th>Number</th>
<th>Activity</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Proposal development and approval</td>
<td>August 2012 – June 2013</td>
</tr>
<tr>
<td>2.</td>
<td>Development of research instruments</td>
<td>July 2013 – October 2013</td>
</tr>
<tr>
<td>3.</td>
<td>Data Collection</td>
<td>November 2013-February 2014</td>
</tr>
<tr>
<td>4.</td>
<td>Data cleansing, coding and capturing</td>
<td>March 2014-September 2014</td>
</tr>
<tr>
<td>5.</td>
<td>Report Compilation and Editing</td>
<td>October 2014 – April 2015</td>
</tr>
</tbody>
</table>
APPENDIX G: INTERVIEW QUESTIONS SCHEDULE GUIDE

1. Do you think that the victim friendly legal system in Zimbabwe has been effective in the protection of child victims of sexual abuse?

2. What role, if any, does professional counselling in the victim friendly legal system contribute?

3. (a) In your own opinion, do you think that there are the gaps in the current policy and institutional arrangements that do not complement the victim friendly legal system in Zimbabwe in the protection of child victims of sexual abuse?

   (a) If there are gaps on current policy and institutional arrangement of the VFLS, what is your recommendation to the government?

4. (a) Are there any issues that have been raised by key stakeholders on the effectiveness of the victim friendly legal system towards the protection of child victims of sexual abuse from being further traumatised?

   (a) To what extent do these issues contribute to the effectiveness of the VFLS in Zimbabwe?

5. (a) What has the response been to issues raised by stakeholders on the effectiveness of the victim friendly legal system in Zimbabwe?

   (a) In your own opinion, what is your thinking towards the effectiveness of the VFLS in Zimbabwe?
6th January 2014

The Commissioner General of Police
Zimbabwe Republic Police
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH POLICE OFFICERS IN THE VICTIM FRIENDLY UNIT IN THE HARARE METROPOLITAN PROVINCE

The above subject matter refers.

I am candidate at Zimbabwe Open University studying for my Doctor of Philosophy programme. I am conducting a study entitled “An evaluation on the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province”. As part of my study, I wish to conduct interviews with police officers in the victim friendly unit in the Harare Metropolitan Province. The thrust of my study is anchored on evaluating the effectiveness of the victim friendly legal system in the protection of victims of child sexual abuse. I would like to visit Harare Central Police, Mbare Police Station, Budiriro Police Station and Highlands Police Station to do some observations of victims and suspects of abuse whilst police officers do their job. I would also be interested in doing document analysis and analysis of statistics in relation to the victim friendly legal system in Zimbabwe. This study is only for academic purposes and the ethical principle of confidentiality would be adhered to at all times.

Your assistance is greatly appreciated.

Webster Chihambakwe.
04-764595-9 Ext 21 or Mobile 0772 707 839
APPENDIX I: Application Letter seeking for permission to conduct the study to the Secretary for the Judicial Service Commission of Zimbabwe

6th January 2014

The Secretary
Judicial Service Commission
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH JUDGES AND MAGISTRATES IN THE HARARE METROPOLITAN PROVINCE

The above subject matter refers.

I am candidate at Zimbabwe Open University studying for my Doctor of Philosophy programme. I am conducting a study entitled “An evaluation on the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province”. As part of my study, I wish to conduct interviews with judges and magistrates within the Judicial Service Commission in the Harare Metropolitan Province. The thrust of my study is anchored on evaluating the effectiveness of the victim friendly legal system in the protection of victims of child sexual abuse. I would like to visit the High Court, Harare Magistrates Court, Chief Magistrate Office, and Office of the National Coordinator Victim Friendly Court. I would also be interested in doing document analysis in relation to the victim friendly legal system in Zimbabwe. This study is only for academic purposes and the ethical principle of confidentiality would be adhered to at all times.

Your assistance is greatly appreciated.

Webster Chihambakwe.
04-764595-9 Ext 21 or Mobile 0772 707 839
APPENDIX J: Application Letter seeking for permission to conduct the study to the Prosecutor General of the National Prosecuting Authority of Zimbabwe

6th January 2014

The Prosecutor General
National Prosecuting Authority
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH PROSECUTORS AND CHIEF LAW OFFICERS IN THE HARARE METROPOLITAN PROVINCE

The above subject matter refers.

I am candidate at Zimbabwe Open University studying for my Doctor of Philosophy programme. I am conducting a study entitled “An evaluation on the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province”. As part of my study, I wish to conduct interviews with prosecutors and chief law officers within the National Prosecuting Authority in the Harare Metropolitan Province. The thrust of my study is anchored on evaluating the effectiveness of the victim friendly legal system in the protection of victims of child sexual abuse. I would like to visit the High Court and Harare Magistrates Court to do some observations of some trial sessions. I would also be interested in doing document analysis in relation to the victim friendly legal system in Zimbabwe. This study is only for academic purposes and the ethical principle of confidentiality would be adhered to at all times.

Your assistance is greatly appreciated.

Webster Chihambakwe.
04-764595-9 Ext 21 or Mobile 0772 707 839
APPENDIX K: Application Letter seeking for permission to conduct the study to the Permanent Secretary, Ministry of Public Service, Labour and Social Welfare

6th January 2014

The Permanent Secretary
Ministry of Labour, Public Service and Social Welfare
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH COUNSELLORS/SOCIAL WORKERS IN THE DEPARTMENT OF SOCIAL WELFARE

The above subject matter refers.

I am candidate at Zimbabwe Open University studying for my Doctor of Philosophy programme. I am conducting a study entitled “An evaluation on the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province”. As part of my study, I wish to conduct interviews with counsellors/social workers in the Department of Social Welfare under your Ministry. The thrust of my study is anchored on evaluating the effectiveness of the victim friendly legal system in the protection of victims of child sexual abuse since your Ministry played an important part in the formation of the victim friendly system in Zimbabwe. I would also be interested in doing document analysis and analysis of statistics in relation to the victim friendly legal system in Zimbabwe. This study is only for academic purposes and the ethical principle of confidentiality would be adhered to at all times.

Your assistance is greatly appreciated.

Webster Chihambakwe.
04-764595-9 Ext 21 or Mobile 0772 707 839
APPENDIX L: Application Letter seeking for permission to conduct the study to the Director, Childline

6th January 2014

The Director
Childline
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH COUNSELLORS/SOCIAL WORKERS AT YOUR ORGANISATION

The above subject matter refers.

I am candidate at Zimbabwe Open University studying for my Doctor of Philosophy programme. I am conducting a study entitled “An evaluation on the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province”. As part of my study, I wish to conduct interviews with counsellors/social workers at your organisation. The thrust of my study is anchored on evaluating the effectiveness of the victim friendly legal system in the protection of victims of child sexual abuse since your organisation played an important part in the formation of the victim friendly system in Zimbabwe. I would also be interested in doing document analysis and analysis of statistics in relation to the victim friendly legal system in Zimbabwe. This study is only for academic purposes and the ethical principle of confidentiality would be adhered to at all times.

Your assistance is greatly appreciated.

Webster Chihambakwe.
04-764595-9 Ext 21 or Mobile 0772 707 839
APPENDIX M: Application Letter seeking for permission to conduct the study to the Country Director, Save the Children

6th January 2014

The Country Director
Save the Children UK
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH PROGRAMME OFFICERS AT YOUR ORGANISATION

The above subject matter refers.

I am candidate at Zimbabwe Open University studying for my Doctor of Philosophy programme. I am conducting a study entitled “An evaluation on the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province”. As part of my study, I wish to conduct interviews with programme officers at your organisation. The thrust of my study is anchored on evaluating the effectiveness of the victim friendly legal system in the protection of victims of child sexual abuse since your organisation played an important part in the formation of the victim friendly system in Zimbabwe. I would also be interested in doing document analysis and analysis of statistics in relation to the victim friendly legal system in Zimbabwe. This study is only for academic purposes and the ethical principle of confidentiality would be adhered to at all times.

Your assistance is greatly appreciated.

Webster Chihambakwe.
04-764595-9 Ext 21 or Mobile 0772 707 839
APPENDIX N: Application Letter seeking for permission to conduct the study to the Director, Family Support Trust (FST)

15th January 2014

The Director
Family Support Trust
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH DOCTORS AND COUNSELLORS AT FAMILY SUPPORT TRUST CLINIC AT HARARE CENTRAL HOSPITAL

The above subject matter refers.

I am candidate at Zimbabwe Open University studying for my Doctor of Philosophy programme. I am conducting a study entitled “An evaluation on the effectiveness of the victim friendly legal system in Zimbabwe: A case study of Harare Metropolitan Province”. As part of my study, I wish to conduct interviews with doctors and counsellors at your FST Clinic at Harare Central Hospital. The thrust of my study is anchored on evaluating the effectiveness of the victim friendly legal system in the protection of victims of child sexual abuse. I would also be interested in doing document analysis and analysis of statistics in relation to the victim friendly legal system in Zimbabwe. This study is only for academic purposes and the ethical principle of confidentiality would be adhered to at all times.

Your assistance is greatly appreciated.

Webster Chihambakwe.
04-764595-9 Ext 21 or Mobile 0772 707 839
APPENDIX O:  Response from the Commissioner General of the Zimbabwe Republic Police

15 January 2014

Chiedza House
9th Floor, Cnr K.Nkrumah/First Street
HARARE

Attention: Webster Chihambakwe

APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH POLICE OFFICERS IN THE VICTIM FRIENDLY UNIT IN THE HARARE METROPOLITAN PROVINCE.

Reference is made to your letter dated 6 January 2014 in connection with the above subject.

Please be kindly advised that the application was not approved.

Referred for your information, please.

[JC CHENGETA] Senior Assistant Commissioner
Chief Staff Officer [Human Resources]

COMMISSIONER GENERAL OF POLICE
21 January 2014

Mr Webster Chihambakwe
Faculty of Applied Social Sciences
Department of Counselling
Chiedza House
9th Floor
Cnr K. Nkrumah/First Street
Harare

Re: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH JUDGES AND MAGISTRATES IN THE HARARE METROPOLITAN PROVINCE

The above matter refers.

Authority has been granted for you to interview Regional Magistrates and the interviews should be restricted to the Magistrates Court since the VFC systems are mainly a feature in the Magistrates Court.

G. Name
For: CHIEF MAGISTRATE

cc. Provincial Head – Harare – Attention: Mr Chikwekwe
APPENDIX Q: Response from the Director of Public Prosecutions, National Prosecuting Authority of Zimbabwe.

10 January 2013

Webster Chihambakwe
Zimbabwe Open University
Faculty of Applied Sciences
Department of Counselling
Chiedza House
9th Floor Corner Kwame Nkrumah/First Street
Harare

RE: APPLICATION FOR PERMISSION TO CONDUCT INTERVIEWS WITH PROSECUTORS AND CHIEF LAW OFFICERS IN THE HARARE METROPOLITAN PROVINCE

Your letter dated 6 January 2014.

May you please be advised that your application has been granted so you contact Mrs Chigwedere and Mr Murobedzi. The latter is Area Public Prosecutor - Harare Magistrates Court.

N MUTSONZIWA
DIRECTOR OF PUBLIC PROSECUTIONS

/ts