

MEDICO LEGAL RESPONSE TO SEXUAL VIOLENCE

Strengthening
Response To Sexual
Violence Safari Park
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MEDICO-LEGAL RESPONSE TO SEXUAL VIOLENCE

CRADLE : EXPERIENCE IN HANDLING
CASES OF SEXUAL ASSAULT WITH THE
FOCUS ON THE EXISTING LEGISLATION
AND MEDICAL MANAGEMENT.

CRADLE THE CHILDREN'S FOUNDATION

- The CRADLE was founded in 1997 to respond to the need of provision of juvenile justice following a research and baseline study in the provision of justice to children. The research evidenced urgent need to address the issue of legal aid to children and the organisation was born to respond to this need. The members not only offered voluntary legal services to children but the work they did entailed legal awareness and provision of school fees for needy children and especially the children whose parents were incarcerated.

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- The CRADLE was symbolically officially launched on 7th December 1998 on the eve of the celebrations of the 50th anniversary of the universal declaration of human rights to show a deliberate child-rights strategy in operations. The launch was held at the United States information service by Judge Arlene Pacht the then chairperson of the International Women Judges Association. The launch was also presided over by the honourable Shem Ochuodho, then Member of Parliament, Rangwe Constituency

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- The CRADLE institutionalised in 1999 by setting up a pilot and the first legal aid clinic of its kind for children. The CRADLE has since continued protecting and promoting the rights of the child to date and also runs other programs such as Legal Awareness and Capacity Building; Rights Monitoring and Documentation; Law Reform and Impact Litigation; and Lobbying and Advocacy.

The Legislation In Place

- The Sexual Offences Act is the legislation that currently deals with sexual assault.
- Before that the law was spread across different legislations .
- Such crimes were still deemed as crimes against morality and did not recognize advances made in the field of forensic such as DNA and profiling.

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- Sentencing of the offenders was entirely at the discretion of the presiding judicial officers.
- There was also insensitivity by the law enforcement officers who did not investigate and effectively prosecute the perpetrators.
- Gender based violence was viewed solely as a legal issue and the role of health systems was severely limited. However this has since changed when contraction of HIV/ AIDS became a potential consequence of GBV.

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- This led to the need to review these laws.
- After a broad consultative process with various members of the civil society , a process in which the CRADLE the children's foundation participated a draft of the sexual offences bill came to life.
- The Sexual Offences Act was passed by the national assembly on 31st May 2006. It received presidential assent on 14th July 2006 and commenced on operation on the 21st July 2006.

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- The Act domesticates provisions on a number of conventions including The United Nations Conventions On The Elimination On All Forms Of Discrimination Against Women, United Nations Conventions On The Rights Of The Child And The African Charter On The Rights And Welfare Of The Child.

GAINS AND SHORTFALLS OF THE ACT

- It introduced 14 new offences including Deliberate Transmission of HIV /AIDS, trafficking for sexual exploitation and child pornography.
- Introduction of minimum sentences of persons found guilty
- Setting up of a DNA data bank and a pedophiles registry.
- The criminalization of sexual harassment.

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- Securing the protection of vulnerable witnesses especially children, to provide victims with a friendlier environment during the trial of the case.
- It has made the exposure of children to pornography illegal.
- A requirement of disclosure by sexual offenders of previous sexual offenders for a sexual offence in certain instances like seeking employment.

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- Prohibition of disclosure during trial of previous sexual conduct of the complainant.
- That only the Attorney General can stop cases of sexual offences . This is meant to curb parties from making out of court settlements and subverting justice.

Resistance to the Act

- There was some resistance to the passing of the Act .The bill was watered down for it to be passed in parliament. For example one of the proposed punishments for rape was chemical castration . This clause was removed.
- The Members of Parliament further wanted deletion of clauses making gang rape and sex between 16-18 years . They however were not successful.

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- They further inserted a clause , Section 38 of the Sexual Offences Act which provided that a person who makes a false allegation of the sexual offence will receive the same sentence that the person against whom the fall allegation would have received.
- The effect of this clause discourages people from reporting sexual offences. Should the prosecution fail to secure a conviction due to evidentiary problems will expose the complainant to the liability to a charge of making false allegations.

Our Experience

- S.M is a beautiful 14 year old girl. She is intelligent , witty and very friendly. She is also H.I.V positive .
- She was defiled by her uncle and subsequently infected with the virus. Her uncle brought her to live with him and his daughter on the pretext of educating her.
- He enrolled her in school but at night he made her his wife.

Our experience

- He had unprotected sex with her. Threatened her with death if she told anyone. She kept quiet.
- 72 hours passed, turned into days , finally into months.
- The only time she spoke of the event is when she went home for her school holidays.

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- Her father reported the matter and the perpetrator was subsequently arrested. The matter is currently in court.
- The family has to travel far to attend the court proceedings . At times when they come to court, the matter is adjourned for one reason or another.
- She has missed over one term of schooling and might have to repeat the school year.

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- She is now on medication and has received counseling. Her parents to have received counseling and continue to support her.

Our Role

- When a child comes to us and they have been sexually abused, we first ascertain if they have received medical treatment and whether they have reported it to the police.
- We advise them to first preserve the evidence properly.
- Seek medical attention within 72 hours.
- And get counseling (psycho social support).

What To Do When Sexually Abused

- Before the survivor is medically examined he/she should not shower in order to preserve all the relevant evidence.
- Every girl/woman of child bearing age should be offered emergency contraception.
- Post exposure prophylaxis should be administered before the lapse of 72 hours.

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- Physical injuries should be cleaned with antiseptic and dressed with iodine, severe injuries sutured under sedation.
- All sexual survivors should be offered STD infection prophylaxis.

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- With regard to preservation of evidence the clothes of the survivor should not be washed. The clothes should not be placed in a polythene paper bag because the evidence would be contaminated.
- We further advice that the survivor should not be bathed in order to preserve the evidence.

At the police station

- The police should encourage and assist any individual presenting a case of sexual assault to attend the nearest health facility as soon as possible.
- The police enters the report in the occurrence book and records the statement. The survivor than signs the statement when she is satisfied with it.

Evidence

- 2 forms of evidence need to be collected
 - a) Evidence to confirm that the sexual assault took place.
 - b) Evidence to link the alleged assailant to the assault.
- Lack of proper documentation may result in insufficient evidence causing the matter to be thrown out of court.

Evidence Cont'

- History taking, examination and documentation critically link the occurrence and survivors to the health care and criminal justice systems.
- Based on the clinical notes and with the help of an authorized health worker, P3 form is filled completed and returned to the police station.

At the CRADLE

- We as an organization offer legal support. This includes representing the child in court and carrying out pre trial briefings to prepare the child to give evidence in court.
- We further offer psycho social support for the child which includes trauma counseling.

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- Our psycho social supports further extends to assisting the survivors with their education. Though this initiative has been hampered due to lack of funding.

Medico-legal Response To Sexual Violence

- There was a poor relationship between the health and the legal sector.
- The receiving of post rape care was a matter of policy rather than legislation.
- Under the Sexual Offences Act 2006 The Attorney General (AG) is responsible for the implementation of the law. This would be through the preparation of a National Policy Framework to guide the implementation and administration of this Act. It also looks at the treatment and care of sexual victims.

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- For this purpose the AG gazzetted taskforce on March 2007, vide gazette notice 2115, whose mandate is to prepare and recommend a National Policy Framework and guidelines for the Act, to review all existing policies, laws and regulation, practices and the customs relating to sexual offences and to make amendments, and to carry out public education, awareness and sensitization campaigns in order to adhere to and promote the objectives of the Act.

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- The Ministry Of Health developed the National Guidelines For Management Of Rape And Sexual Violence in 2005.
- The document standardizes the provision of post rape care services .

Challenges

- We face various challenges with regard to the medico legal aspect of GBV. These include:
- Low reporting due to the trauma and shame associated with rape.
- Lack of support from family and friends.
- An insensitive criminal justice system.
- Stigmatization from the community.
- Attitude of the police.



Thank you

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