



# OUT FROM THE **SHADOWS**

SEXUAL VIOLENCE AGAINST CHILDREN  
WITH DISABILITIES

**Save the Children works in more than 120 countries. We save children's lives. We fight for their rights. We help them fulfil their potential.**

**Handicap International** is an international federation specialised in the field of disability. Non-governmental, non-religious, non-political and non-profit making, it works alongside people with disabilities, whatever the context, offering them assistance and supporting them in their efforts to become self-reliant. Since its creation, the organisation has set up programmes in approximately 60 countries and intervened in many emergency situations. It has a network of eight national associations (Belgium, Canada, France, Germany, Luxembourg, Switzerland, United Kingdom, USA).

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# EXECUTIVE SUMMARY

Children with disabilities from around the world are suffering from sexual violence, including rape, sexual assault, sexual exploitation, and verbal sexual abuse. This affects both boys and girls. It is a gross violation of their rights.

Children with disabilities are especially vulnerable as a result of entrenched social and structural discrimination against them. Many live in relative isolation and are invisible from society, often kept indoors and out of sight; they have less interaction with peers or adults in whom they could confide; and stigma surrounding disability can result in their needs and rights being dismissed by communities, authorities and families. This is compounded by the acute lack of access experienced by many children with disabilities to education, child protection and medical, psychosocial, legal and other services, including reporting mechanisms, that rarely accommodate their individual needs. This results in these children being uninformed about their rights, finding themselves in environments where they are vulnerable to sexual violence and, if they are violated, with little opportunity to receive medical, legal or psychosocial support. All this leaves children with disabilities in an extremely weak position in society. Some children suffering sexual violence are not aware that what is happening to them is wrong, and those who do have little possibility of reporting or receiving support.

The perpetrators of sexual violence enjoy almost total impunity. There is little chance that they will be observed, nor is the survivor likely to tell anyone what is happening to them. In many cases, perpetrators are part of the family or community upon which the child is dependent for his or her well-being and survival and, therefore, hold great

power over the child. Very few cases that are officially reported to the authorities ever reach a court hearing or result in a harsh sentence. This is largely due to the chronic inaccessibility and structural discrimination that children with disabilities come up against within national legislation and legal systems. As a consequence, survivors and their families are deterred from speaking out about the abuse against them, which in turn perpetuates their vulnerability.

Shrouded in taboos, and far from a political priority, this issue has, until now, been largely ignored. Very little research has been conducted on it and children with disabilities are often invisible in systemic and national data collection. However, persistent anecdotal evidence and continuous feedback from field teams led Handicap International and Save the Children to conduct a joint project on this issue, of which this research study is part.

This report is based on evidence generated from a global literature review and first hand research in four African countries: Burundi, Madagascar, Mozambique and Tanzania (Zanzibar). This was a qualitative study conducted in 2010 by local researchers interviewing 89 adults with disabilities who had been abused as children, as well as 152 carers and professionals associated with their protection, including carers, lawyers, judges, police, social workers, teachers and members of disabled peoples' organisations.

Save the Children and Handicap International have created a set of recommendations (summarised below), which are available in full at the end of this report. These were developed in consultation with children, young people and professionals working

on this issue around the world. We hope they will be taken forward by governments, donors and civil society organisations, communities, and children and young people.

- 1. Tackle the social and structural discrimination that prevent children and young people accessing services**, by, for example, guaranteeing equal access to education, reporting mechanisms, and other opportunities that decrease the isolation of children and young people with disabilities.
- 2. Invest in high-quality, free services that prevent and respond to sexual violence against children and young people with disabilities and prioritise the best interests of the individual child at all times.**
- 3. Support children and young people with disabilities to play an active part in society and in the services that affect them.**
- 4. Make children and young people with disabilities more visible both in society and in development programming** by, for example, conducting more research on issues that affect them and including impairment-specific disaggregated information in data collection.
- 5. Ensure that national laws and policies prevent and respond to sexual violence against children and young people with disabilities in line with international and regional human rights instruments** by, for example, making explicit and specific mention of their particular rights and needs in national child protection and sexual violence legislation and policies.

# INTRODUCTION

Children with disabilities are among the most discriminated against children in the world. Although it is estimated that 200 million children have a disability, 80% of whom live in the developing world, they are largely ignored by governments, the media and other opinion-formers and decision-makers, and remain almost totally invisible in mainstream society.<sup>1</sup>

The statistics that underlie the lives of children with disabilities are shocking:

- at least 90% of children with disabilities in the developing world are denied the right to education<sup>2</sup>
- children with disabilities are disproportionately likely to live in poverty<sup>3</sup>
- in some countries where under-five mortality as a whole has decreased to below 20%, mortality among young children with disabilities is as high as 80%.<sup>4</sup>

In many countries children with disabilities are routinely denied access to family life, play, culture, education and information, and are rarely given a voice to articulate their experiences.

In addition, it is now becoming increasingly apparent that children with disabilities are at disproportionate risk from physical and sexual violence. The violence takes place in many settings: in the home, in childcare institutions, in schools, in the juvenile

justice system, in the workplace and within the wider community. It takes the form of infanticide and so-called mercy killings, beatings, sexual violence, and emotional and verbal abuse and bullying. Although too little research has been undertaken as yet to fully understand the extent to which the right of children with disabilities to protection from violence is being violated, what evidence does exist paints a consistently bleak picture – and one which is reinforced by the findings in this report.

***Out from the Shadows*** focuses on sexual violence against children with disabilities. Handicap International and Save the Children are acutely aware of the vulnerability of children with disabilities to sexual violence, and both organisations feel that it is an issue that is not sufficiently recognised or discussed at national and global levels. They are grateful for the commitment and financial support of the Oak Foundation that enabled them to undertake the research presented here.

This report sheds light on what remains an under-researched issue and makes recommendations on how to tackle it. As well as a global literature review, it includes research findings from four African countries, which are taking part in an ongoing programme of work by Save the Children and Handicap International, sponsored by the Oak Foundation, to tackle sexual violence against children with disabilities.



# PART I: BACKGROUND



# VIOLENCE AGAINST CHILDREN WITH DISABILITIES: A GLOBAL OVERVIEW

## THE SCALE OF VIOLENCE AGAINST CHILDREN WITH DISABILITIES

Significant – if still partial – evidence exists to demonstrate that children with disabilities are disproportionately at risk of violence and abuse, including sexual violence. Most of the large-scale evidence comes from the countries of the developed world.

A study of 50,000 children undertaken a decade ago in the USA found that over 30% of children with disabilities had been abused. Children with disabilities were three to four times more likely to be neglected, or physically, emotionally or sexually abused or neglected than non-disabled children.<sup>5</sup> Another study, by the same researchers,<sup>6</sup> investigating 3,000 children who had been maltreated found that children with speech and language difficulties were at five times greater risk of neglect and physical abuse than other children, and three times greater risk of sexual abuse. And for those children with behavioural disorders, the risk is between five and seven times higher than for children without disabilities.

In a retrospective study undertaken in the USA with 770 adults who are congenitally deaf, 45% reported some type of abuse as children.<sup>7</sup> Another piece of US research found that 90% of individuals with intellectual impairments will experience sexual abuse at some point in their life.<sup>8</sup>

From outside the USA, research in Canada suggests that the estimated risk of abuse of people with disabilities may be as much as five times greater than the risk for the general population.<sup>9</sup> A national survey of adults who are deaf in Norway found that 80% of all individuals surveyed reported having been sexually abused at some point in their childhood.<sup>10</sup>

Violence, including sexual violence, against children with disabilities appears to be particularly significant in institutional settings. Despite the growing evidence on the damaging impacts of such settings – including abuse and increased disability – the practice still exists for many children with severe disabilities. Years after the horrifying exposure of cruelty to children with disabilities in institutions in Romania, a study published in 2006 found treatment amounting to life-threatening torture in many facilities:<sup>11</sup>

*“Children were tied to cribs, wrapped head to toe in sheets used as full-body restraints, with open wounds and bed sores all over their bodies, malnourished, and near death. Some were so emaciated that they looked like they were three or four years old. Their spindly arms and legs were twisted into contorted positions from disuse and atrophy. Their eyes were deeply sunken into their skulls, and they stared blankly at us when we entered the room. Ribs and other bones stuck out from their skin, which seemed to sag from their bodies without any extra flesh.”*

These patterns of institutional abuse are not restricted to Romania, but found in a number of countries across central and south-east Europe.<sup>12</sup>

Similarly shocking findings about violence against children with disabilities emerge from the limited evidence available from developing countries. Recent research undertaken by Terre des Hommes in three countries in east Africa testifies to the high levels of violence experienced by children with disabilities.<sup>13</sup> It was estimated that in Kenya, for example, 15–20% of children with disabilities experience severe levels of physical and sexual violence, with girls with intellectual impairments particularly vulnerable. Furthermore, the majority of children with disabilities were found to be experiencing debilitating and criminal neglect, including cases of near-starvation, grossly unhygienic living conditions and total abandonment. In the most extreme cases, children were found dying or to have been killed.

In a 2004 small survey in Orissa, India, virtually all of the women and girls with disabilities were beaten at home, 25% of women with intellectual disabilities had been raped and 6% of women with disabilities had been forcibly sterilised.<sup>14</sup> In South Africa, it has been found that children with physical disabilities are three to four times more likely to be abused than able-bodied children<sup>15</sup> and children with intellectual disabilities are three to eight times more common in abused than in non-abused children.<sup>16</sup>

In recent research in Ethiopia, 38 children with disabilities recounted being locked in their houses or in their classrooms, and neglected or abandoned by their families.<sup>17</sup> Their stories highlighted how they were forced to perform hard labour, denied the same levels of food and care afforded to other family members, forced to steal and given alcohol. Most reported being raped. And research for this report in Burundi, Madagascar, Mozambique and Tanzania (Zanzibar) finds, yet again, similar experiences of sexual violence (see Chapter 3).

## THE ROOTS OF VIOLENCE

Although the evidence is limited, it strongly suggests that there is a consistent pattern of violence against children with disabilities across countries with different cultures, that are at different levels of socio-economic development, and that have profoundly different political histories. How can we explain this?

Although violence against children with disabilities appears consistent across countries, the causes of this violence are deep-rooted, varied, complex and interlinked.

A key factor that underlies the treatment of children with disabilities is people's attitudes towards, and understanding of, disability, which are often rooted in cultural traditions and beliefs. In some cultures disability is viewed as a curse or punishment for sins committed in an earlier life, so a child born with an impairment is the embodiment of past failure, inadequacy or wickedness of the individual and sometimes their mother. In some African cultures, people with disabilities are regarded as a threat to highly valued social norms: for example, they are perceived as having limited capacity to contribute to family and community life or to biologically reproduce and, in some cases, are associated with witchcraft.<sup>18</sup> Where such attitudes are held, not surprisingly, the child with a disability can be viewed with hostility, shame and resentment by their family and broader community.

There is also considerable ignorance and lack of understanding about the nature of disability, its causes and implications. Children with psychosocial disabilities can be considered evil, disobedient or immoral. Those with sight or hearing impairments are widely assumed to be incapable of learning, lacking in intelligence and therefore 'uneducable'. And those with learning disabilities are sometimes thought to be sexually uncontrolled. Often, parents of other children fear 'contamination' if their children mix with, or are educated alongside, children with disabilities.

Often, the girl or boy with a disability becomes lost beneath social anxieties about the child's impairment. The child is defined by what they lack rather than by what they can contribute or offer. This deficit model diminishes the humanity and dignity of children with disabilities. Their lives and physical integrity are not valued as much as those of other children, and as a result it becomes easier to abuse or harm, or ignore these actions undertaken on a child with a disability.

For poor families, particularly where limited or no social protection or basic services are available, the birth of a child with a disability can be very challenging. The family is likely to face increased pressure and stress. In these circumstances, a child with a disability is at greater risk of being viewed as a social and economic burden rather than as an asset. This is particularly the case in cultures where part of a child's role is to help support their parents in old age. The child may become the focus of frustration, leading to anger, rejection, and sometimes violence. This threat is even greater for children who need high levels of intimate or physical care.

Hostility, fear, shame and a desire to protect children with disabilities from negative behaviour and attitudes mean they are often hidden away and denied access to other children, the wider family, and public or social events. As a result of this isolation, children with disabilities are perceived to be an easy target for violence; perpetrators have a high degree of impunity; and there are often no witnesses to sexual violence against children with disabilities or people willing to speak out against any violations.

In many cases, parents of disabled children are unaware of the particular child protection risks facing them. Parents often know little about disability before the birth of their child. They do not anticipate that a disabled child could be exploited or abused and, therefore, miss the signs and signals that they might pay attention to for children without disabilities.

In summary, the high levels of violence against children with disabilities do not arise from the intrinsic nature of their disability, but are a consequence of the extreme social exclusion that children with disabilities experience. This includes discrimination, rejection of difference, poverty, lack of services and support, and social isolation. The causes of sexual violence are in the environment in which the child lives, not in the child him or herself.

## BARRIERS TO PROTECTING CHILDREN WITH DISABILITIES

Children with disabilities who attempt to challenge sexual violence come across a series of often insurmountable barriers. First, the isolation of children with disabilities from other children, from school and from other sources of information means they may not be aware that sexually violent behaviour towards them constitutes abuse. Perpetrators often imply that what they are doing is normal or an act the child should be grateful of and that the child must accept it. It can also be particularly difficult for children who have high levels of dependency, and who need intimate care, to understand that some forms of touching are unacceptable and to take measures to protect themselves.

Even if the child understands that what is happening is wrong, they may not be aware that they are entitled to protection from such abuse and violence, and are unlikely to know how to report the violence. They are less likely than non-disabled children to have contacts with, or access to, adults outside the home from whom they can seek help, and will often lack information about, for example, helplines and child protection agencies. Even where children with disabilities have information about possible sources of help, children who are deaf, blind or have restricted mobility may find it impossible to reach that help. Their dependency on family members, who in many cases are the perpetrators or relatives of the perpetrators, means these children are often trapped into situations

of violence. They may also risk punishment if they do seek help. Finally, even if all those hurdles are overcome, and they succeed in reporting abuse, it is all too common for the police and courts to refuse to believe a child with a disability, assuming that they lack the competence to make a reliable report or to serve as a credible witness in court, as research for this report has borne out.

These multiple barriers result in a vicious circle.<sup>19</sup> Because few cases of sexual violence against children with disabilities are reported, there is very limited awareness of the scale of the problem. This leads to low levels of investment by the state in prevention or response, which in turn contributes to a low level of reporting.

# INTERNATIONAL FRAMEWORKS TO PROTECT CHILDREN WITH DISABILITIES AGAINST SEXUAL VIOLENCE

There has, in recent years, been some growing recognition within the international community of this horrific pattern of violence and neglect. The UN Study on Violence against Children considered the vulnerability of children with disabilities to be of sufficient significance to commission a thematic study on the issue, which concluded that while all children are at risk, children with disabilities are at significantly increased risk.<sup>20</sup> The final report of the UN Study includes strong recommendations for children with disabilities to be made visible in all strategies to tackle violence against children, emphasising both the need for them to be included in general violence-prevention initiatives as well as in disability-specific ones.<sup>21</sup> The Human Rights Council has pressed all governments to enact and enforce legislation protecting children with disabilities against all forms of discrimination, exploitation, violence and abuse.<sup>22</sup> And the UN Secretary-General's Special Representative on Violence against Children in a joint report with the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography on counselling, complaint and reporting mechanisms, paid special attention to the particular challenges faced by children with disabilities in accessing protection and justice<sup>23</sup>.

Legal frameworks exist at the international level to challenge violence against children with disabilities. The near-universally ratified UN Convention on the Rights of the Child (UNCRC) includes a broad range of provisions that seek to protect children,

and all these provisions apply on an equal basis to children with disabilities as to all other children (see box overleaf).

The Committee on the Rights of the Child has elaborated the obligations of governments in its General Comment on children with disabilities, emphasising the need to provide education and support for parents; measures to reduce bullying and abuse in schools; appropriate training; staffing and standards of care in childcare institutions; access to complaints mechanisms; effective sanctions against and removal of abusers; and systems for ensuring appropriate treatment and rehabilitation of children with disabilities who have experienced violence.<sup>24</sup>

Similarly, Article 16 of the African Charter on the Rights and Welfare of the Child demands that governments take all necessary measures to protect children 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'* and, in Article 27, from *'the inducement, coercion or encouragement of a child to engage in any sexual activity.'* The Charter has been ratified by 37 of the 53 eligible African states, including all four countries that are the subject of this report.

These provisions have been reinforced by the UN Convention on the Rights of Persons with Disabilities, now ratified by 99 countries, which

## UN CONVENTION ON THE RIGHTS OF THE CHILD – PROVISIONS TO PROTECT CHILDREN

**Article 2** – introduces an obligation to respect the rights of every child to protection from discrimination, including on grounds of disability

**Article 3** – demands that the best interests of the child is a primary consideration in all actions affecting the child, and that all institutions, services and facilities provided for children are of an adequate standard

**Article 19** – emphasises the right of every child to protection from all forms of violence and imposes explicit obligations on governments to take the appropriate legislative, administrative, social and educational measures necessary to ensure that protection.

**Article 34** – requires governments to protect children from sexual exploitation and abuse

**Article 37** – prohibits torture or other cruel, inhuman or degrading treatment of children

**Article 39** – requires the introduction of programmes of recovery and reintegration.

All these must be informed by the obligation, embodied in **Article 12**, to ensure that children are enabled to express their views on these matters and have their views taken seriously in accordance with age and maturity.

emphasises that, while all human rights apply to all people, additional measures are needed to ensure that those rights are realised for people, including children, with disabilities. Article 16, which addresses the right to protection from violence, requires that all prevention, protection, recovery and rehabilitation services, as well as investigative services, are age, disability and gender sensitive. Article 23 introduces obligations on governments to provide information, support and services to families to prevent the neglect and abandonment of children with disabilities. And measures are also introduced

in Article 12 to strengthen access to justice, by ensuring that all stages of legal proceedings are sensitive and accessible to people, including children, with disabilities.

However, too little investment has been made in translating recent international commitments into practical action on the ground. As the pages that follow show, on a day-to-day level there is, as yet, limited progress towards challenging the widespread violation of the right of children with disabilities to be protected from sexual violence.



# PART 2: RESEARCH STUDY ON SEXUAL VIOLENCE AGAINST CHILDREN WITH DISABILITIES IN FOUR AFRICAN COUNTRIES



# RATIONALE AND METHODOLOGY FOR THE RESEARCH

## BACKGROUND

Sexual violence against children with disabilities is a recurrent issue for Save the Children and Handicap International. Given the paucity of research data on sexual violence against children, and our limited understanding of its scope, Handicap International and Save the Children decided to conduct primary research on this issue. This study was conducted across four African countries – Burundi, Madagascar, Mozambique and Tanzania (Zanzibar). These four countries were selected on the basis of historical and programmatic expertise in this area – Handicap International and Save the Children have strong links with children’s rights and disabled people’s organisations in the countries – and because this issue had already been identified as a problem by staff on the ground. This research was part of an ongoing programme of work to address sexual violence against children with disabilities.

The four countries are located relatively close together in south-east Africa. All have a low human development index and low life expectancy (64 years in Madagascar, 59 in Burundi, 52 in Mozambique and 53 in Tanzania\*).

In each of the four countries there is no systematic data collection of people with disabilities. In a context of social stigma towards people with disabilities and discrimination, some families do not even register the births of children with disabilities.

To provide global estimates on disability the United Nations estimates that 10% of the total population is disabled. Although it can be argued that this proportion may not be evenly distributed across all countries (with higher rates likely in countries that face extreme poverty and malnutrition, and that have a recent history of civil conflict) this 10% estimate is still regularly used.

All four countries have signed and ratified the UN Convention on the Rights for the Child (UNCRC), and made some effort to incorporate it at domestic level. All four countries have signed the UN Convention on the Rights of Persons with Disabilities (UNCRPD), although only two (Mozambique and Tanzania) have ratified it.

## METHODOLOGY

In 2010, Handicap International and Save the Children commissioned researchers to undertake a qualitative study of sexual violence against children<sup>25</sup> with disabilities in Burundi, Madagascar, Mozambique and Tanzania (Zanzibar). The same interviewing tools were used in each of the four countries and all the researchers received the same training and support.

The researchers examined the social and the legal aspects of the issues. Survivors of sexual violence, carers and other professionals working with people with disabilities, and legal and law enforcement

\* <https://www.cia.gov/library/publications/the-world-factbook/index.html>

personnel were asked questions based on semi-structured questionnaires. The aim was to find out:

- what makes children with disabilities particularly vulnerable to sexual violence
- how families and communities respond
- whether children with disabilities have access to professional psychological, social, medical and legal services, and whether attitudinal or structural barriers limited their access
- whether different legal systems affect the access of children with disabilities to justice
- the roles of statutory and traditional legal systems, and the relationship between them
- the outcomes for both survivor and perpetrator.

A decision was taken at the outset that the primary source of evidence of the experience and impact of sexual violence against children with disabilities would be a retrospective study, of adult survivors of sexual violence that occurred when they were children, rather than children themselves. This decision was taken for a variety of ethical and methodological reasons.

In all, 89 adults with disabilities who had survived sexual violence as children were interviewed. Although most participants were identified by disabled people's organisations, the majority were not members of these organisations. The 'snowball method' as well as purposeful sampling was also used to make contact with other survivors. This methodology may have resulted in those who are most isolated not being interviewed, and therefore had an influence on the overall trends identified in the data.

In addition to the interviews with survivors, 65 interviews were conducted with personal and professional carers, professionals working with children with disabilities (including teachers and social workers) and members of disabled people's organisations. To find out how the legal system deals with cases of sexual violence against children with disabilities, 87 legal and law enforcement

personnel (including police officers, lawyers, judges and traditional leaders) were interviewed about their knowledge of the law in this area and their personal experience of individual cases involving sexual violence.

The working languages of the project were English (in Mozambique and Zanzibar) and French (in Burundi and Madagascar). However, many of the interviews were conducted in the local language or dialect, and in sign language when appropriate. Hence, the social and legal researchers generally worked in two languages (three in Mozambique) and translated from the local language or dialect into English or French. One important challenge across the four countries was the wording used in the interview for 'sexual violence' and 'sex'. In some situations there were no words to describe the sexual violence experienced by survivors and in some instances there was no direct translation into English or French of the words used to describe the violence.

Despite the Project's aim to include the experience of both boys and girls, very few cases of men who were survivors of sexual violence were included in the study (only 16 out of the total 89 personal testimonies were from men). This was true for both the personal testimonies and the reported case law (as studied by the legal researchers). This does not necessarily mean that relatively few boys are victims of sexual violence; it is generally felt that boys are even less likely than girls to report sexual violence or be willing to speak about it. Reasons for under-reporting by boys were not identified in the data collection. However, but it is likely to be significant that homosexuality is illegal in three of the countries and taboo in all four. Feedback from the Handicap International and Save the Children field programme staff, as well as the external researchers suggests that boys who experience sexual violence often do not report the incident because, according to commonly held cultural and religious beliefs, it is seen as an affront to their masculinity.

## PERCEPTIONS AND DEFINITIONS OF SEXUAL VIOLENCE

Across the four countries involved in the research there is a chronic lack of awareness of both sexual violence and how it affects children with disabilities. For example, almost all people interviewed for this research viewed sexual penetration as the defining characteristic of sexual violence. No other manifestations of sexual violence – such as verbal sexual abuse, sexual assault, and pornography – were mentioned. This finding was consistent across the four countries and among survivors, carers and professionals.

*“If they have sex I think it is abuse, but if it is the grandfather or an uncle saying something [sexual] to a grandchild or nephew I don’t think so. People playing with children this way happens often but they don’t get to the point of having sex with the child.”*

Mozambican man, raped at the age of 11

*“Nothing ever happened to me, or if it did I don’t know if it’s sexual abuse. I was approached by four young people when I was coming back from the market, they fondled me and left.”*

Mozambican man recalling what happened when he was a teenager

Although the consensus of all those interviewed was that sexual violence – however they defined it – against any child is wrong, many suggested that it was not seen as a serious offence, particularly against children with disabilities. Some respondents even suggested that children with disabilities who had experienced sexual violence were often regarded as fortunate, especially if they fell pregnant, to have had any sexual contact at all. Speaking of girls with disabilities who were raped and became pregnant, one respondent from Madagascar said at least “somebody wanted her”; another respondent, also from Madagascar, said that now “there is somebody to take care of her when she gets old”.

# THE SITUATION FOR SURVIVORS

## WHY ARE CHILDREN WITH DISABILITIES PARTICULARLY VULNERABLE?

As noted earlier, there are several reasons why children with disabilities are more vulnerable to sexual violence (see page 00). The social<sup>26</sup> and structural discrimination<sup>27</sup> experienced by children with disabilities is a fundamental factor, which shapes their position in society, and limits their access to services and the quality of those services. This section explores these issues and how they manifest themselves in the lives of the survivors, carers and professionals who were interviewed.

The overwhelming majority of respondents referred to the social isolation of children with disabilities. Many survivors that were interviewed described how they had grown up entirely inside the home, rarely leaving or interacting with the outside community. They did not attend school and they were left at home while their parents went out to work, believing their child would be safer that way.

Other parents tried to hide their child with disabilities because of social stigma and negative cultural attitudes towards disability. In Burundi, for example, the birth of a child with disabilities is seen as divine punishment. According to one Mozambican lawyer, *“In our country the disabled are treated differently by their families, who do not treat them as normal people. Often they live hidden inside houses.”* This level of isolation leaves children with disabilities especially vulnerable to abuse since they, and the violence against them, is often hidden away, leaving the perpetrator to act unchecked. As one Handicap International worker in Madagascar said, *“It wasn’t*

*the place that was unsafe, it was the fact that they were alone.”*

*“Every time I was alone at home, my father used to have sex with me and order me not to tell anyone.”*

Burundian woman who was raped at age 15

Structural discrimination against children with disabilities also prevents them from accessing basic services that are vital to their protection. First and foremost, the lack of access to education experienced by most children with disabilities compounds their vulnerability. Very few of the survivors interviewed had completed primary school or attended secondary school – either because their parents would not send them or because the local education facilities felt unable to accommodate their needs. As a result, these children were isolated from their peers and community, and less likely to have access to information about their rights and about what to do if they are violated. Moreover, they were more likely to remain home alone and, therefore, vulnerable to potential perpetrators.

*“I lived with my parents, an uncle and my two brothers. I was the oldest. When my parents left for work, and because I was not going to school anymore, because they did not enrol me, my uncle would call me to his room and tell me to take my skirt off, and he would tell me he would buy me a dress, and he would touch my vagina.”*

Mozambican woman who was raped at age 15

Children with disabilities are also prevented from accessing a range of other services critical to their protection, including judicial, medical, legal, psychosocial, and social services. The generalised

failure to disaggregate data with regard to children with disabilities makes their specific needs invisible to policy-makers and service-providers. This is compounded by the exclusion of children with disabilities from developing policies and services, with very few opportunities for children with disabilities to participate in decision-making and to shape the services around them.

Furthermore, the particular procedures and knowledge necessary to accommodate the needs of children with disabilities are either poorly understood or absent altogether, eg, staff with specialist training, and provision for disabled-access areas. The cost and difficulties of travelling to the service-provider also contribute to preventing children with disabilities from accessing services that are key to preventing sexual violence from happening and responding to it if it does.

Respondents described a lack of priority given to children with disabilities that pervades many aspects of service provision. For example, many respondents referred to the lack of follow-up to cases of violence against children with disabilities by medical, judicial, psychological and other professionals, who felt either unwilling or unable to take action. As we shall see, this lack of access to services has a profound effect on the impunity of perpetrators.

*“When my mother came back I told her the full story about what her brother-in-law had done to me. She did not believe me... I became pregnant but my child died one week after birth. People from the disabled people’s organisation ... helped me to report the case to the police, but when the child died that was the end of everything.”*

Tanzanian woman, abused at 13 years

Finally, children with disabilities face particular challenges to reporting abuse against them, which in turn makes them particularly vulnerable. For example, a third of the survivors interviewed had experienced sexual violence many times, often from the same perpetrator, who was someone they knew and who was in a position of power over them. The social isolation described earlier means that children with disabilities have little opportunity

to interact with the community and few friends or adults to whom they could confide. The high level of dependency amongst many children with disabilities also limits their abilities to speak out against the perpetrator – who was demonstrated to be often a member of the household or neighbour and on whom they depend for their own survival and wellbeing.

*“When I was born, my father separated from my mother saying that in his family there was no one born with a disability. I lived with my mother until one day she remarried and took me to my stepfather’s house. When he was drunk and my mother was asleep he would come to the house where I slept with the other children and force me to have sex with him so he would continue to support me.”*

Mozambican woman who was raped at age 15

*“I was alone at home when my uncle gave me bread and took me to his bed to rape me. Another family member used to give me money to persuade me to have sex with him.”*

Burundian woman, who was first sexually abused at age five

The structural discrimination described above also applies to child protection reporting mechanisms. For example, reporting pathways for complaints or allegations of abuse often rely upon verbal or written communication as well as on the survivor being able to interact with a teacher, social worker, or other formal or informal designated child protection focal point. As a result, official reporting pathways are often out of the reach of children with disabilities. Even where they exist, survivors have to overcome the ‘double stigma’ surrounding both sexual violence – which carries its own taboos<sup>28</sup> – and disability in order to speak out. This last point often leads to families keeping the abuse to themselves.

*“I was scared it would happen again, I wanted help to talk to the neighbour. My aunt spoke to him and threatened to tell my mother if he did it again, which would not be good for him, so the matter stayed between three people – me, my aunt and him.”*

Mozambican woman, abused at 12 years

## WHAT SUPPORT DO SURVIVORS RECEIVE?

Most survivors described an overwhelming lack of support. This was true of survivors in both rural and urban contexts and across all four countries. Where support had been received it was almost always provided by the family and community rather than by the local authorities or service-providers. In these cases, efforts usually focused on stopping the abuse from happening again. It must be noted that, in many cases, these efforts were successful and that abuse was not repeated once family and / or community action had been taken. For example, respondents described how the community sometimes forced the perpetrator to leave the village or local area and, in a few cases, used physical punishment. It was more common for the family to exclude the perpetrator from the house and prohibit any further contact with the survivor.

However, communities rarely, if ever, attended to the medical, legal or psycho-social needs of the survivor. Relief that the violence had stopped seemed to lead to a general assumption that the situation was resolved and no further action was necessary. In some cases, particularly when the survivor became pregnant, local community members forced the perpetrator to pay financial compensation to the family and / or marry the survivor; in the latter case resulting in further rights violations of the child.

Local authorities were described as either unable or unwilling to respond effectively. Firstly, many lacked information about the response services available to survivors. While many professionals interviewed could name the relevant over-arching government ministry responsible for supporting children with

disabilities, very few could identify specific medical, legal or psychosocial services for survivors of sexual violence. As a consequence, children are rarely directed or referred on to the relevant providers.

More generally, respondents felt that there was a pervasive lack of willingness among the authorities to follow up cases of abuse. This is linked both to a lack of knowledge within the authority, and to the social and structural discrimination against children with disabilities described earlier, which prevents many cases from being taken forward. For example, many respondents highlighted how even cases that had been reported were not referred on to relevant legal, medical, and psychosocial entities.

*“I went to the hospital alone to find out what was wrong with me. I also went to the police with my aunt to file a complaint. I went to the police to report the case but they did not follow it up so my uncle is still free.”*

Mozambican woman raped at 18 years

The lack of effective follow-up to cases of sexual violence against children with disabilities is a key cause of under-reporting. Survivors and their families are deterred from speaking out, and risking the repercussions, if there is little chance that the case will be responded to effectively. As a result, less than half the survivors had reported the abuse to a medical or legal professional and even fewer had sought professional psychosocial support. Of those who had reported the violence to professionals or service-providers, by far the greatest proportion did so to medical services, often because of pregnancy or the need for treatment for sexually transmitted infections or other injuries.



# THE PURSUIT OF JUSTICE

## BACKGROUND

A central aim for this research project was to analyse the legal outcome of cases of abuse that had been officially reported. While under-reporting is widespread, a number of our research participants had spoken out about their experience to the local authorities. The legal outcome of these cases was tracked. Interviews were also conducted with a range of legal and judicial professionals to understand more fully the role that legal and judicial systems play in responding to cases of abuse.

The legal context varies across the four countries. Mozambique, Madagascar and Burundi have civil law legal systems, which are based on long-standing legal principles and codes set out in statutes. Zanzibar has a common law system based on case law, which develops organically with social norms and values. It is important to acknowledge that the trends revealed by the research cut across both types of legal systems and across all four countries.

All four countries also operate a traditional quasi-legal system in parallel to the conventional legal system. However, this rarely, if ever, handles cases of sexual violence against children with disabilities. There was a consensus amongst those interviewed that although traditional leaders have the power to impose fines, obtain compensation and / or child maintenance, oblige an offender to marry the survivor, or force them to do community work or to leave the community, these powers tend to be used for situations like divorce or property disputes; they do not usually extend to sexual violence cases. A few of the traditional leaders interviewed reported that their role in these circumstances was to advise the survivor and their family to go to the conventional legal system.

## STRUCTURAL DISCRIMINATION WITHIN THE JUDICIAL SYSTEM

Respondents, including professionals within the judicial systems themselves, highlighted acute weaknesses in procedures that are meant to support the pursuit of justice against perpetrators of sexual violence against children with disabilities. The result is a culture of chronic impunity in which perpetrators operate in the reasonably secure knowledge that legal prosecution is unlikely. In turn, survivors and their families have little faith in the legal system and are, therefore, less likely to seek justice. The perception of almost all respondents was that very few cases of sexual violence against a child with disabilities had ever been brought before the courts.<sup>29</sup> This section explores the reasons and root causes behind the failures in the legal and judicial systems with a view to improving them.

Underpinning many of the weaknesses in the judicial and legal systems is the widespread lack of knowledge about the rights of children and disabled persons. Almost none of the legal and judicial professionals interviewed knew about the UN Convention on the Rights of Persons with Disabilities or how it applied to their work. While there was greater awareness of the UN Convention on the Rights of the Child, many of the legal personnel who were interviewed said they did not use it. One judge from Madagascar said, “we do not often refer to the UNCRC but rather to national laws... because it is not a priority for the state.” A judge from Mozambique said, “our state speaks little of the Conventions in general.” The challenges generated by the lack of awareness and low priority given to these two conventions are compounded by the fact that cases of sexual violence against children

with disabilities often do not proceed beyond the lower court stage in which judges are often less experienced and may be less informed about the relevant legislation.

Similarly, many survivors, carers and professionals associated with child protection lacked awareness of these conventions as well as of national laws and procedures necessary for making a legal complaint effectively. Many people simply did not know who to go to or, as one Handicap International worker in Burundi put it, “what door to knock on”. When asked what they would do differently following their experience with the judicial system, most survivors said that with hindsight they would have reported the violation sooner and pursued police investigation to ensure that they had the appropriate evidence. A few survivors reported that they would next time go to traditional leaders to implement punishment on a perpetrator due to their complete dissatisfaction within the conventional system.

There is also widespread discrimination against children with disabilities within laws and legal procedures, which prevents them from achieving justice. Judges themselves acknowledge that laws and legislation have not been adapted to account

for the particular circumstances of children with disabilities. First, the burden of proof is a key challenge for children with disabilities. For example, rules of evidence place great emphasis on the visual identification of the perpetrator, which can be difficult for children who are visually impaired. In one case in Madagascar, a survivor with a learning disability had to tell his story 14 times to different people, and still found it difficult to be understood. Because his story changed slightly over time, the perpetrator was released.

Linked to this is the persistent failure of medical and police personnel to provide supporting evidence. Judges interviewed in all four countries stressed that medical evidence was essential to succeed in the courts. However, medical staff had no real understanding of what medical evidence was required by the legal system. A judge from Mozambique said, “Medical staff are.... not dealing with the case seriously.” Often there was a failure to provide supporting evidence because the violence had not been reported immediately, but it also occurred because of poor record-keeping and because medical staff had not filled in the appropriate sexual assault forms. As one lawyer in Zanzibar said, “They need a medical certificate, but

## MADAGASCAR

At the age of 23, when she heard that another girl from her school for children with a hearing impairment had reported a teacher for rape, Mara\* filed a complaint against the same school where she had been sexually abused when she was 15. Surprisingly, the cases were heard together, through a sign language interpreter employed by the same school. Although both named their attackers, one of whom admitted to rape, both cases were dismissed.

\*not her real name

The court found that, “*Contradictory statements have been revealed during the proceedings, all the more so as the victims are handicapped, being deaf and dumb. In spite of the efforts made by the interpreter called to the hearing to translate the gestures of these handicapped girls, misunderstandings have come to light on several occasions during the proceedings. So, as it appears from what has preceded that there is no irrefutable evidence, the Court cannot find the defendants guilty.*”

in many cases there is no professional doctor to issue one.”

Similarly, the police were described by many respondents as not even investigating complaints of sexual violence against children with disabilities, leading to key gaps in evidence. This is compounded by a lack of coordination and follow-up between medical, social, legal and other entities.

Children with disabilities also face substantial practical barriers to pursuing justice. They are often unable to afford the legal and travel costs – a problem exacerbated by the lengthy procedures surrounding the legislative process. There is also a chronic lack of interpreters to assist children with visual and communication impairments. According to one judge in Zanzibar, “[court] Infrastructures are not designed for such children. There is no adequate translator for mute persons and the deaf.” In Mozambique, for example, there are only 20 sign language interpreters in the whole country. Another related challenge is that many people who are deaf develop their own sign language within their family unit.

Finally, contradictory and ambiguous legislation on consent and marriage present another barrier to the survivor to achieve justice within the legal system. This applies to all children, including children with disabilities. For example, in Mozambique the age of legal consent for sexual activity is not made explicit in the law. In many cases, the legal age of consent is disregarded if the perpetrator can prove that sex was consensual. As we have seen, the burden of proof on the survivor makes this extremely challenging. In other cases, courts have approved marriages between perpetrators and children with disabilities on the authorisation of the parents of the survivor on the grounds of ‘serious reasons’ such as a pregnancy. As a judge in Zanzibar said, “There is no seriousness in the system for such cases [sexual violence against minors]. If the child is between 16 and 17 years, she is considered to have enjoyed and accepted it.”

## SOCIAL DISCRIMINATION WITHIN THE JUDICIAL SYSTEM

The cultural discrimination against children with disabilities described earlier has a profound impact on the quality of judicial review of cases of sexual violence against such children. Many respondents, including judicial professionals, described how children with disabilities are not considered a priority in the allocation of already scarce time and resources. As a judge in Madagascar said, “I think people don’t deal with children with disabilities. They say it’s necessary only to save healthy children.”

This research also suggests a tendency for legal leniency to be applied to perpetrators. In several cases that were analysed as part of this study the sentence was downgraded to sexual assault, which incurs a lesser sentence, without any clear reason.

Interviews with legal professionals, studies of case law and the experienced faced by the survivors interviewed also showed that perpetrators rarely if ever received the actual sentence as set out in law. In nearly half the 90 cases we analysed nothing at all happened to the perpetrator. Even out of the very small number of cases where the perpetrator was convicted, very few ended up serving their sentence. For example, in Zanzibar one perpetrator who was sentenced to 19 years in jail served just eight months.

*“I was coming from the bush where I’d been to find coconut leaves to make brooms. A man grasped my hand and told me, ‘Come, I want to give you a nice meal.’ I said ‘No, I want to go home.’ He pulled me into a small bush and laid me down and had unnatural sex with me. I told my mother and she reported it to the police. Also I was sent to hospital. The man was sentenced to 19 years in jail, but after eight months he was out.”*

Tanzanian woman raped at age 15

Finally, as illustrated by the following case study, cultural discrimination against children with disabilities means that they are less likely to be

believed in court, thereby making the burden of proof even greater.

## BURUNDI

Because her family could not afford to support her, at the age of 12 Francine\* – who is paralysed in one leg and has difficulty walking – was sent to work as a house maid and nanny. One day when the children's mother was out, the father raped her and threatened to kill her if she told anyone.

However, she was so badly injured and in such pain that she told some women neighbours who referred her to the Association for the

Protection and Promotion of Women's Rights, where she stayed for several days and received medical care.

Through Lawyers without Borders, the case was reported to the police and the alleged rapist arrested. However, although a medical certificate proved rape, and although Francine had the support of her neighbours, the court held that they could not prove the involvement of the accused and he was acquitted.

\*not her real name

# CONCLUSION AND RECOMMENDATIONS

This report sheds light on an issue that is in urgent need of further research and action. The social and structural discrimination experienced by many children with disabilities often condemns them to a position of extreme vulnerability in society. As a consequence they are particularly at risk of violence, including sexual violence, by perpetrators who are free to operate with almost total impunity.

The threat of sexual violence affects children with disabilities in every country in the world, and not just the four countries analysed here. Tackling it requires action on all our parts – including governments, donors, civil society organisations, communities, and children and young people. Underpinning all efforts is the need to make children with disabilities, and their rights, more visible and to give them the same priority as other children. Research, data collection and the participation of children with disabilities in decision-making all play a key role in this regard.

Below is a set of recommendations developed in consultation with children and communities, with global experts on children's rights and disability issues, and with staff on the ground.

**Tackle the social and structural discrimination that prevent children and young people accessing services.** This includes:

- prohibiting all forms of discrimination that may hinder access to justice and medical, legal, psychological and social services, including, for example, legal provisions that automatically prohibit children with certain disabilities from being recognised as competent witnesses
- ensuring that children and young people with disabilities, their families and communities are aware of child protection, medical, legal, psychological and social services
- ensuring that all professionals in contact with children and young people are trained in disability rights and empowerment, and in barriers that prevent access to services, such as communication
- developing and introducing child sensitive, accessible, safe and confidential reporting and complaints mechanisms for children with disabilities
- ensuring that all children with disabilities and their families have accessible avenues to voice their opinions, concerns and complaints against discriminatory services
- guaranteeing equal access to education and other opportunities that decrease the isolation of children and young people with disabilities
- information campaigns to raise awareness about disability, challenge stereotypes and stigma and promote positive images of disability.

**Invest in high-quality, free services that prevent and respond to sexual violence against children and young people with disabilities and prioritise the best interests of the individual child at all times.**

This includes:

- child protection mechanisms, inspection services and other measures that are age-, gender-, culture- and language-appropriate and provide relevant information in suitable formats for different disability groups

- medical, legal, law enforcement, psychological, social, education and other services to respond to sexual violence against children and young people with disabilities. This includes:
  - ensuring that mainstream response services meet the individual needs of children and young people of all disability groups effectively, including by providing specialised services where appropriate
  - early intervention and appropriate referrals between medical, law enforcement, legal, education, psychological and social services to support the timely response and exchange of essential information for the most appropriate and sensitive care of survivors and for suitable sentencing of perpetrators
  - ensuring that legal, law enforcement and judicial professionals are consistent and sensitive to the needs and rights of children and young people with disabilities during the investigation, prosecution and sentencing of perpetrators.

**Support children and young people with disabilities to play an active part in society and in the services that affect them.** This includes:

- supporting and empowering children and young people with disabilities and their families to take part in all relevant processes, including decision-making
- consulting with children and young people with disabilities, their families, disabled people's organisations and other professionals to ensure service planning and implementation is appropriate and accessible to all disability groups
- ensuring that children and young people with disabilities have access to information on their rights – particularly those who do not have access to mainstream education – so that they can identify, prevent and act upon a violation against them

- involving children with disabilities in monitoring and evaluation of policies and services designed to strengthen protection from violence, including prevention, intervention, investigation, prosecution and rehabilitation processes.

**Make children and young people with disabilities more visible both in society and in development programming.** This includes:

- conducting more research on sexual violence and other issues affecting children and young people with disabilities
- including impairment-specific and disaggregated data and indicators in all programming, national censuses and data collection surveys to enhance targeted interventions
- promoting greater professional and academic knowledge of sexual violence against children and young people with disabilities
- increasing networking and information exchange between child protection and disability services, disability advocacy and human rights organizations.

**Ensure that national laws and policies prevent and respond to sexual violence against children and young people with disabilities in line with international and regional human rights instruments.** This includes:

- ratifying and incorporating into national law relevant instruments – including the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and the African Charter on the Rights and Welfare of the Child – that protect and promote the human rights of children and young people with disabilities
- making explicit and specific mention of the particular rights and needs of children and young people with disabilities in national child protection and sexual violence legislation and policies.

## Introduction

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## 2. International frameworks to protect children with disabilities against sexual violence

<sup>20</sup> UNICEF (2005) *Summary Report: Violence against Children with Disabilities*, Findings and recommendations of a consultation convened by UNICEF New York, 28 July 28, 2005 for the UN Secretary General's Study on Violence against Children Thematic Group on Violence against Children with Disabilities

<sup>21</sup> P Pinheiro (2006) *UN World Report on Violence against Children*, United Nations, New York

<sup>22</sup> Human Rights Council Resolution 7/29. Rights of the child, March 2008

<sup>23</sup> Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary General on Violence against Children A/HRC/16/56, February 2011

<sup>24</sup> UN Committee on the Rights of the Child General Comment No.9, The Rights of Children with Disabilities, CRC/C/GC/9, February 2007

### 3. Rationale and methodology for the research

<sup>25</sup> The UN Convention on the Rights of the Child defines a child as anyone under the age of 18.

### 4. The situation for survivors

<sup>26</sup> Here the term 'social discrimination' refers to entrenched cultural beliefs, attitudes and behaviour that exclude or present obstacles to children with disabilities.

<sup>27</sup> Structural discrimination refers to rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that represent obstacles to groups or individuals in

achieving the same rights and opportunities that are available to the majority of the population. This definition is taken from Office of the High Commission for Human Rights ([http://www2.ohchr.org/english/issues/racism/groups/docs/M\\_Najcevska.doc](http://www2.ohchr.org/english/issues/racism/groups/docs/M_Najcevska.doc))

<sup>28</sup> Much has been written on the social taboos surrounding sexual violence that prevent people from speaking out about it. For example, see *No One to Turn to: The under-reporting of sexual violence against children by peacekeepers and aid workers*, Save the Children, 2009.

### 5. The pursuit of justice

<sup>29</sup> However, because official statistics do not take the survivor's disability into account, verifying this perception is not possible.