

---

**‘ANY PERSON WHO...’ INTERROGATING THE NATURE OF POLICE  
TRAINING AND HOW IT INFLUENCES THE MALAWI POLICE SERVICE’S  
(MPS) RESPONSE TO VICTIMS OF  
SEXUAL VIOLENCE**

---

**BY**

**Dennis CHIPAO**

**Supervisor: Ms Rosalie Katsande**

**A Dissertation submitted in partial fulfilment of the requirements for a Masters Degree  
in Women’s Law, Southern and Eastern African Regional Centre for Women’s Law,  
University of Zimbabwe  
2014**



## Abstract

**This research reveals that as a direct result of a lack of proper training of its police officers in gender sensitivity, the Malawi Police Service (MPS) finds itself guilty of failing to protect and sometimes blatantly violates the numerous human rights of women victims of sexual offences. This qualitative piece of research was conducted in 3 out of the 4 police regions of Malawi in the cities of Lilongwe (where the MPS training centre is based), Blantyre and Zomba, in the districts of Balaka and Dedza. It was conducted using the grounded women's law approach and other supportive women-centred methodologies (including the human rights approach) and drew its research data from a law and literature review as well as structured, semi-structured interviews, case study group discussions and observations of respondents including women victims, commercial sex workers, police officers, government officials, medical personnel, representatives of NGOs, members of faith based organisations and a journalist. The research traces in great detail how the initial gender insensitive treatment of women victims when they report a sexual assault has the very real potential to breach and regularly does breach their human rights ranging from inhibiting their right to access to justice and effective remedies (Article 8 of UDHR; Article 2(3) ICCPR); their right to reparation (paragraph 2 (b, d) of the Victim's Declaration); their right to victim protection [paragraph 3(5), 8(b)]; their right to receive humane treatment with respect to the victim's physical and psychological well-being and privacy and avoiding re-traumatisation (paragraph 6). The study concludes by recommending that starting with trainers, police officers should be sensitised on gender, gender sensitivity, women and victim's rights in order to enhance the police's response to victims of sexual violence. It also recommended that gender sensitive training be introduced at recruit training level as well as all other levels of training. Psycho-social support, improved co-ordination and due diligence in handling victims of sexual violence were also recommended as well as having a clear law specifically covering victim's rights. A multi-sectoral approach to identify and meet the needs of victims of sexual violence should be adopted. The best long term strategy is to eradicate sexual violence completely by maintaining on-going efforts to create a culture that refuses to tolerate sexual violence.**

## Table of contents

Table of contents.....	4
Declaration.....	8
Dedication.....	9
Acknowledgements.....	10
List of abbreviations.....	11
List of declarations and treaties.....	12
List of statutes.....	12
List of cases.....	13
List of appendices.....	13
List of figures.....	13
List of tables.....	13
Executive summary.....	14
CHAPTER 1.....	16
1.0 INTRODUCTION.....	16
1.1 Introduction.....	16
1.2 Problem Statement.....	17
1.3 Objectives.....	18
1.4 Aim of the study.....	19
1.5 Research assumptions.....	19
1.6 Research questions.....	19
1.7 Demarcating the field of study.....	20
1.8 An outline of the chapters.....	20
CHAPTER 2.....	21
2.0 CONCEPTUAL AND THEORETICAL FRAMEWORK.....	21
2.1 Introduction.....	21
2.2 The conceptual framework.....	21
2.2.1 <i>Gender sensitive training</i> .....	21
2.2.1.1 The meaning and importance of gender sensitivity.....	21
2.2.1.2 Legal and policy framework.....	22
2.2.2 <i>The link between gender equality, human rights and gender sensitive training</i> .....	23
2.2.3 <i>Victims and victims' rights</i> .....	24
2.2.3.1 Categories of victimisation.....	24

2.2.3.2	Impact of victimisation .....	25
2.2.3.3	Victims' rights .....	25
2.2.4	<i>Sexual violence</i> .....	25
2.3	Theoretical framework: Feminist theories.....	27
2.4	The legal framework.....	29
2.4.1	<i>Background to the police mandate</i> .....	29
2.4.2	<i>State obligations</i> .....	30
2.4.2.1	The Women's Protocol .....	30
2.4.2.2	The SADC Protocol .....	30
2.4.2.3	Other international human rights instruments.....	30
2.5	Literature on gender sensitive training and point of departure .....	31
2.6	Conclusion.....	31
CHAPTER 3	.....	33
3.0	METHODOLOGY .....	33
3.1	Introduction .....	33
3.2	Qualitative research .....	33
3.3	Research methods .....	33
3.3.1	<i>Women's law approach</i> .....	33
3.3.1.1	Grounded theory .....	34
3.3.1.2	Emerging categories analysed.....	35
3.3.1.3	Emerging categories not fully developed .....	36
3.3.2	<i>Human rights approach</i> .....	36
3.3.3	<i>Actors and structures</i> .....	37
3.3.4	<i>Legal pluralism</i> .....	37
3.4	Data collection methods .....	38
3.4.1	<i>Interviews</i> .....	41
3.4.1.1	Semi-structured interviews .....	41
3.4.1.2	Unstructured interviews .....	41
3.4.2	<i>Focus group discussion</i> .....	41
3.4.3	<i>Observation</i> .....	41
3.4.4	<i>Case study group discussion</i> .....	42
3.4.5	<i>Desk research</i> .....	44

3.5	Limitations of the study.....	44
3.6	Conclusion.....	44
CHAPTER 4 .....		45
4.0	GENDER SENSITIVE, BIASED OR NEUTRAL TRAINING: WHICH WAY? .....	45
4.1	Introduction .....	45
4.2	The nature of police training .....	45
4.3	Striking a fair balance: Victims’ rights.....	49
4.4	Women’s rights.....	50
4.5	Improving the plight of victims of sexual violence – The Victim Support Unit (VSU) .....	52
4.6	Are gender sensitive training and women’s rights a challenge to police physical training?.....	56
4.7	Conclusion.....	58
CHAPTER 5 .....		59
5.0	POLICE TREATMENT OF VICTIMS OF SEXUAL VIOLENCE.....	59
5.1	Introduction .....	59
5.2	Handling of sexual violence offences.....	59
5.2.1	<i>Gender insensitive practices</i> .....	60
5.2.2	<i>Attitudes and stereotypes</i> .....	65
5.2.3	<i>Beyond gender sensitive training: Corruption and abuse of office</i> .....	69
5.3	Protecting or violating rights? .....	71
5.4	Gender sensitive training and gaps .....	72
5.5	State party obligations under international law .....	74
5.5.1	<i>Nature of obligations</i> .....	74
5.6	Conclusion.....	75
CHAPTER 6 .....		76
6.0	THE WAY FORWARD .....	76
6.1	Introduction .....	76
6.2	Conclusions .....	76
6.3	Recommendations .....	78
6.3.1	<i>Short term</i> .....	78
6.3.1.1	Sensitisation	78
6.3.1.2	Enhanced co-ordination .....	78
6.3.1.3	Emphasis on victims’ rights.....	78
6.3.1.4	Psycho-social support .....	79

6.3.1.5 Due diligence	79
6.3.2 <i>Medium to long term</i>	79
6.3.2.1 Gender sensitive training	79
6.3.2.2 Review of police training curriculum	80
6.3.2.3 Establishment of an independent complaints commission	80
6.3.2.4 Amendment to the Police Act	80
6.3.2.5 Laws on victims' rights	80
Bibliography	81
Appendices	87

## **Declaration**

I declare that this research paper, “Any Person Who...” Interrogating the Nature of Police Training and How it Influences Police Response to Victims of Sexual Violence, is my own work and it has not been submitted at any other high learning institution for the award of certificates or any other form of assessment.

Signed:

A handwritten signature in black ink, appearing to read 'Dennis Chipao', written in a cursive style.

Date 11th April, 2014

Dennis Chipao



### ***Dedication***

*This paper is dedicated to all victims of sexual violence. It is hoped that the world is going to give them a listening ear.*

## **Acknowledgements**

First and foremost I give glory, reverence and honour to Almighty God for His grace which enabled me to study the eye opening programme of Master's in Women's Law. It is His grace that brought me this far, may His Name be forever exalted.

Secondly, I extend my gratitude to NORAD for the scholarship.

Special thanks should go to my supervisor, Ms Rosalie K. Katsande, for her support, guidance and tireless efforts throughout this work. This is the product of your diligent supervision.

I also extend my special gratitude to Professor Julie Stewart for taking me through Research Methodology and Methods; your effort was not in vain. I also thank the entire team of SEARCWL staff for all your input and support; Sesedzai Munyaradzi for her meaningful input in Information Technology; Cecilie Mariri for Library skills. To Professor Sylvia Tamale, Dr Sarah Kinyanjui and Justice Dr Amy Tsanga whose lectures ignited my interest in this research.

I also thank the Inspector General of Police, Mr Lot Dzonzi, for his quick response and permission both to study this course and conduct research within the Malawi Police Service; to all police officers who facilitated access to different premises for the study and all the respondents for your valuable information.

Lastly, I thank my wife, Her Honour Violet Chipao, for her moral and academic support and constructive criticism. Not forgetting family members and relatives for taking care of home affairs in our absence.

## **List of abbreviations**

AIDS	Acquired Immune-Deficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CID	Criminal Investigations Department
CP&EC	Criminal Procedure and Evidence Code
CPB	Community Policing Branch
GBV	Gender Based Violence
HIV	Human Immune-Deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
MPS	Malawi Police Service
OECD	Organisation for Economic Co-operation and Development
SADC	Southern African Development Community
SARPCCO	Southern African Region Police Chiefs Co-operation
SEARCWL	Southern and Eastern Regional Centre for Women's Law
SSO	Service Standing Orders
STI	Sexually Transmitted Infection
UDHR	Universal Declaration of Human Rights
UNEG	United Nations Evaluation Group
UNHCR	United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
VSU	Victim Support Unit
WHO	World Health Organisation
Women's Protocol	Protocol to the African Charter on Human and People's Rights On the Rights of Women in Africa

## **List of declarations and treaties**

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), UNGA Res 34/180 (December 18, 1979/ September 3, 1981) 1249 U.N.T.S 13

Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res/40/34 (29 November, 1985)

Declaration on the Elimination of Violence against Women, UNGA Res/48/104 (20 December, 1993)

International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 999 U.N.T.S. 171 (1966/1976)

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; (The Women's Protocol), AHG/Res.240 (XXXI) (July 1, 2003 / November 25, 2005)

Southern African Development Community Protocol on Gender and Development

United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA RES/60/147. (21/03/2006)

Universal Declaration of Human Rights, UNGA Res 217 A (III) (UDHR) 1948

Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice UNGA RES/65/228 (31/03/2011)

## **List of statutes**

Child Care Protection and Justice Act, Act No. 22 of 2010

Children and Young Persons Act, Chapter 26:03 of the Laws of Malawi

Criminal Procedure and Evidence Code, Chapter 8:01 of the Laws of Malawi

Dangerous Drugs Act, Chapter 35:02 of the Laws of Malawi

Gender Equality Act, Act No.3 of 2013

Firearms Act, Chapter 14:08 of the Laws of Malawi

Liquor Act, Chapter 50:07 of the Laws of Malawi

Penal Code, Chapter 7:01 of the Laws of Malawi

Police Act, Chapter 13:01 of the Laws of Malawi

The Constitution of the Republic of Malawi (1994)

## **List of cases**

- Bridget Kaseka and 6 Others v Republic* [1999] Malawi Law Reports 116  
*Republic v Bulaziyo* [1997] 1 Malawi Law Reports 121  
*Republic v Mwasumola* (1966-68) 4, African Law Reports (Malawi Series) 569

## **List of appendices**

- Appendix 1: Two case studies for focus group discussion held at the Police Training Centre situated at the Central Region Police Headquarters .....87  
Appendix 2: The Table of Contents of the Human Rights Training Manual: A Resource And Training Manual For The Malawi Police .....89

## **List of figures**

- Figure 1: Bar chart showing the police respondents represented by the branches at which they work.....39  
Figure 2: Pie chart showing all the respondents by policing region .....40  
Figure 3: Photograph of participants in a case study group discussion .....43  
Figure 4: Bar chart showing who offered counselling services to the victims of sexual violence .....54  
Figure 5: Pie chart showing the cases of victims of sexual violence referred (or not) to the VSU .....55  
Figure 6: Graph showing initial reporting patterns of sexual violence cases to the police .....60  
Figure 7: Graph showing pattern of those who arrest alleged sexual offenders.....62  
Figure 8: Periods of time taken before reporting a sexual attack and what triggered it .....64

## **List of tables**

- Table 1: Showing details of all the respondents .....40

## **Executive summary**

The paper presents the research findings on the influence of police training in the way police officers handle victims of sexual violence. The research was conducted in Malawi between the months of October 2013 to early February 2014. The research interrogated the nature of police training by examining how gendered or engendered the training is. It also examined and analysed the extent to which training influences the police's response to victims of sexual violence and made recommendations on how the training can match current trends and best practices in law enforcement training.

Being on the front line of the state's response to cases of sexual violence, the police are the usually the first of its agents to meet and introduce victims to the justice system. As its gatekeepers, their response, attitudes or behaviour can either encourage victims to report their cases for legal redress or shut them out of the justice system. Cases of sexual violence are serious and the attack has a great impact on the lives of victims and this can be aggravated if they are insensitively handled when reporting their cases to the police leading to secondary victimisation. Sexual violence is a sub-set of gender based violence and it is a gender issue. The police are mandated to offer protection of the rights and safety of all persons in Malawi. Ideally a police officer should be seen as a source of help. Thus it was perceived that the police's mandate may not be carried out effectively if police officers are gender blind, or do not appreciate socio-cultural factors that affect victims of sexual violence or if they operate under the influence of stereotypes, prejudices the society has on such victims. This led to the need to interrogate the effectiveness of police training in imparting knowledge to police officers to be able to handle such victims appropriately.

It is against this background that this research was carried out. The main objectives of the research were to:

- To examine police training and the extent to which it incorporates gender sensitive elements and victim rights.
- Analyse the biases which police officers may have when they treat or encounter victims of sexual violence.

- To find out the impact, if any, of gender neutral police training or curriculum and inadequate coverage of victims' rights on the treatment of victims of sexual violence.

Different research methods and methodologies were used with the Women's Law approach as the leading method and other supporting methods such as the human rights approach and legal pluralism. Combined with the grounded theory, the methods were effective in engaging in qualitative data research. Structured, semi-structured interviews, case study group discussions and observations were some of the data collection methods used as well as literature review.

The research revealed that police training is largely gender neutral as it is founded on neutral and sometimes gender blind laws. It was also found that there is inadequate knowledge on gender issues among police officers and they are perceived as women's issues. Although the police training curriculum contains victim's rights and women rights, the manner of delivery and inadequate knowledge of the issues by trainers showed itself to be a major obstacle in imparting such vital knowledge to police recruits. Consequently police officers graduate with little knowledge of victim's rights, women rights and almost zero knowledge on gender. This results in insensitive practices when handling victims of sexual violence starting from the public front desk of police stations. It was found that police officers are equally affected and reproduce stereotypes in their exercise of discretion and judgment of cases despite the law being clear which is attributed to lack of gender sensitive training. Consequently many rights of victims of sexual violence such as the right to effective remedies are violated due to police (mis)conduct. Although the VSU was found to be victim friendly, their confinement to domestic violence cases was found to be a major set-back.

Accordingly it was recommended that starting with trainers, police officers should be sensitised on gender, gender sensitivity, women and victim's rights in order to enhance police response to victims of sexual violence. The research also recommended that a gender sensitive training be introduced at recruit training level and all other levels of training. Psycho-social support, improved coordination and due diligence in handling victims of sexual violence were also recommended as well as having a clear law on victim's rights. A multi-sectoral approach to the needs of victims of sexual violence was opted including the creation of culture that does not tolerate sexual violence as the best prevention strategy.

## CHAPTER 1

### 1.0 INTRODUCTION

#### 1.1 Introduction

‘Is this not a prostitute? Or else she must have had unprotected sex with her boyfriend and she is afraid of getting pregnant. Even just looking at the way she is dressed, can she complain that she has been raped?’<sup>1</sup>

The above words which were uttered in the presence of a rape victim raised a question as to whether that was an appropriate way of treating a victim. Why would a trained female police officer respond to a victim of sexual violence like that? Are police officers employed to judge people in such a manner? Is the statement gender sensitive? What informs such thinking? Is it the influence of police training?

It was not until after the awareness of the unique position of such victims obtained through the Women’s Law course that a further reflection on how victims of sexual violence are treated at police stations was ignited. This led to examining the role of front desk officers and linking it to possible influence of police training. Does police training have any influence in the way officers behave when they get out of the training institution?

The power of knowledge cannot be underestimated. Indeed knowledge is power and is capable of changing mindset, transforming attitudes and thinking patterns. Experientially, the police training changes the thinking of an ordinary citizen to that of a law enforcement officer, from a civilian to a cop. Many things that are learnt at police training such as how to open a case file; how to administer a caution, how to aim and shoot are implemented at police stations or on the ground. In the same way training can change the way an officer view or treat victims of sexual violence.

Reporting sexual violence to police represents a victim’s entry into the purview of and protection of the law (Mont, Miller and Myhr, 2003: 467). It sets the wheels of criminal justice system in motion which is a step towards accessing justice and protecting the victims’

---

<sup>1</sup> Voice of a female senior police officer uttered in my presence some 5 years ago when I was at the front desk office. She was making reference to a victim who had come to report a rape case.



rights. It provides a number of 'social goods' (Gartner & Macmillan, 1995) for victims and the larger community. It reduces chances of repeat victimization through the potential apprehension, punishment and rehabilitation of the offender (Neville & Pugh, 1997) and deterrence of would be offender (Bachman, 1998). Generally rape and sexual assault cases are extensively underreported because of among others a mixture of fear and disbelief, fear of retaliation, intimidation or family reaction which is fuelled by reaction of the police and others (Wolhuter, Olley & Denham, 2009: 55). Unreported cases are considered to pose a serious threat to public safety in general (Bachman, 1993: 255). Police conduct can shut victims out of the criminal justice system since in addition to the suffering meted out through victimisation, there is a possibility of further suffering caused by the way in which a victim is treated (Wolhuter, Olley & Denham, 2009: 47).

Accordingly as a first point of contact in the criminal justice system, police have a vital role to play. While it takes extensive courage for victims of sexual violence to come into the open, the additional step to report to police is a daunting prospect and to be met with a negative response can be emotionally debilitating and may inhibit the victims' psychological recovery (Jamel, 2010: 707). Thus a gender sensitive training for police officers is key to effective protection to victims of sexual violence. The paper intends to examine the police training and the extent to which it influences police response to victim of sexual violence.

## **1.2 Problem Statement**

For a person to become a police officer, he or she must undergo basic police training.<sup>2</sup> Lack of a gender sensitive training at the basic police recruit training level is a major contributing factor to insensitive police response to victims of sexual violence in Malawi. The police are at the frontline of the criminal justice system; their attitude and response can have dramatic impact on the victims including prevention of future violent acts and protection of victims (UNODC, 2010: 3). However, police officers are part of a larger community. They are humans as well who are equally affected by societal attitudes, values and beliefs. Just like many other public institutions, the police reproduce the stereotypes and prejudices of their society with respect to women and men (UN Women, 2009: 4).

---

<sup>2</sup> This is the very first type of general police education provided to newly recruited police members upon joining the police service. It aims at teaching them basic police competence. The training is important because it changes the way a person behaves, it prepares an individual for different situations or cases likely to be encountered in the future.

Sexual violence affects women disproportionately and in larger numbers than men. It is estimated that during her lifetime, one in five women in the world will become a victim of rape or attempted rape (UNODC, 2010: 8). The effects of sexual violence can be fatal and not solely confined to immediate aftermaths of crimes. Rape and sexual assault generate ‘much greater and more widespread costs to victims and society in general than is the case with other crimes’ (Wolhuter, Olley & Denham, 2009: 54). The consequences include unwanted pregnancies, gynaecological complications, trauma, suicidal behaviour, social ostracism (Krug *et al.*, 2002: 163).

The police on the other hand are Constitutionally mandated to offer protection of the public safety and rights of person in Malawi.<sup>3</sup> This is no mean task to the police considering the delicate nature of both victims and offences of sexual violence. Coupled with the realisation that sexual violence is a gender issue, it becomes apparent that victims of sexual violence may not be effectively handled without gender sensitive training and adequate knowledge of victims rights on the part of police officers. In a society in which the criminal justice system and its agents such as the police, ‘are patriarchal,<sup>4</sup> the state is male, and the law sees and treats women the way men see and treat women’ (Jackson, 1996), it becomes reasonable to view the law and practices with suspicion. This includes the police training which is structured on the perceived neutral laws. Hence the need to examine how gender sensitive the police training is, becomes paramount and how the training itself influences police officer’s response to victims of sexual violence.

### **1.3 Objectives**

The objectives of the study are as follows:

1. To examine police training and the extent to which it incorporates gender sensitive elements and victim rights.
2. To analyse the biases which police officers may have when they encounter victims of sexual violence.

---

<sup>3</sup> Section 153(1) of the Constitution states, ‘The Malawi Police Service shall be an independent organ of the executive which shall be there to provide for the protection of public safety and the rights of persons in Malawi according to the prescriptions of this Constitution and any other law.’

<sup>4</sup> From the word ‘patriarchy’ meaning a male dominated social system in which men have all or most of the power and importance in the society.

3. To find out the impact, if any, of gender neutral police training or curriculum and inadequate coverage of victims rights on treatment of victims of sexual violence.

#### **1.4 Aim of the study**

The study aims at investigating whether a police service that is gender sensitive will contribute to efficiency and effectiveness in preventing, responding to and handling sexual violence and protection of such victims.

#### **1.5 Research assumptions**

In order to achieve the aims and objectives of the study, the following research assumptions were made:

1. The basic police training is gender neutral and this contributes to insensitivity in handling victims of sexual violence.
2. The basic police training does not adequately cover victims' rights which the police are supposed to protect.
3. Police officers fail to appreciate the socio-cultural factors and realities that affect victims of sexual violence such as shame, fear, stigma and trauma.
4. The absence of a gender sensitive training contributes to police officers viewing victims of sexual violence with suspicion and stereotypes which in turn affects the way their cases are handled.
5. The rights of victims of sexual violence are infringed as a result of police failure to effectively handle their complaints which is due to the absence of gender sensitive training.

#### **1.6 Research questions**

Based on the above listed assumptions, the following research questions were made:

1. Is the basic police training gender neutral? Does this contribute to insensitivity in handling of victims of sexual violence?
2. Does the basic police training adequately cover victims' rights which the police are supposed to protect?

3. Do police officers appreciate the socio-cultural factors and realities that affect victims of sexual violence such as shame, fear, stigma and trauma?
4. Does the absence of gender sensitive training contribute to police officers viewing victims of sexual violence with suspicion or stereotype? Does this affect the way cases of victims of sexual violence are handled?
5. Are rights of victims of sexual violence infringed as a result of police failure to handle their complaints which is due to absence of gender sensitive training?

### **1.7 Demarcating the field of study**

The paper focused on victims of sexual violence in Malawi and covered the cities of Lilongwe, Blantyre, Zomba; and districts of Balaka and Dedza. The representation was fair because trainings are coordinated at Police Headquarters in Lilongwe and victims were sampled both purposively and randomly in the demarcated areas. Among the broader areas of gender sensitivity that could have been pursued, the paper focused on police training in terms of delivery of knowledge to police recruits; however aspects of curriculum were also examined from which the training is based so as to appreciate sources of gaps, if any.

### **1.8 An outline of the chapters**

Chapter 2 will focus on the theoretical and conceptual framework of the study. Chapter 3 will discuss the methodologies employed in the study. Chapter 4 will bring the findings on whether the police training is gender sensitive, neutral or biased. It will also discuss aspects of victim's rights and women rights and the role of victim support unit. Chapter 5 will examine the way police officers handle victims of sexual violence, it will bring the lived realities of such victims. Chapter 6 concludes the paper and makes recommendations.

## **CHAPTER 2**

### **2.0 CONCEPTUAL AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

The state is called upon to protect its citizens from acts violating individual's rights. The police is at the front line of the criminal justice system and plays a crucial role in protecting rights of victims of sexual violence as 'they are often called upon when an act of violence is in progress or shortly after it has occurred' (UNODC, 2010:3). At the same time, the police has the potential to violate the rights of the same victims which it is supposed to protect. Thus there is a need for the police to be fully equipped with relevant knowledge and attitudes about the needs of victims, to be sensitive to the peculiar needs for both male and females. This calls for gender sensitivity in treating victims of sexual violence.

Starting with the conceptual framework, this chapter will examine the meaning of gender sensitive training and the need for the police to be gender sensitive when handling victims of sexual violence. It will also discuss the concept of a victim, victims' rights, sexual violence and its forms; feminist theories that inform this study; general functions of the police and state obligations with respect to protecting victims of sexual violence.

#### **2.2 The conceptual framework**

##### **2.2.1 *Gender sensitive training***

###### **2.2.1.1 The meaning and importance of gender sensitivity**

Gender sensitivity is the ability to recognize gender issues, especially women's different perceptions and interests arising from their unique social location and gender roles (UNIFEM, 2007: 4). It calls for an understanding and consideration of the social-cultural factors underlying discrimination based on sex whether against men or women. Gender sensitivity is not anti-male or a 'war between the sexes' (UNIFEM, 2007:5). Both women and men are victims of sexual violence and discrimination 'although there are more women victims than men' (UNIFEM, 2007:4). Thus it will take gender sensitivity to appreciate that a young woman can be raped by her boyfriend or that a prostitute can be raped. It also takes gender sensitivity to appreciate that some cultural practices like forced marriages, wife cleansing or widow inheritance which are practised in some parts of Malawi are acts of

violence against women and they perpetrate male dominance over females. Gender sensitive training would help police officers to appreciate that ‘men and boys are also victims of gender based violence (GBV) and may face even greater barriers than women in reporting it and seeking justice’ (OECD, 2009: 2). The understanding and appreciation of these social dynamics is at the core of gender sensitivity.

A gender sensitive police service is crucial in preventing and responding to specific security needs of women, men, boys and girls. It also ‘contributes towards building police institutions that are non-discriminatory, reflective of the diversity of citizens and accountable to the population at large’ (UN Women, 2009: 2). Police officers require greater awareness of the nature, extent and seriousness of GBV. Thus police officers need to be trained to take such offences seriously and to change their method of dealing with victims and survival that are often too vulnerable to cope with aggressive, invasive or insensitive behaviour from officers at police stations (UN Women, 2009: 4). Gender sensitive training would enable police officers not to tolerate other acts of sexual harassment such as booing of girls by males when they are passing by or child and forced marriages which sometimes are tolerated and perceived as ‘normal’ or part of ‘culture.’ Indeed when the police are not responsive to the different security needs of women and men, the threat of GBV is even greater (UN Women, 2009: 2).

Gender sensitive training will also help the police to guard against stereotypes. Stereotype is a generalized view or preconception of attributes or characteristics possessed by, or the roles that should be performed by a particular group (Cook and Cusack, 2010: 9). A stereotype presumes that all members of a certain social group possess particular attributes or characteristics (Cook and Cusack, 2010: 9). Gender stereotype is an over generalised belief in the characteristic of a person simply based on their gender. An example would a view that ‘when women say no to sexual advance they actually mean yes’ or that a prostitute cannot be raped since it is her business to have sexual encounters with men. Gender sensitive training can help to eliminate these stereotypes in the process improving police responses to victims of sexual violence.

#### **2.2.1.2 Legal and policy framework**

The principles of national policies under section 13(a) of the Constitution of Malawi recognise the need for gender equality which can be achieved through the implementation of

the principles of non-discrimination. In view of this, the state is mandated to pass laws to eliminate customs and practises that discriminate against women leading to sexual abuse, harassment and violence (section 24(2)(a) of the Constitution).

The Draft National Gender Policy (2012 – 2017) among others recognises that education and training are key to achieving gender equality (paragraph 3.1). One of the policy outcomes is to enhance gender mainstreaming across all sectors (Paragraph 2.2). The draft policy also aims at ensuring that knowledge, attitudes and practices on GBV are improved (paragraph 3.7). Although there is no specific mention of the need for the police or law enforcement institutions to be gender sensitive, the police being law enforcers and primary protectors of individual's rights in accordance with section 4 of the Police Act, they need gender sensitivity for them to appreciate and properly handle cases of sexual violence.

### ***2.2.2 The link between gender equality, human rights and gender sensitive training***

Gender equality refers to the equal rights, responsibilities and opportunities of women and men, girls and boys (UNEG, 2011: 13). Equality however does not mean that men and women will become the same, 'but that their rights, responsibilities and opportunities will not depend on whether they were born male or female' (UNEG, 2011: 13). This involves taking into consideration the needs, interests and priorities of men and women. It follows that gender equality is not a 'women's issue', but it concerns and fully engages both women and men (UNEG, 2011: 13). Equality is both a human rights issue and an essential component for the realisation of all human rights. It is a synonym for non-discrimination.

Discrimination against individuals because of belonging to a particular group is a phenomenon whose roots are deeply entrenched (McLean, 1988(a): 1). Discrimination may be direct or indirect, deliberate or unconscious (Campbell, 1988: 17). Thus attention should also be paid to rules, procedures that seems neutral but whose implications may affect groups or individuals (McLean, 1988(a): 2) either in the way they are treated or the way they participate in the life of society. This justifies interrogating police training in order to evaluate its impact on treatment of victims of sexual violence.

Further the appreciation that the mere change of rules does not necessarily translate into changing attitudes which shape individual or collective practices (McLean, 1088(a): 3) means that the need for gender sensitive training becomes paramount. Gender sensitive training also

enables one to recognise different perceptions, experiences and needs people may have because of their gender/identification and helps to refrain from wrongly assuming that those belonging to a specific gender are a homogenous group (Victoria, 2011: 3-4).

### **2.2.3 *Victims and victims' rights***

Paragraph 1 of the United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims Declaration) defines victims 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 a country Member States.’

Under paragraph 2, a victim also includes, ‘the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.’

#### **2.2.3.1 Categories of victimisation**

Victimisation is classified into two parts: primary victimisation which refers to a victim’s experience of the crimes committed against them and secondary victimisation which refers to the victim blaming attitudes, reactions, behaviours and practices by service providers that results in further violation of victims rights and trauma (Wolhuter, Olley & Denham, 2009: 55). Zedner (2002: 436) documented that insensitive questioning by the police, failure to communicate progress about the victims case or information about what is happening to a victims case, delays and unexplained decisions by the prosecution to drop a case are some of the contributing factors to secondary victimisation.

The institutional culture of the criminal justice system agencies exacerbates secondary victimisation by fostering insensitive attitudes to victims. Thus a crime control focus of ‘catching criminals’ and securing convictions, may cause police to overlook victims needs (Wolhuter, Olley & Denham, 2009: 48). Equally prejudices and stereotypes based on gender and sexuality may generate inappropriate responses from players in the criminal justice system (Wolhuter, Olley & Denham, 2009: 48).



### **2.2.3.2 Impact of victimisation**

Effects of victimisation may persist for many years and they include emotional disturbance, sleeping and eating disorders, feeling of insecurity, low self esteem (Zedner, 2002: 429). The effects may be physical, health, social, economic and psychological. The two most common psychological effects associated with victims of sex crimes are post-traumatic stress disorders and major depression (Resick and Nishith, 1997: 31). Rape victims have been known to suffer trauma reaction more than victims of other offences such as robbery (1997: 31). The fact that victims of crimes are usually primary witnesses, dictates that police should adopt a clear set of principles that are based on compassion (SARPCCO, 2003: 116). Victims of sexual violence are generally children and women who by virtue of their status are already vulnerable persons hence sensitivity in handling them is imperative (SARPCCO, 2003: 117).

### **2.2.3.3 Victims' rights**

Victims just like any human being are entitled to all the rights found in the international Bill of Rights such as the right to human dignity, privacy, security of the person, right to liberty and effective remedy among others. However, the Victim's Declaration provides for other rights relevant to the unique position of victims such as the right to be treated with compassion, access to the mechanisms of justice and right to prompt redress as provided by national legislation (Paragraph 4 of Victim's Declaration Annex). Other rights include allowing views and concerns of the victim to be considered at various stages of proceedings, the need to take measures to minimize inconvenience to victims, and ensuring their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation (Paragraph 6 of Victims Declaration).

### **2.2.4 Sexual violence**

Wagner quoting a Syracuse University Brochure defined sexual violence as the unwelcome behaviour of a sexual nature that relates to the gender or sexual identity of an individual and that has the purpose or effect of creating an intimidating or hostile environment whether for study, work or social living (Wagner, 1999: 59). It is a form of gender based violence (UNHCR, 2003: 10) and by its nature it involves the violation of rights.

Sexual violence takes many forms such as verbal harassment which includes insults, sexual or sexist jokes, demands or unwelcome sexual requests; non verbal harassment which comprises body language or gestures involving staring, making sexist signs or body

movements, among others (Wagner, 1999: 59). The most blatant forms of sexual violence are physical which involve unwanted hugging, kissing, touching sexual activities and other forms of body contact (1999: 59). In terms of sexual offences, physical violence culminates in offences such as rape, marital rape, incest, child defilement, sexual harassment, forced sodomy, forced prostitution. Other forms of physical violence are linked to harmful practices such as wife cleansing, widowhood rites and forced child marriages (UNHCR, 2003: 16). By just looking at the forms of sexual violence, it is apparent that victims are largely women and girls regardless of age, class, race or sexual orientation. Sexual violence can and does take place both in public and private spaces including the home.

Sexual violence is an instrument used to keep women out of the public realm and forces them to stay at home where control of men over women is easier and unquestionable (Wagner, 1999: 61). In a patriarchal system,<sup>5</sup> laws, rules and systems will favour men and make it harder for women to fight against such subordination. Sexual aspects are not the reason for harassment or sexual abuse but institutionalized systems of male privilege and superiority, abuse of power and men's use of their physical strength and authority to show power and force women to engage in any form of sexual behaviour (Wegner, 1999: 62). Women are largely targets of sexual violence because of their sex. 'This is not random violence; the risk factor is being female' (Adjetey, Fitnat and Osei Boateng, 1998: 1).

Sexual violence that involves sexual intercourse is exacerbated by some myths and a phallogocentric culture which is structured to meet the needs of the masculine imperative (Smart, 1989: 27). Women are deemed to possess something which they are not ready to share; thus female pleasure is assumed to coincide with the male definition of pleasure. The assumption is that rape is pleasant even for women because it involves penetration (1989: 28). Smart states that from a judge to the convicted rapist there is a common understanding that female sexuality is problematic and that their 'sexual responsiveness is whimsical (fantastic) or capricious (unpredictable). As women do not know their sexual responsiveness and enjoyment, thus it could occur in the unlikely circumstances even where they are in fear of their lives or being gang raped' (Smart, 1989: 31). This was apparent in the case of *Republic v Bulaziyo*<sup>6</sup> in which the accused aged 50 years defiled a girl child aged 4 years. A

---

<sup>5</sup> This is a system of social structures and practices, in which men dominate, oppress and exploit women. It is a social and ideological construct which considers that men are superior to women.

<sup>6</sup> [1997] 1 MLR 121.

sentence of 5 years was reduced to 6 months. Although the accused pleaded guilty in the lower court, on confirmation the High Court stated that:

‘What the accused did was to rub his sex organ against the warm legs of the girl and having applied his mind to the imaginative act of engaging in normal sex, discharged his semen to the outer part of the little girl. This explains why the girl acted nonchalantly. *She sensed neither pain nor the sweetness that ensues upon the actual sexual event*’<sup>7</sup> (my emphasis).

Implicit in this reasoning is that whether one is raped or sex is consensual, as long as there is penetration, the victim somewhat enjoys the act because of the ‘sweetness’ associated with penetration. This attitude may be shared by many; thus it takes gender sensitivity to appreciate the power dynamics that occur in such cases and how to treat such victims fairly and with compassion.

The consequences of sexual violence are myriad and include a high risk of severe health and psycho-social problems, emotional and physical trauma, reproductive consequences such as unwanted pregnancies, unsafe abortions, STI’s sexual disorders (UNHCR, 2003: 23). If the victim still lives with the perpetrator, like in cases of incest, there is continued anxiety and the victim lives in constant fear (Nyongo, 2002: 23). Other victims of sexual violence have extreme depression, post-traumatic stress, shame, self-hate, self-blame. Thus if police officers are not sensitive to the victim/survival’s needs for immediate care, dignity and respect; further harm and trauma may result because of delayed assistance and insensitive behaviour (UNHCR, 2003: 24).

### **2.3 Theoretical framework: Feminist theories**

There is no single feminist’s theory that informs this paper, instead different feminist strands are invoked. The first strand is the feminist legal thought whose aims and objectives are ‘directed towards the understanding of and removal of inequalities and discrimination supported by the law’ (Hilaire, 1998: 13). Police training is informed by the law. It comes from statutes such as the Penal Code, Criminal Procedure and Evidence Code (CP&EC) and Service Standing Orders (SSO) among others. Hilaire explains that law being largely the reflection of society, adopts the social construction of gender and translates it into legal norms (1998: 16). This explains why liberal feminists’ primary focus has been on removing

---

<sup>7</sup> Per Justice Kumange at pages 122-123 of the judgment.

the social and legal obstacles to women's attainment of equal civil and political rights (Barnett, 1998: 16). Considering the legal nature of police training, it may be worthwhile to consider the relevance of liberal theory with its approach on the law.

The classical liberals emphasise the protection of civil liberties and providing individuals with equal opportunities. They also demand that the state should not interfere with acts that happen in the private arena (Tong, 1994: 12). To them gender *per se* is theoretically unproblematic, what is required is the removal of formal legal inequalities which bar women (Hilaire, 1998: 17). The study agrees with this theory only to the extent that the removal of inequalities in the law is important. However this should just be the starting point since paper rules do not always translate into action on the ground.

Another important feminist's strand comes from radical feminism. They believe that male domination is the source of inequality. Indeed as it will be seen in this study, most victims of sexual violence are females while perpetrators are men. Radical feminists believe that the law, practices and society reflects male domination over women. To this extent asking the women questions becomes relevant because although the rules of law and institutional practices appear to be in neutral terms, the reality is that they operate in a manner which places gender centre-stage (Barnett, 1998: 22). Thus there is a need to unmask the seemingly neutral procedures and view them from the victim's perspective. For instance in rape cases when a woman in a miniskirt complains, instead of focusing on gathering evidence and arresting the suspect, it may be the lifestyle, the way the woman is dressed or indeed whether she consented or not that becomes the centre of focus. The theory is vital and may assist both to critically analyse the seemingly neutral police training and critically analyse the actual treatment police officers offer to victims of sexual violence in view of state obligations with respect to the rights of victims of sexual violence.

Further the paper is also informed by another theoretical strand which is taken from relational feminism. According to relational theory, women's lives are regarded as not autonomous but relational as they are heavily dependent upon others both for their survival and survival of children who are part of them (West, 2007: 131). Thus motherhood leaves women vulnerable, as they are not autonomous and women are said to value relationships a lot (West, 2007: 131). As it will be seen in the study, sometimes women fail to report cases of sexual violence just because the perpetrator is their husband who happens to be the breadwinner. Of course

women may be more relational, valuing relationships, but this does not mean that they are happy with the events. Again the relational nature of women cannot be essentialised upon all women, and where it has been evident, economic dependency has been the determining factor not a woman's hedonic life.

The welfare or egalitarian liberals bring hope to the women's predicament. This school of thought recognize that individuals have differences that at times they cannot take their fair share unless some adjustments are made to offsets their liabilities (Tong, 1994: 11). Hence apart from having the laws on equality, they call for government interventions to address huge inequalities. They emphasize on the need for society to recognize the differences between the sexes until when women become androgynous human beings (Tong, 1994: 19). This is a more realistic approach when it comes to treating victims of sexual violence more especially women. There is a need to recognize the unique position of male and females if the State is to be effective in protecting their rights.

## **2.4 The legal framework**

### ***2.4.1 Background to the police mandate***

The Malawi Police Service (MPS) is constitutionally established 'to provide for the protection of public safety and the rights of persons in Malawi' (section 153(1) of the Constitution). Under the Police Act, section 4(1)(a) and (b) police has the duty to investigate and detect crime, apprehend and prosecute offenders. Further under 4(1)(d) of the Police Act, there is a duty to protect fundamental freedoms and rights of individuals and enforcement of all laws.

As noted earlier, the police have a vital role to play in the prevention of sexual violence. One part is the manner in which they respond to incidents and measures taken to protect victims. From the reporting stage victims should not be viewed with suspicion. States are urged to develop investigative techniques that are not degrading to victims or subjecting them to further violence. Intrusion into their lives should be minimised while maintaining standards for the collection of best evidence (UNODC, 2010: 46). Thus the role of police in protecting human rights need not be overemphasized and links well with the state's obligation with regard to protection of its citizens.

## **2.4.2 State obligations**

Various international legal instruments impose different obligations on the State relevant to gender sensitivity and protection of victims including victims of sexual violence.

### **2.4.2.1 The Women's Protocol**

Article 12(e) of the Protocol to the African Charter on Human and People's rights on the Rights of Women in Africa ('The Women's Protocol') mandates States to take necessary measures to integrate gender sensitisation and human rights at all levels of education curricula including teacher training. Although there is no explicit mention of police training, the wording of the provision envisages other forms of training other than teacher's training. Thus arguably police training can be incorporated under the said provision. Further article 8(d) places an obligation on governments to ensure that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights.

### **2.4.2.2 The SADC Protocol**

Closer to home, article 20(6)(7) of the SADC Protocol on Gender and Development ('The SADC Protocol') recognises the need to ensure that cases of GBV are conducted in a gender sensitive environment and that State Parties should establish special counselling services and police units to provide dedicated sensitive services to survivors of GBV.

### **2.4.2.3 Other international human rights instruments**

There are many provisions that allude to the need for gender sensitivity by law enforcement officials in handling victims of sexual violence. Pursuant to article 2 of the Convention on the Elimination of all forms of Violence against Women (CEDAW) there is a duty to eliminate discrimination by inter alia providing gender sensitive training to law enforcement officers, judiciary for the effective implementation of the Convention (General Recommendation No. 19 paragraph 24(b)). There is also a requirement for police officers to receive adequate training to sensitise them to the needs of victims (Para 16 of Victim's Declaration Annexe).

Finally, the Declaration on the Elimination of Violence against Women (DEVAW) requires the States to ensure that re-victimisation of women does not occur because of gender insensitive laws, enforcement practices or other interventions (article 4(f)). Further, measures are to be taken to ensure that law enforcement officers receive adequate training to sensitise

them on the needs of women (Article 4(i)) and that there is due diligence in investigating as well as punishing perpetrators of the acts (Article 4(c) of DEVAW).

## **2.5 Literature on gender sensitive training and point of departure**

In a self assessment study report on GBV and gender mainstreaming carried out in 2013<sup>8</sup> gender insensitivity was found in issues like use of language under both the Police Act and SSO; undesirable restrictions in recruitment, selection and training of police officers; discrimination in the way females are treated during training and immediately after training, unfair practices between males and females as regards to wedding procedures, marriage, postings and accommodation; poor knowledge on GBV, gender issues and low levels of reporting GBV within the police.

Chuunga (2010) also evaluated the Zambian Police College Training. He focused on the entire training, teaching climate and the curriculum. He found among others that human rights were not adequately covered, that the training was based on a male model. He also found that females were stereotyped by instructors as weak and there was no module on gender which led to a failure to address sensitive issues such as domestic violence.

The present study examines how the current Malawi Police Service (MPS) training affects the way police officers respond to cases of sexual violence.

## **2.6 Conclusion**

This chapter discussed concepts that are vital in the study such as the gender sensitive training, sexual violence and the position of victims. Indeed the police play a crucial role in ensuring that victims of sexual violence access justice. Gender sensitive training is therefore crucial to an effective response to such issues. Interrogating the law and procedures to unmask inherent biases is equally crucial. Different feminist theories in that regard may help to offer a critique of the law and offer a better understanding about some decisions women as victims make. They also help us to understand the realities about the position of women in

---

<sup>8</sup> The survey was conducted in Malawi between August to October 2013 with aid from UN Women. The information was made available to me by Mr. Kaira the second in charge of Community Policing Branch within the Malawi Police Service (not yet published).

law and the impact of the law, procedures and structures on women. The next chapter focuses on methodologies used in the study.



## **CHAPTER 3**

### **3.0 METHODOLOGY**

#### **3.1 Introduction**

The chapter discusses methodologies used in the study, why they were chosen and how they influenced the data and validity of the data collected.

#### **3.2 Qualitative research**

As opposed to quantitative research, the study used qualitative research methods as they provide deeper insights into the issues. Qualitative research implies use of small samples and collection of data based among others on detailed accounts of specific life events or in-depth interviews with key informants (Bentzon *et al.*, 1998: 152). However some quantitative data was collected in order to facilitate a critical evaluation of concepts and theory.

#### **3.3 Research methods**

Different research methods were used with the Women's Law Approach being the overarching method because of its focus on women lived realities.

##### ***3.3.1 Women's law approach***

It involves use of three fundamental methodological bases namely the ethical, the empirical and the legal doctrinal. The ethical discusses the moral and political questions with the desire to improve women's position at law and in society (Stang Dahl, 1988:10-11). The empirical aspect involves the starting point which is the female body and its social significance as sex; and the legal doctrinal which involve a systematic criticism of current law based on the principles of women's law (Stang Dahl, 1988: 12). In this regard, the choice of the subject of the research is determined by suspicion that something is wrong with the rules from a woman's perspective. Thus if 'there is suspicion that a rule which is gender neutral in form, in actual fact discriminates against women', empirical research will be necessary to discover whether the suspicion holds water (Eckhoff, 1988: 46). The method explores women's lived realities and from that viewpoint, it questions and investigates the law (Bentzon *et al.*, 1998: 26).

With women as the starting point the method led to the examination of the concept of gender sensitivity and consideration of laws on sexual violence; human rights provisions and the extent to which these are reflected in the police training; the manner in which they are taught at training school and how this impacts on lived realities of victims of sexual violence when they encounter the police. In doing so the grounded theory was used as it was instrumental in data collection and interrogating issues as they rose to the point of saturation.

### **3.3.1.1 Grounded theory**

Combined with the women's law approach the use of grounded theory aimed at engaging empirical knowledge about gender relations and local practices and procedures in a constant dialogue with theoretical generalisations and concept building (Bentzon *et al.*, 1998:25). Despite having assumptions, open mindedness was crucial to avoid having a rigidly pre-conceived or imposed theory. Thus assumptions were tested and data analysed to find out which assumptions were holding or being challenged before making adjustments.

Informed by my professional background, the starting point was interviewing officials from the Human Resource Development who disclosed information links which led to other interviewees such as those in charge of training, training committee members, police trainers and an examination of the police training curriculum. Thus follow ups were made through information links provided by interviewees. Through the use of women's law approach and in line with the assumptions, victims of sexual violence who were predominantly females were purposively interviewed in order to get their experiences on how they are treated by the police.

Through interviews with key informants in the police and follow ups of information links given, interviews with women on the ground and the constant testing of assumptions it emerged that some assumptions were holding subject to some exceptions. For instance on the first two assumptions that the police training is gender neutral and that victim's rights are not adequately covered, some gender sensitive elements were found like the ones taken from criminal procedure, and human rights law, i.e., those related to the search and arrest of women among others. In general the training was found to be gender neutral as it was based purely on the general neutral laws and the (SSO).

Interesting findings were on the third assumption, where theoretically it was challenged by the findings while in practice the assumption was supported by the findings. The practical part of it disclosed failure by police officers to appreciate societal forces that impact upon victims of sexual violence such as shame, stigma. This was evident from the responses from the case study group discussion with police officers from different branches and practical examples from victims of sexual violence who were ill treated by police officers by either shouting at them or dismissing their complaints as not disclosing any cause of action. The use of the dung beetle method in testing assumptions with data from the lived experiences of women with input from men's perspectives and information gathered from official respondents led to emerging issues some of which were fully analysed while others were not.

### **3.3.1.2 Emerging categories analysed**

In pursuance of the dung beetle method as the assumptions were being tested with lived experiences from different respondents, from the first assumption it came out that there are fears that gender sensitive training might compromise the quality of the physical part of police training. It was felt that gender sensitivity meant that police officers should be soft on police recruits and should not give them tough assignments. As will be seen in chapter 4, this is just a misconception of what gender sensitive training entails. It also came out that not all police officers are gender insensitive. There are some few police officers of both senior and junior ranks who have attended gender sensitive training especially those belonging to the Community Policing Branch (CPB) which incorporates the victims support Unit (VSU).

On the second assumption it emerged that victims' rights are also taught in detail at some point for officers in the VSU. This greatly improves the way VSU officers handle victims. However, although senior officers in the VSU at headquarters level and indeed almost every VSU officer indicated that counselling is offered to victims of sexual violence, this was contradicted by the lived realities of victims as nobody among those interviewed indicated to have received counselling from any VSU officer. It also transpired that the operation of the VSU is further crippled by the absence of an enabling law to support its operation. Finally from the last three assumption it transpired that police conduct and infringement of rights of victims of sexual violence may not only be attributed to lack of gender sensitive training but also other factors such as corruption, abuse of power, ignorance of the law. This was deduced from the interviews that were conducted with sex workers who lamented the harassment they suffer in the hands of police such as arresting them for offences alien to the law and asking

sexual favours from them. Using the grounded theory, these emerging issues were properly analysed and followed to the point of saturation.

### **3.3.1.3 Emerging categories not fully developed**

Due to time constraints some issues that emerged during the research were not thoroughly interrogated to the point of saturation. This included the alarming rate at which defilement cases rated high among cases of sexual violence encountered. It was also noted that a high percentage of perpetrators of such cases were known. The problem of poor coordination between front desk officers and the VSU when handling victims of sexual violence also emerged. However the issues were not fully examined.

In general the women's law approach and grounded theory were instrumental in testing the assumption though data collection. It was also helpful because when going into the field one had some ideas in mind other than being totally blank. The strength of the women's law approach includes 'its women centred approach as it records and analyses female life situations and reveals issues and dynamics that are seldom evident in the male dominated world' (Bentzon *et al.*, 1998: 93). The disadvantage however is that 'it is very easy from a one sided approach to assume that the experiences of women are not replicated in the lives of men' (Bentzon *et al.*, 1998: 93).

### **3.3.2 Human rights approach**

The method was very much linked with the women law approach as it examined State Party compliance with human rights obligations. The approach acknowledges the existence of rights and compliance on the part of duty bearers usually the government to respect, protect and guarantee individual rights. It also encourages right holders to meet their obligations. Accordingly, the effectiveness of the role of the police as an organ of the state in protecting fundamental freedoms and rights of individuals under section 4(1)(d) of the Police Act was examined. This duty was examined and the extent to which the rights of victims of sexual violence were protected and realised. The requirement for states to ensure that re-victimisation of women does not occur because of among others enforcement practices under Article 4(f) of DEVAW, were considered. Equally considered was the requirement that all persons are equal and are entitled without any discrimination to the equal protection of the law (Article 26 of ICCPR) and other victim's rights.

Informed by my professional background, police officers responsible for training were asked about the extent to which women's and victim's rights are incorporated in the basic police training and curricular and their knowledge of the said rights. Victims of sexual violence were asked about their lived realities on how they are handled at police stations to ascertain whether rights in the books and curriculum trickle down to beneficiaries. A threat to the right to access to justice and effective remedies among others was noted from the time of reporting to further handling of the case. It was found that some victim are totally discouraged from pursuing their matter further in the criminal justice system because of police conduct especially at the time of reporting. Although that was the case, it is important to know that the state still has a responsibility to ensure that rights of victims of sexual violence are meaningful.

### **3.3.3 Actors and structures**

The method helps to explore the effects of the interplay of norms between and within the different fora (Bentzon *et al.*, 1998: 100). By focusing on women and their relationship with men, other women and society at large including institutions, other norms, expectations, social and economic forces which influence problem solving and dispute resolution are uncovered (Bentzon *et al.*, 1998: 100). The method helped to assess whether actors in the criminal justice system such as the police are only influenced by the law or others forces such as practices, family issues, customs, etc., and how this in turn affects the victims. The method was used to compare how victims of sexual violence are treated in different braches within the police. An effort to compare how these victims are handled at the Malawi Human Rights Commission proved futile because the relevant officer was not met due to his busy schedule right until the end of research period.

With the exception of the courts, the police emerged the key player in handling victims of sexual violence. However in handling the victims of sexual violence, the formal law was not the only norm applied. At times prejudices and personal biases played a bigger role and this led to the adoption of legal pluralism as another research method.

### **3.3.4 Legal pluralism**

Legal Pluralism recognises that there are other regulatory or normative systems other than the formal law that affects and controls people's lives (Bentzon *et al.*, 1998: 41). Indeed there are invariably plural systems of law within one hegemonic legal system (Bentzon *et al.*, 1998:

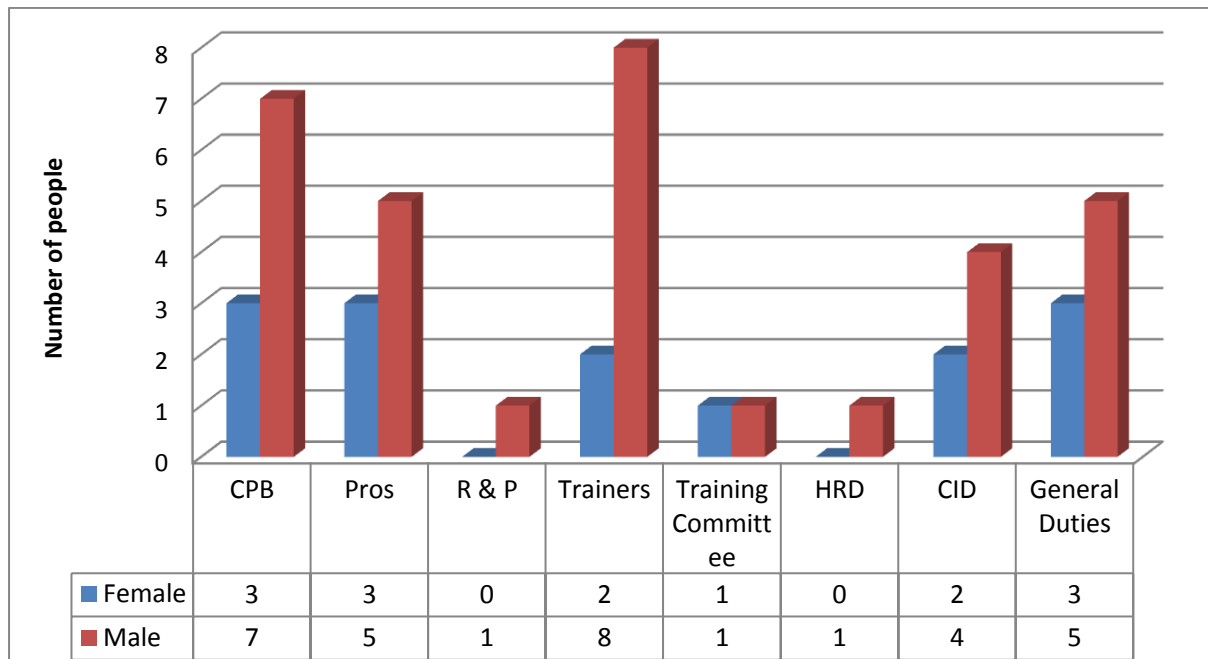
33). Combined with the actors and structures method, the two methods assisted to unveil other regulatory or normative systems that affects or controls both police officer's and victim's lives such as knowledge of the law, notions of human rights, practices, stereotypes and cultural norms. The method was used to gain deeper insights as to why some victims do not report sexual violence or why they report late. On the part of police, the method assisted in understanding why police shun other victims. It was apparent that influences other than the formal law come into play. The method helped to unearth internal biases which police officers have despite having clear formal penal laws.

Legal pluralism and the actors and structures methods were also used in the data collection method of case study group discussion in which a single case study yielded different responses from different police officers thereby showing influences other than the formal law.

### **3.4 Data collection methods**

Different data collection methods were used which combined with the research methods determined the allocation respondents. Key informants were located based on my professional background about the functions of different branches in police and role of other players in handling cases of sexual violence. Other key informants were visited because they were mentioned or recommended by other interviewees. The training department in the police was chosen because it is directly involved in training police recruits. Members of the training committee were targeted because they provide training needs to training department. The VSU was chosen because of its good reputation in handling victims of GBV. Sex representation among official respondents was based on their roles and the relevance of their position and knowledge to the research, while in the case of other interviewees it was due to their availability. The following branches were represented CPB, Prosecutions (Pros), Research and Planning (R&P), Trainers, Human Resource Development (HRD), Criminal Investigations Department (CID) and General Duties. Below is a figure showing the number of respondents from police alone representing their branches.

**Figure 1: Bar chart showing the police respondents represented by the branches at which they work**



The above mentioned branches represented 9 police formations that were visited which included police headquarters, regional headquarters, police stations, posts and units.

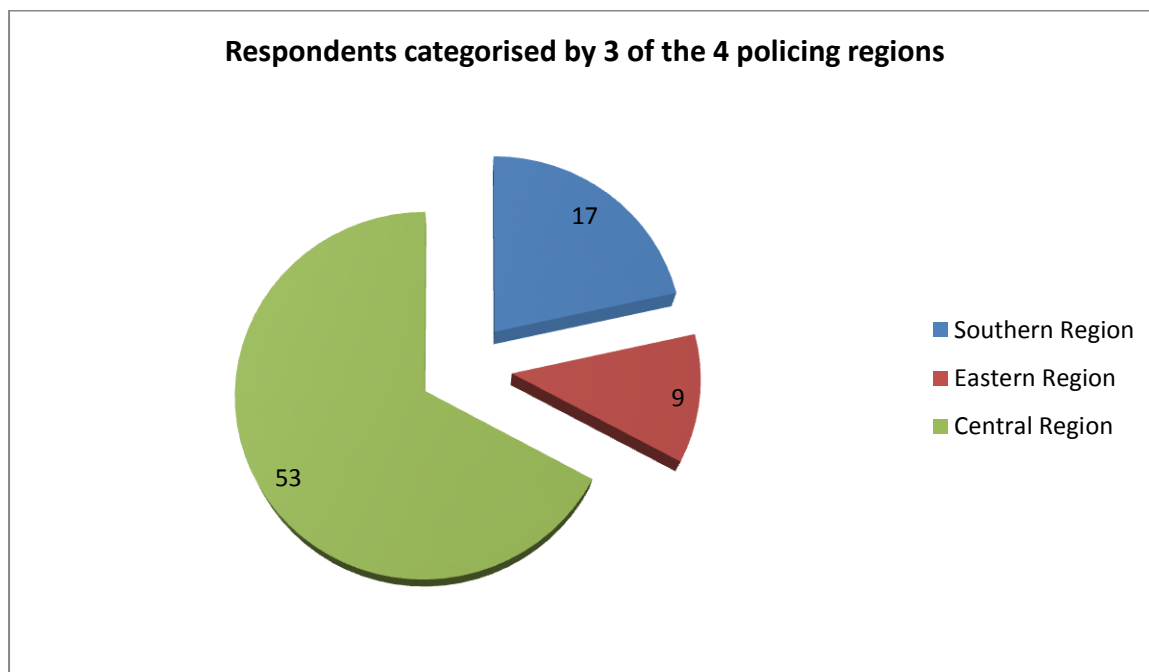
The choice of other respondents was by random and purposive sampling in order to get a fair view of how they are treated by the police. However, some categories of sexual violence offences were either under-represented or not covered at all simply because they could not be found. For instance, no victim of sexual harassment, incest and sodomy involving adult male was found. Other forms of sexual violence were under-represented such as rape, abduction, indecent assault or attempts to commit such acts. However, despite tracing other victims of rape in Lilongwe they literally refused to be interviewed. For ethical purposes, consent was sought before interviewing any victim of sexual violence and all respondents under the age of 18 were interviewed through their guardians. The table below shows the total number of respondents covered in the research and their main categories.

**Table 1: Showing details of all the respondents**

Number	CATEGORY	SEX		TOTAL
		FEMALE	MALE	
1	Victims of sexual violence	16	2	18
2	Police officers	14	32	46
3	Sex workers	4	0	4
4	Faith Based Organisations	2	1	3
5	NGOs	2	0	2
6	Medical Personnel	2	0	2
7	Ministry of Gender	1	1	2
8	(Media) Journalist	1	0	1
9	Law Commission	0	1	1
Total		40	39	79

For the sake of getting fair and representative views and information from the respondents, three out of the four policing regions in Malawi were covered. The figure below shows the regional representation of the respondents with the exception of the northern region.

**Figure 2: Pie chart showing all the respondents by policing region**





### **3.4.1 Interviews**

#### **3.4.1.1 Semi-structured interviews**

Semi-structured interviews were preferred as they created an environment where the respondents could talk freely without necessarily limiting them to the issues under the spotlight. This was important as in the process they would bring out important points that were never anticipated. The challenge with the method was that it was time consuming and not suitable to respondents who had tight schedules as it was difficult to make follow ups on all interesting and emerging issues raised by such respondents.

#### **3.4.1.2 Unstructured interviews**

This is a refined version of the open conversation which has a broad general focus (Bentzon *et al*, 1998:205). The method helped to get a broad general focus of problems faced by respondents. It was used mainly with sex workers as I wanted them to determine what issues were relevant to them as regards sexual violence. Apart from being abused by some unscrupulous clients, their sour relationship with police was consistent in their responses. Although helpful in bringing out pertinent issues which cause concern to victims of sexual violence, it required a lot of patience.

### **3.4.2 Focus group discussion**

The method ensures that all participants have an opportunity to speak and that nobody should hog the floor. It was specifically designed to target many respondents at once and simultaneously ensure their maximum participation. It was used with police trainers and it was vital in getting different views from different police trainers (i.e., class trainers and field trainers). The method was very fruitful as participation was high and other respondents were freer to talk and bring out their issues. The limitation was that some people dominated the discussion. This was avoided by deliberately asking a question targeting those who were a bit quiet.

### **3.4.3 Observation**

Passive observation worked effectively without unnecessarily triggering much suspicion because of my professional background. Of course sometimes some police officers could be suspicious of my presence as others felt I was there for some suspicious motives. Direct observation of case statistics and police training curricula helped in analysing trends in sexual violence cases and the extent to which police training curricula is gender sensitive and

adequately covers victim's rights. Observation was also used to determine which data collection method to employ at a particular place. The advantage of the method is that one gets clear empirical information, although the challenge is that the method can be prone to wrong interpretation. Again with time if the observations are not quickly recorded, it is easy to forget other important details.

#### ***3.4.4 Case study group discussion***

The deployment of grounded theory prompted resort to this method. At the onset of the research, it became tricky to determine attitudes of police officers and deduce whether training can have an impact on the attitudes displayed. This method involved giving some case studies to officers from the four main branches in police who are in frequent contact with victims of sexual offences. This included officers from the general duties branch which included front deck officers. Others were from the CID, prosecutions and the VSU. The officers were put in groups of about 5 persons comprising both male and females. The groups were given cases and they were required to put in writing how they would handle such a complaint if the victim approached them for assistance. I conducted this exercise with a colleague. During their discussion, I noticed that there were heated debates about how to handle case study number 1 and 2 (see Appendix 1). The participants were told to report their findings and state if there were any dissenting opinions.

It transpired that despite the heated debates and disagreements which were noted in the 3 groups except the VSU group, when reporting they reported as if they were all in agreement. The groups reported that they would properly handle the cases of date rape and of rape of a young lady in a miniskirt despite the fact that she had made a late report and did not resist the attack. Immediately after the presentations, a deliberate question was asked as to whether the groups' presentations reflected the views of all the members. This question opened a Pandora's box as all the participants, except those from the VSU, stated that they did not present what they do in practice. Various comments ensued which attracted a heated debate between the 3 groups on one side and the VSU officers on the other side with the exception of one female prosecutor who at the end of the discussion explained that she once attended a gender sensitive training session.

The different approaches to the problem were easily discoverable and properly linked to the absence of a deep knowledge of victim's rights and gender sensitive training which became

apparent in the general discussion that followed the case study. Comparable branches were chosen from Lilongwe Police Station because it is one of the model police stations in Malawi and Central Region Police Headquarters because of its central position and convenience. Besides, the Training Centre which housed the study is within the premises of Central Region Police Headquarters.

The method helped to unleash attitudes, stereotypes and prejudices which police officers have and how they affect victims of sexual violence. It clearly demonstrated that gender sensitive training brings a positive impact to police responses to victim of sexual violence. Below is a group photo of the participants who were invited to the case study group discussion.

**Figure 3: Photograph of participants in a case study group discussion**



### **3.4.5 Desk research**

Desk research is what informed the concepts discussed in this paper especially in chapter 2. It involved extensive readings, of literature, human rights instruments, statutes that related to the theses in order to appreciate what others have covered, the position of the law and then to identify the gaps needing to be explored.

### **3.5 Limitations of the study**

Despite the research methods used being helpful in interrogating the nature of police training and how it influences the response of police officers to victims of sexual violence, the study had its own limitations. In the first place the research failed to cover the northern region of Malawi due to resource constrains, mainly time. There were problems in getting interviews from victims of rape as most of them refused. Getting females to speak was another challenge. That was resolved however by using a colleague. Bureaucracy problems led to failure to get any data from Malawi Human Rights Commission. There was also limited and sometimes unavailable data in all other categories of sexual violence except defilement.

Apart from the above shortfalls, data collected was valid and was properly triangulated with different sources. Biases and prejudices were minimised which meant that the findings remain valid.

### **3.6 Conclusion**

The use of women's law as a methodological tool combined with other methods discussed in this chapter were very instrumental in examining the lived experiences of victims of sexual violence and interrogating the nature of police training. Although there were some challenges, data collected remained valid and it led to important findings which will be discussed in chapters 4 and 5.

## **CHAPTER 4**

### **4.0 GENDER SENSITIVE, BIASED OR NEUTRAL TRAINING: WHICH WAY?**

#### **4.1 Introduction**

The chapter presents research findings mainly based on the first two assumptions. It discusses and analyses the concepts of gender sensitive training, sexual violence and victim's rights in accordance with the findings made. It also presents and analyses some of the issues that emerged during the research that were based on the first two assumptions such as the efforts made in improving the position of victims in the MPS.

#### **4.2 The nature of police training**

The first two assumptions were about the neutrality of police training and the inadequate coverage of victim's rights. Underlying the first assumption was the proposition that a gender neutral curriculum is not the best because it does not cover unique issues that affect women, a girl child and other marginalised people in the society. The premise is that treating unequal people in equal terms may result in further inequalities. The police being front-line officers in the protection of public safety and individual rights play a crucial role in treating victims of sexual violence. Thus there is a need for them to be sensitive to the specific needs of such victims.

Sexual violence refers to any act, attempt or threat of a sexual nature that results, or is likely to result, in physical, psychological and emotional harm (UNHCR, 2003: 10). As noted in chapter 2, it includes rape (whether by strangers, in marriage or dating relationships), sexual harassment, customary forms of sexual violence such as forced marriages, wife inheritance among others (WHO, 2012: 1). Sexually violent offences affect both men and women and they are heavily underreported by both male and female victims (Jamel, 2010: 691) due to among others inadequate support systems, shame, fear or risk of being blamed or retaliation, fear of not being believed or being mistreated or even socially ostracised (WHO, 2012: 1). Since most forms of sexual violence are offences, the police usually become the first point of contact within the criminal justice system. Thus there is a need for police officers to be

gender sensitive which can be obtained through training in order for them to properly handle such cases.

Whilst a gender blind training will lack any recognition of differences between genders, the essence of gender sensitivity is the ability to recognise differences between genders and the appreciation of the need to attend to these differences (Victoria, 2011:3). Training which is gender sensitive should be able to impart knowledge, skills and attitudes to the trainees so as to enable them to respond to and consider men, women, boy or girl's specific needs bearing in mind their unique and special circumstances.

Research and literature on gender sensitivity has predominantly focused on increasing sensitivity towards women (Moller-Leimukuhler, 2002). While this focus on women is understandably connected to an acknowledgement of a previous lack of recognition and consideration of the needs of women, such an approach to gender sensitivity is limited in scope (Victoria, 2011: 3). A gender perspective calls attention to the differences on the roles of men, women, boys and girls as well as their needs, experiences and priorities (OECD, 2009: 2). Gender sensitive training should be distinguished and is not the same as women rights or human rights although there is a close link between gender and human rights as noted in chapter 2.

It was found during the research that the police training syllabus covers quite a wide range of important class subjects such as Criminal Law (from the Penal Code), Criminal Procedure and Evidence (from CP&EC); Police Procedure (from SSO), Traffic Law (from Road Traffic Act), Statutory Law (discusses offences from different statutes such as Dangerous Drugs Act, Liquor Act, Firearms Act); First Aid, and Human Rights Law (see Appendix 2, being The Table of Contents of the Human Rights Training Manual: A Resource And Training Manual For The Malawi Police). It is apparent from the above subjects that there is no module that specifically discusses issues of gender such as 'sex and gender analysis' and its implications for equality between men and women.

It was found that the police training is neutral in its nature. An official respondent in the training department at Police Headquarters was clear about this and he said:

‘The Police curriculum is not accommodative to gender issues as it stands now. Law enforcement focus has been on if you contravene this law, you get arrested. The training and the criminal law curriculum at police is based on “any person who” and does not pay specific attention to anybody unless where the criminal law itself says otherwise.’

The neutrality of the curriculum was attributed to sources of the training curriculum which are gender neutral if not biased at times such as the SSO, the Penal Code and other statutes. This view was also confirmed by several respondents including officers in the VSU and others in the Training Committee.

However, getting to the root of it altogether, police trainers were able to spot some gender sensitive issues in their training such as the requirement that women should be searched by women, men by fellow men, and that female offenders should be put in different cells from male offenders. Although this was the case, a partial explanation of what gender sensitive training entails led to the admission that the police training covers gender issues in a very narrow manner. One of the trainers said:

‘We are handling gender partially, we need it [gender sensitive training] and we don’t have it. We don’t have training materials, even ourselves we are not trained in gender issues. But based on your explanation then gender sensitive training is very important.’

Thus the trainers themselves were able to acknowledge the absence of gender sensitive training in police training and were eager to have it incorporated at the basic recruit police training.

It was also found during the research that the two terms ‘gender’ and ‘sex’ are mostly conflated such that the difference between them is obscured and gender issues are treated as women issues and considered irrelevant to police work. It is important to know that while sex refers to biological differences between men and women, gender refers to social roles of women and men at a specific time and that these roles are always changing (Nyong'o, 2002: 8). The former is static and unchangeable while the latter changes from time to time and varies from society to society. When biological factors are used to explain the different social roles and behaviours of the sexes as justification for treating women and men differently this often leads to discrimination. A mere acknowledgement of biological differences would not necessarily lead to discrimination. What is discriminatory is when these differences are used

to provide justifications for differentiation which overtly or subtly undervalues one individual on account of the group to which he or she belongs (McLean, 1988(a): 4). The problem has been to allow prejudicial and often degrading assumptions about the nature of females and males, and role stereotyping based on simplistic presumptions about gender and its impact on behaviour (McLean, 1988(b): 200).

The relevance of gender to criminal law becomes clear in the way females either as offenders or victims are treated in the criminal justice system. It was found that most victims of sexual violence are females. It is generally these female victims of sexual crimes that are vulnerable to the application of these unreasonable presumptions. Myths about female behaviour and sexuality inform the treatment of the victims. Gender sensitive training will thus help to equip police officers with the right knowledge, attitudes to respond to victims needs and guard against wrong assumptions made about such victims as well as differentiate what can be attributed to one's sex or gender and avoid haste generalisations which are most often stereotypical.

Although it was found that the training also covers issues of GBV, sexual violence is not specifically handled using the gender lens. If anything, it is sexual offences which are taught in the criminal law class and the training to this extent only focuses on the elements of an offence under the usual model of 'any person who commit such an offence is liable to imprisonment for a specific term.' Teaching the elements of sexual offences *per se* would not amount to gender sensitive training. The crux of gender sensitive training is the ability and willingness to impart knowledge on police officers to perceive existing gender issues, gaps and inequalities and to be sensitive to the different situations and needs of women and men throughout the decision making process (UNIFEM, 2007: 31). It entails 'searching for, considering and accommodating aspects of relations between men and women in their social and cultural context' (UNIFEM, 2007: 31). This entails understanding societal perceptions of sex and gender, the roles and stereotypes attached to it and unearthing the obstacles and challenges that victims of sexual violence face right from the community to the point of reporting.

A closer look at the syllabus revealed that GBV is not a course at all but a mere topic on 'Domestic Violence' which according to the training manual covers almost one A4 page. The



context of teaching domestic violence again revealed serious flaws as one member of the training committee said:

‘Gender based violence is found albeit in brief at the recruit level, but it is dependent on the particular officer facilitating the course... it all depends on the trainer’s attitude.’

In view of the above voice, it is therefore apparent that teaching domestic violence is at the mercy of a trainers’ attitude. This may be due to lack of thorough knowledge on the topic. With limited knowledge one would not expect trainers to effectively train a police recruit on issues that they are not conversant with. Thus for a meaningful change, gender sensitive training should start with the trainers themselves.

### **4.3 Striking a fair balance: Victims’ rights**

One of the interesting and unique aspects of police duty is its ability to handle conflicting and sometimes opposing interests of victims and suspects of crimes in the criminal justice system. This call for special skill and all in all police officers are expected to protect the rights of them. Police training must therefore strike a fair balance by incorporating the interests of them all. With an exception of police officers who indicated to have attended a gender sensitive training either internationally or within Malawi, none of the police respondents interviewed in this research indicated to have learnt anything about victim’s rights during their basic training. Surprisingly, most of them indicated to have learnt about rights of an accused person and even demonstrated knowledge about them.

However when the trainers were asked about victims’ rights, they indicated that they are taught about them. On specific rights that they teach they indicated that they tackle the right to compensation and reparation. On the latter however they said:

‘Reparation as one of the victims right is not covered and if mentioned then it is not emphasized. In fact others say that if we want reparation, then it is up to the concerned person to pursue a civil case in a court of law.’

The general understanding was that victims’ rights can be pursued in the civil court and therefore not the business of police. As police officers they felt to be more concerned with the criminal law and saw no relevance in expounding victim’s rights. However, when one

examines the scope of victim's rights as outlined in chapter 2, it is clear that they are broad. Victimization itself starts at the moment a crime is committed against a particular person. It 'is part and parcel of the experience of being dehumanised, in the deepest sense of the word' (Weisstub, 1986: 195). It is like a double-edged sword which, on the one side, is the act of violating the moral autonomy of another, while on the other side, curiously, it makes out of the person, an ineffectual submissive object of benevolence (Weisstub, 1986: 196). Thus respect for victims rights on the part of police officers should start at the very moment they come into contact with a victim which is usually during the reporting time for this is the stage where instead of protecting their rights, victims' may be exposed to secondary victimisation.

Despite of the existence of victim's rights in the Human Rights Training Manual, it was clear during the research that there is little or no emphasis on victim's rights. The rights remained like a white elephant in the books with very little knowledge trickling down to police officers on the ground. Although this is the case, the criminal justice system depends heavily upon victims for the reporting and detection of offences as well as provision of evidence in court, yet it does not appear to value the victim (Shapland (a), 1986: 215). It is therefore a mockery to the victims for the police training to sideline them and ignore their rights while rights of an accused person are taught in detail. It is important to strike a fair balance and remove the victims from the periphery considering the all important role victims play in the criminal justice system.

#### **4.4 Women's rights**

In the very origins of western legal culture, in Athenian Greece, women were regarded as sub-male or inferior to men, second class and even non-citizens (Weisstub, 1986: 197). Women have been deemed to be deficient in rationality, sometimes as passive and without sexual feelings (Weisstub, 1986: 200). It was assumed in the Victorian world that most women could not be in trouble with the criminal law as they were not in the habit of luring men into sexual intrigue with them (Weisstub, 1986: 201). To this extent, female sexuality was victimised; however when women found themselves as victims of sexual abuse, the criminal justice system found it convenient to shift the burden against women. They were characterised as 'natural hysterics or masochists who had in their un-female, that is, non-passive, overly sexualised femaleness that lured men into criminal wrongs' (Weisstub, 1986:

201). This is a stereotype arising out of a history of the subordinate status of women. These stereotypes about women affect the way they are treated in the criminal justice system.

With the exception of police officers who attended a gender sensitive training elsewhere, just like victim's rights, most respondents expressed lack of knowledge about women rights. When an effort to triangulate this finding was made from the trainers, different responses were forthcoming. One trainer said that:

‘Our curriculum covers women rights issues properly and this is taught when dealing with vulnerable groups. We teach about women as victims of gender based violence, a right based approach towards women, that is, women should not be handcuffed whenever they have been arrested. We also teach about culture as discriminatory.’

When asked to shed more light on culture as discriminatory one trainer said:

‘We balance these rights because culture is also a human rights issue and people are entitled to their culture.’

This attracted a question as to whether some elements of culture may not be obstacles to women rights, the response was that:

‘Culture is very important and we cannot do away with it, so women rights must be discussed within the cultural framework.’

There was no further elaboration from the above response despite my request inviting more contributions. The story shifted; accordingly they were asked whether International Human Rights Instruments like CEDAW or Women's Protocol are taught. It was said:

‘Yes CEDAW is mentioned also Women's Protocol is mentioned and all these fall under the subject Human Rights...we just mention some provisions in CEDAW or Women's Protocol, we don't elaborate.’

It was apparent from the responses that women's rights are just mentioned not necessarily taught and that when they are taught this is done within the cultural framework. This may pose a challenge because it may promote some discriminatory cultural practices such as widow inheritance, wife cleansing and may entrench some common views that women are primary cares of children hence they are naturally suited for domestic work. Some trainers do

not even bother mentioning women's rights. It was found that Human Rights as a subject is covered in about three weeks. The topic for women rights is mixed together with several other topics such as the rights of the child, refugees and aliens; victims of crime and all these are given 2 periods (see Appendix 2).

It was found however that trainers do not deliberately sideline women rights but that they lack sufficient knowledge about them just like victim's rights. It transpired that whenever there are opportunities for training in such issues, priority is given to officers who are in the VSU and trainers are omitted. It would therefore be important to expose trainers to knowledge on women rights as well as victim's rights so that they are able to impart that knowledge to police officers who get posted throughout Malawi and often become front desk officers in their respective stations.

An examination of the contents of the topic for child rights showed that it is outdated in many respects. The training manual is based on the old Children and Young Person's Act which was repealed in 2010 instead of the recent Child Care, Protection and Justice Act of 2010.<sup>9</sup> There is thus a need to revise the training manual and bring it up to date with the current laws. Similarly there is also need to incorporate the Women's Protocol<sup>10</sup> in the training manual to cover for women rights from the African context since the curriculum did not cover this. Thus police training needs not only to be made gender sensitive, but it must also reflect the current laws and international instruments that are relevant to our context.

#### **4.5 Improving the plight of victims of sexual violence – The Victim Support Unit (VSU)**

Not all was bad in terms of the treatment of victims of sexual violence. There were some positive developments that were found during the research. In the first place the existence of some police officers in the service who have attended gender sensitive training especially in CPB under the VSU was a gain. It emerged during the research that victims' rights are taught

---

<sup>9</sup> The new Act is more detailed and provides protection for children from undesirable practices such as child trafficking, child abduction; protection from social or customary practices harmful to the health or general development of a child; protection from forced marriages or betrothals under sections 78 to 81 of the Act. It also provides for diversion for children in conflict with the law; victim offender mediation and other restorative justice processes under sections 112 and 118 of the Act.

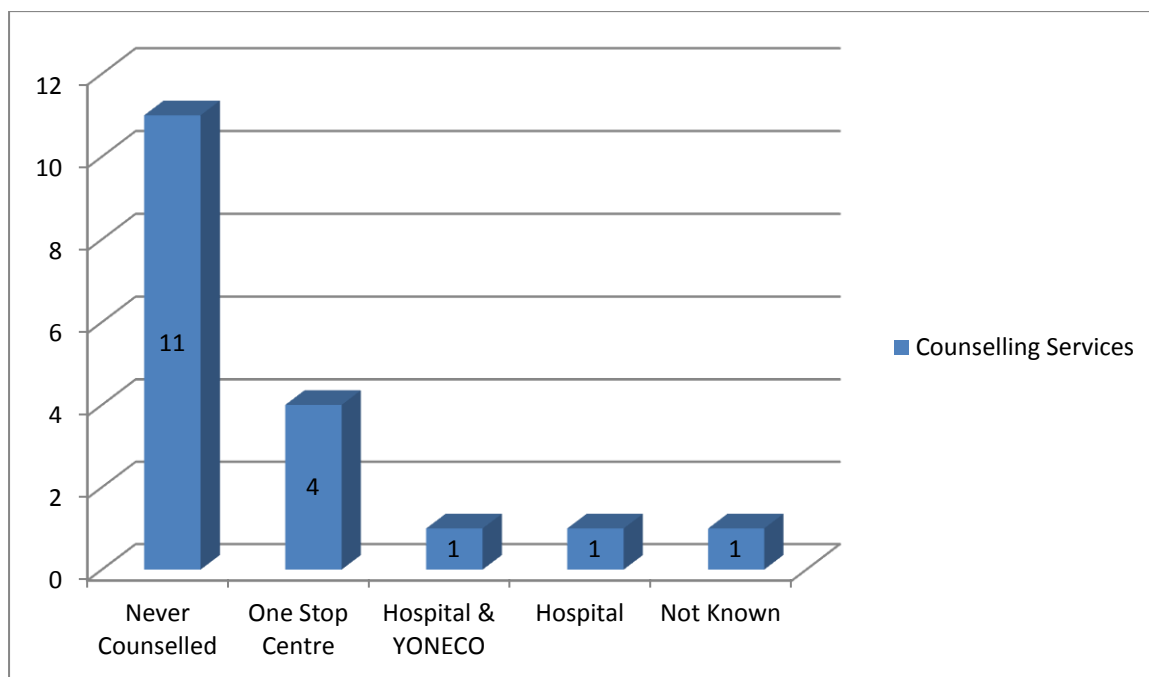
<sup>10</sup> The training may include provisions related to marriage where 18 is the minimum age for marriage as per article 6; the need to criminalise forced sex whether in private or public under article 4(2) and this can cover marital rape; the protection of women in armed conflict (Article 11) and the health and reproductive rights in article 14 of the Women's Protocol, among others.

in detail at another stage for officers who are attached to the VSU. The VSU training although it is not gender sensitive per say, its emphasis on victim's rights, customer care principles among others make a difference in treating victims. The presence of VSU officers in all the police stations in Malawi was poised to boost the handling of victims of sexual violence for it was envisaged that such victims would be properly handled by sensitive police officers.

However the challenge found was that VSU officers take a long time before being trained. For instance with an exception of bosses at the police headquarters, VSU officers interviewed 4 out of 7 officers indicated to have been in the VSU for close to 5 years without training. This means that their service in the VSU was more or less similar to the other untrained police officers.

On the part of services offered by the VSU, the officers interviewed indicated that they offer counselling services to victims of sexual violence. Interviews with victims of sexual violence however contradicted this assertion. All the victims interviewed indicated that they were never counselled by any VSU officer let alone any police officer. Where counselling was mentioned it was done at One Stop Centre in Blantyre or by some non-governmental organisations or hospital officials. Below is a figure showing who offered counselling services to victims of sexual violence interviewed.

**Figure 4: Bar chart showing who offered counselling services to the victims of sexual violence**



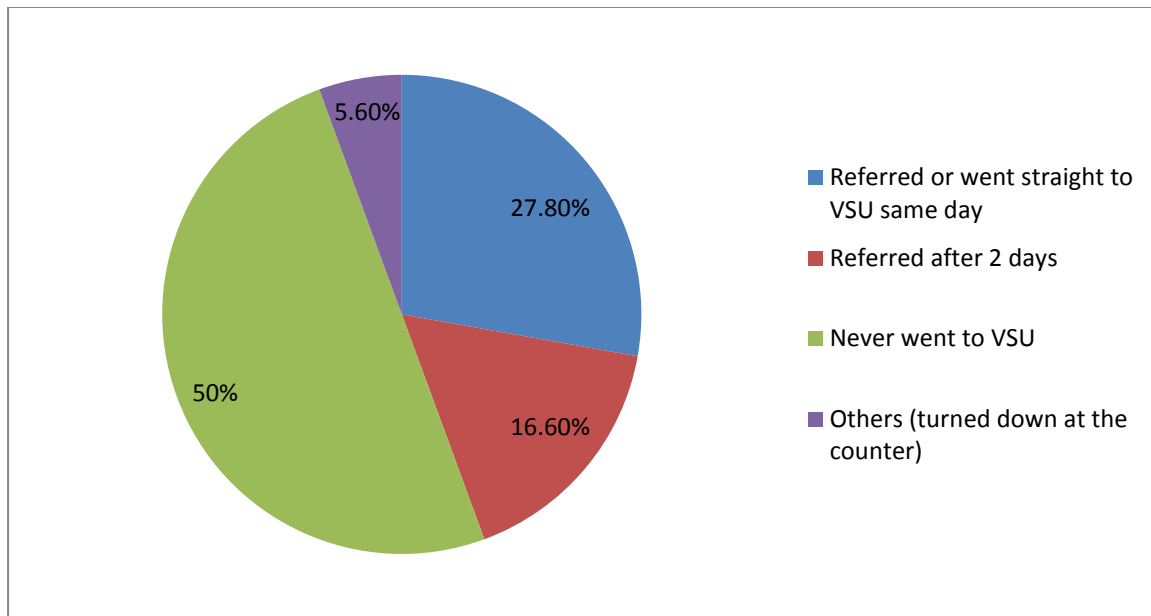
Further although it was said by some official respondents that VSU services exists in all police stations everyday and every hour, a good number of victims contradicted this assertion. Of the many interviewed, one victim who had reported to Kawale Police Post in Lilongwe on 09/09/2013 after being to referred to hospital at the front desk office had this to say:

‘On 10/09/2013 (Tuesday) I went back to Kawale Police and arrived there at around 16:00hrs. I found a woman at the counter (front desk). I presented the medical report to the police officer who told me to come the following day because there was no officer at the victim support unit.’

This was not an isolated event and it was not unique to Kawale Police. The point is there are very few VSU officers yet they are the ones who are better trained to handle the needs of victims of sexual violence. Having a gender sensitive training at the basic police training can address these challenges because every police officer will graduate with a gender sensitive mind.

Apparently it was found that of about 50% of victims interviewed, their cases proceeded to trial without the victims making any contact with VSU officers; some were referred to the VSU after 2 days, while others were turned down at the counter (front office). Below is a figurative representation of cases referred or that went through the VSU.

**Figure 5: Pie chart showing the cases of victims of sexual violence referred (or not) to the VSU**



The above pie chart shows that a total of 44.4% of cases were referred to the VSU out of which 27.8% were very effective since they were referred to the VSU the same day the matter was reported to police or the victims themselves went straight to the VSU.

The above findings do not mean that VSU officers just sit idle in their offices. The officers play a crucial role in assisting victims of domestic violence who are properly counselled. However, it is important that such counselling services should also be made available to victims of sexual violence. In the research done by Shapland (1986: 229) it was found that more than a third of the victims said they would have liked help from a victim support scheme that covered practical and informational matters as well as emotional support. All that the victim's desire is greater help and support from the police. This quest for psycho-social support was confirmed during the research as the voice of a father whose 14 year daughter was gang raped by 4 men in Dedza said:

‘The girl has been negatively affected by the rape. She was very bright and intelligent in class. The incident happened when she was about to write exams. She failed that exam and since then she is just failing in class and she keeps on saying that she better drop school... At school she is laughed at as somebody who was raped. My plea to the Government is that you should consider counselling such victims because I can see that things are not well for my child psycho-socially. She is totally disturbed. We need counselling may be from the VSU this is our greater need.’

The demand for counselling for victims of sexual violence is thus loud and clear. The VSU however is also faced with a challenge of the lack of an enabling law for its operation. While the CPB which hosts the VSU is properly catered for in the Police Act, the VSU was left out. The unit therefore operates on the strength of some ambiguous pieces of legislation. This may pose challenges as it may be difficult to hold the VSU accountable for their inaction.

#### **4.6 Are gender sensitive training and women’s rights a challenge to police physical training?**

Apart from the general perception that gender sensitive training is important and it should form part of the basic police training, some trainers expressed reservation about it. It was stated that gender sensitive training might dilute the paramilitary nature of police training especially the field part of it. Others even felt that the whole issue of incorporating women rights were softening the police training. This is a challenge because these are the aspects of police training that can help the police to be sensitive when handling victims of sexual violence. However most of them acknowledged the importance of gender sensitive training and were of the view that it must start with the way trainers treat police recruits. One of the class trainers, an Inspector of Police, said:

‘When it comes to gender sensitive training, to be honest, violence brings violence, so we may need to start there.’

Another class trainer a Sub-Inspector said:

‘The way you are trained here has an impact...We must start ourselves to be gender sensitive in the way we handle the police recruits.’

Another officer, a superintendent, also said:



‘The treatment we give students here can influence their behaviour right there at the station.’

The above views supported gender sensitivity in the training and suggested that the sensitivity should start with the way trainers handle police recruits at the training because if police recruits are insensitively treated, they may also do the same to victims.

The above voices did not go unopposed. This came in light of the recognition of certain treatment given to police recruits when they are undergoing police training. The treatment was perceived to be harsh by some trainers. Some trainers especially those that are responsible for field training or parade drill felt that too much of human rights or gender sensitivity would bring lame excuses from some lazy police recruits. One ground trainer a Sub-Inspector was very clear:

‘We train people for real situations not ideal; so if Human Rights is 90% then we are hiding real situations for them. These police officers can meet harder things so we need to prepare them for that.’

Striking a fair balance was the voice from a ground trainer a Sub-Inspector who said:

‘It is sometimes a matter of misunderstanding; because being a soldier you have to learn perseverance but you are not supposed to end up abusing others. The perseverance we train here is supposed to teach you to persevere even when you meet situations that are hard for you and you could have overreacted.’

Perhaps what matters most is an understanding of what police training is all about. The whole essence of police training is to transform civilians into police officers who can effectively discharge their duties which include protection of the rights of individuals, their safety, detection of crime, apprehending offenders and bringing them to justice. Police officers are required to combat criminals and pursue perpetrators. Simultaneously, there is an expectation that responses will centre on victims (OECD, 2009: 11). It is the latter part that requires imparting knowledge, skills and attitudes in police officers to be gender sensitive. Training can effectively achieve its objectives without compromising on quality. The essence of gender sensitive training has already been elaborated upon in the chapter. It does not mean that police officers should not be taught how to climb obstacles or that they should be exempted from other minor tactics, drills or fatigues (non military army duty). Maintaining

the delicate but essential balance between imparting knowledge of gender sensitivity, the needs of law enforcement, the needs of victims is essential and that is the essence of professional police training. Thus gender sensitive training does not and should not affect the paramilitary nature of police training but it has to improve police response to victims of sexual violence.

#### **4.7 Conclusion**

Police training is the crux as far as imparting knowledge to police officers is concerned. Gender sensitive training will give police officers the skills they need when dealing with victims of sexual violence. Related to gender sensitivity is the need that women and victim's rights should be properly taught to recruits. Perhaps empowering trainers with up to date knowledge in such issues will be a step forward and in the right direction towards the attainment of a responsive gender sensitive police service that will have minimal or no insensitive practices like the ones to be discussed in the next chapter.

## **CHAPTER 5**

### **5.0 POLICE TREATMENT OF VICTIMS OF SEXUAL VIOLENCE**

#### **5.1 Introduction**

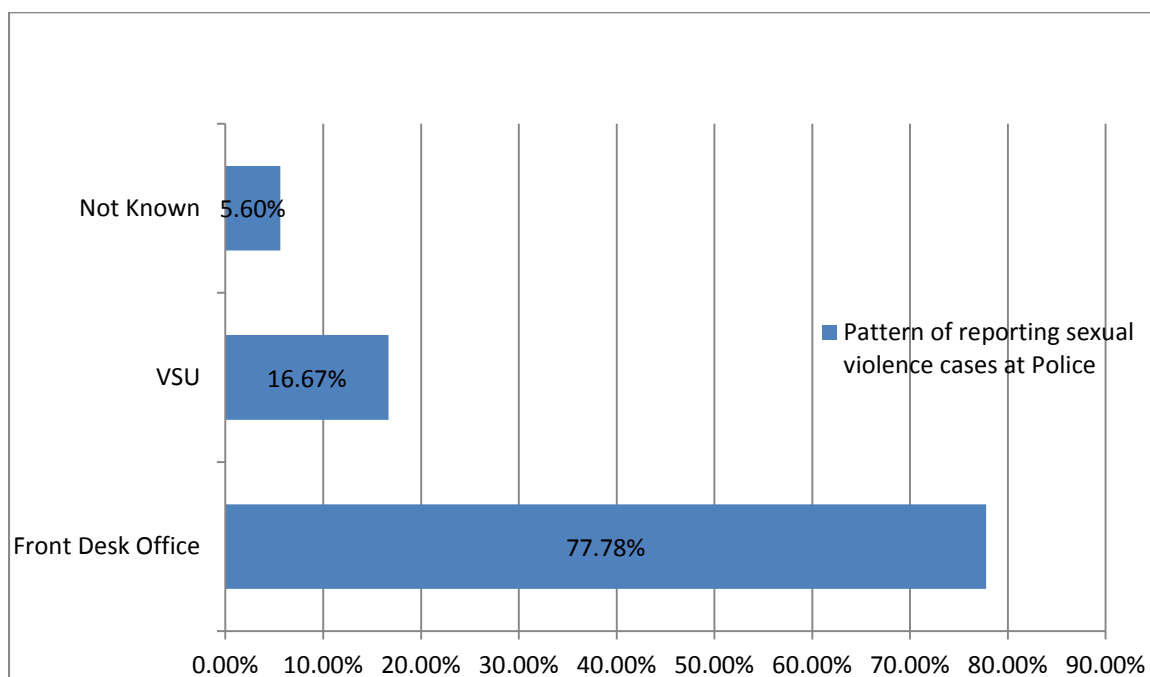
From the previous chapter it is clear that since most forms of sexual violence are criminal offences, the police are usually the first point of contact for victims. The response victims receive during reporting may influence the nature and quality of evidence obtained, which may affect whether the complainant proceeds with his or her case (Jamel, 2010: 689). Therefore the manner in which police conduct the initial interviews is significant for it can boost or undermine victims' confidence in the criminal justice system. This chapter presents the findings from the last three assumptions. While highlighting the importance of gender sensitive training; the chapter present findings on how police officers handle victims of sexual violence. It outlines insensitive practices of police officers including stereotyping and how these effect victims of sexual violence. A deliberate comparison is made with the VSU officers to show the impact of gender sensitive or at least victim friendly training in handling victims of sexual violence. The chapter also discusses state obligations in relation to handing such victims and whether there is compliance with the set standards.

#### **5.2 Handling of sexual violence offences**

One of the positive developments in the MPS was the establishment of the VSU in 2001. The unit was established with the aim of protecting, promoting and upholding the rights of victims of various forms of criminal and civil activities, especially those of vulnerable women and children (MPS, 2010: 11). Functions of the VSU include providing counselling, first aid, advisory role, acting as a referral unit and dealing with gender based violence cases.

It was found during the research that while most cases of domestic violence are directly referred to the VSU or the victims themselves go straight to the VSU. This was not always the case with sexual offences. The majority of victims of sexual violence still make their first time contact with front desk officers who are not gender sensitive. Below is a figure showing where most victims of sexual violence made first time contacts with the police.

**Figure 6: Graph showing initial reporting patterns of sexual violence cases to the police**



The major problem with this arrangement is the insensitive handling of victims of sexual violence by some front desk officers which is due to their lack of training in gender sensitivity. Suffice it to say that officers at the front desk are general duties officers and not VSU officers. At the end of the day it is these general duty officers who have not been properly trained in gender sensitivity that end up handling victims of sexual violence. Thus, by the time victims are referred to the VSU the damage might have already been done due to their insensitive (yet sometimes unintentional) practices as outlined below.

### **5.2.1 Gender insensitive practices**

There are many insensitive practices that were uncovered during the research. In the first place, some cases of sexual violence were not treated with the seriousness they deserve. This was common for victims of rape. For instance when a 19 year old rape female victim went to report at Chinsapo 1 police unit in Lilongwe, apart from presenting her case at the victim unfriendly front desk office, she was called aside to a room where the police officer wanted to confirm if she was really raped. She said:

‘I was taken to a separate room where I was told to lie down so that the female police officer should verify if I had really been raped. I was told to remove my

underwear to pave way for the inspection. She also inspected my torn underwear. It was very shameful for me to lie down and being inspected like that to verify rape.’

Although this may be an isolated or unique incident, it shows how gender insensitive police officers are in treating the already victimised victims of sexual violence. In paragraph 8(b) of the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, states are urged on police matters to develop investigative techniques that do not degrade women subjected to violence and to minimise intrusion into their lives while maintaining standards for the collection of best evidence. The inspection rose out of suspicion that the victim might have been telling lies hence the need to find corroborating evidence that she was really raped. Treating victims with this kind of suspicion is not only an example of the system shunning them, it also affects their right to dignity and privacy. This was not only an insensitive act but also showed a lack of regard for the victim as a person with dignity; she was treated like an unfeeling piece of evidence and it is a clear demonstration of lack of gender sensitivity.

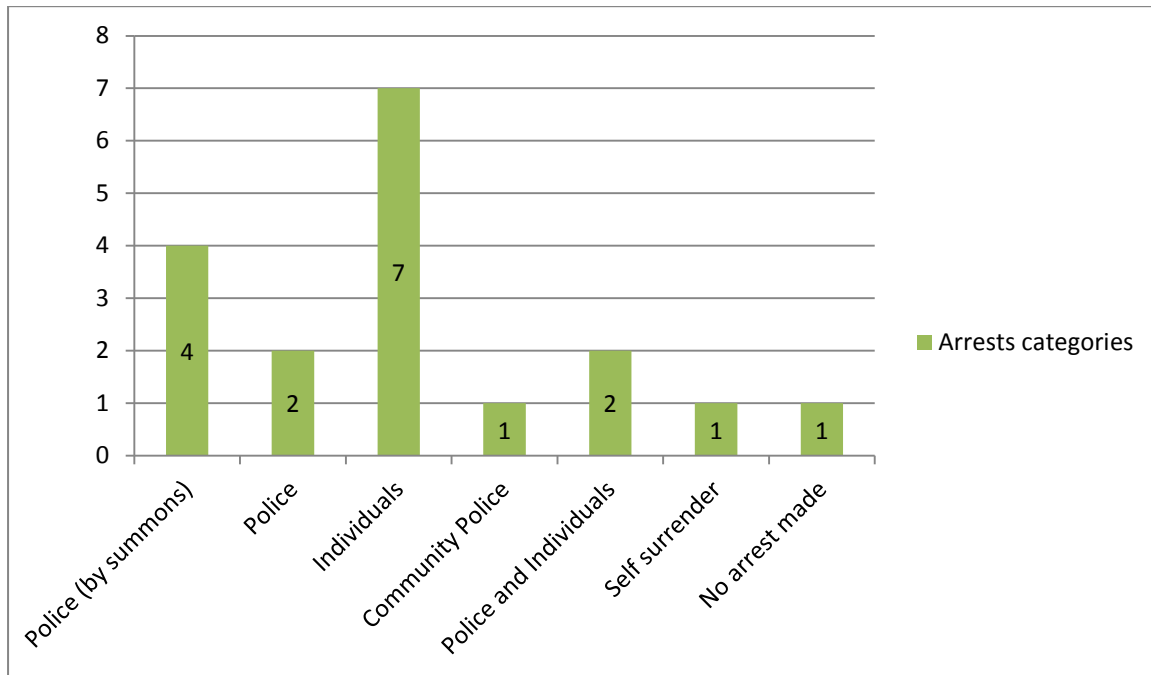
Similarly, in Blantyre a 14 year old girl was defiled and impregnated by a known person who threatened her if she revealed his identity. When her elder sister discovered this, she took the victim to police to report the incident. For ethical purposes her elder sister was quoted saying:

‘At police we arrived at the front desk office where after narrating the story the police asked why she did not reveal in good time; we were shouted at..., they started calling the victim a prostitute and they said they were not going to help the her.’

This shows lack of appreciation of the societal forces such as shame, fear, stigma that affects the decision whether or not to report a particular case thereby confirming the third assumption. The decision that the victim would not be helped because she delayed in reporting debars her from accessing justice and infringes her right to effective remedy. Such insensitive practices were done by front desk officers. No similar insensitive practices were found among officers in the VSU. This confirms the impact of victim friendly and gender sensitive training in the way the police responds to victim of sexual violence. It is against this background that it is argued that gender sensitive training should extend to all police officers and should be incorporated at the stage of basic recruit training.

It was a common trend among the interviewed victims that after reporting a case whether at the front desk or at the VSU, there was a tendency on the part of the officers of allowing victims to arrest the suspects on their own instead of police doing their job. Below is a graphical presentation of patterns of arrest of alleged sexual offenders.

**Figure 7: Graph showing pattern of those who arrest alleged sexual offenders.**



Mathematically it follows that the police arrested 11.11% of the suspects while individuals acting on their own arrested 38.88% of the suspects. The other arrests were shared among individuals, members of community policing and police officers. Although there is no contrasting data with other crimes in which we obviously know that individuals also carry out arrests, most of the so-called serious crimes are handled by the Criminal Investigation Department (CID) and they arrest suspects after reporting to the CID. The victim is merely used to spot the house of the suspect. This was confirmed by one of the senior CID officers and other data also triangulated this finding.

The difference in arrest trends with other offences handled by CID is that while all victims may make the first time contact with police at the front desk office, sexual violence victims are mostly first referred to hospital for medical examination in a bid to secure corroborating evidence. From the hospital they are either referred to the VSU for statement taking before

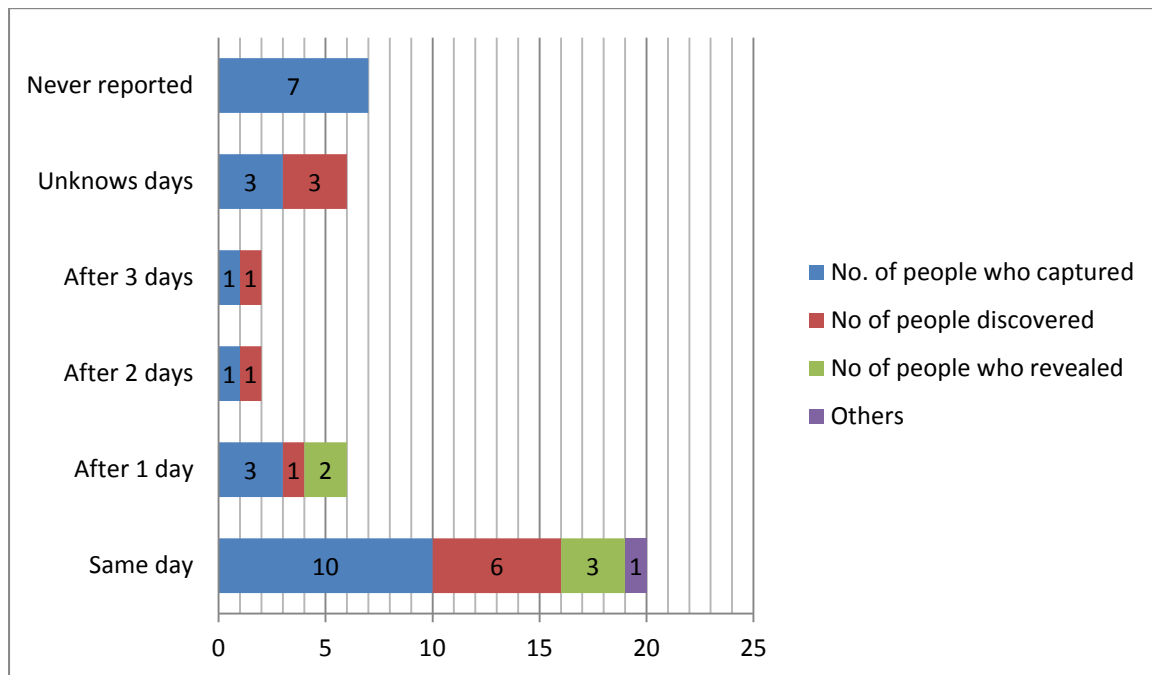
being referred to the CID for continued investigation. From the time that the first contact with front desk officers is made, that is when they are mainly given letters to bring the suspect to the police. Prompt police response has been found to be one of the determinants of victim satisfaction at their first contact with police (Shapland, 1986(b): 212). The manner in which the police respond to incidents and measures taken to protect victims in the immediate aftermath and before and at trial plays a vital role in the prevention of violence against women (UNODC, 2010: 43). This is where the need to mainstream gender in police training is important so that initial report management skills at branches like the CID are perfected so that apart from being effective in arresting suspects, they should add gender sensitivity when interviewing and handling victims of sexual violence.

Furthermore, in some situations male officers may interview young female victims of defilement. Of course it is understood that this may not be insensitivity *per se*. It is appreciated that the officers' sex is not of immediate concern, but the manner, perhaps levels of professionalism, sensitivity and care of the responding officer is crucial (Jamel, 2010: 693). Thus, female police officers may not automatically be better than male officers in dealing with a defilement victim. There is no hard and fast rule to this. While presumably females may be more emphatic and sensitive than males who are socialised to be more stoic in accordance with their male gender role, this may exemplify the reinforcement of socially constructed gender roles (Jamel, 2010: 695). Perhaps giving a victim the chance to choose the preferred sex of an officer may help. What is paramount here is gender sensitivity of an officer which can be acquired through training.

Interesting findings were on reporting trends which captured data from 25 victims out of which 18 were interviewed and the other 7 were supplied by key informants. Although most people reported the crime on the same day (10 people), 60% of those that reported did so because they were discovered by someone immediately after the act of sexual violence. It was only 30% of people who reported the matter the same day who did so voluntarily. A higher percentage of victims reported voluntarily a day after the incident. Having the night to think it over maybe emboldened them to report the matter. The challenge here, however, is that there is insufficient data about this and until sufficient data is obtained the data so far may not give a true reflection of the reality of the matter. What was obvious was that after the first 2 days of the attack, subsequent reporting to police was due to the fact of being discovered; it did not come about as the result of a voluntary disclosure. This confirms

existing literature on general problem of reporting cases of sexual violence (Wolhuter, Olley & Denham, 2009). If it were not for having been discovered, chances are that most victims would not have reported the attack to the police. The figure below shows reporting trends with 7 people who did not bother to report thereby representing 28%.

**Figure 8: Periods of time taken before reporting a sexual attack and what triggered it**



As it was noted in chapter 4, several factors such as shame, fear of reprisal or risk of not being believed contribute to non-reporting. Treating such victims with utmost care and due diligence is important and this is an aspect which can be achieved by gender sensitive and victim friendly training. Otherwise there is a risk of permanently shutting victims out of the system thereby further violating their right to access to justice.

Most cases of sexual violence found related to an offence of defilement in which girls younger than 16 years of age were victims. This is the very reason why it is necessary to have gender sensitive training as it would enable police officers to effectively respond to the unique issues faced by such young girls. Most defilement cases that were not reported to the police or were reported but an attempt was made to withdraw them involved suspects who were mostly either biological fathers or step-fathers. Women preferred not to report the attack



in order to preserve their marriages thus confirming the relational nature of women. It is doubted if they did so out of choice and economic factors must have played a major role.

Some of the most common malpractices found were the failure by police officers to communicate to victims the progress of the cases. Almost every victim interviewed complained about this practice. A parent of a 13 year old girl, who was gang raped by 4 men and then had a stick inserted into her vagina in Blantyre, complained about police conduct of releasing the suspect on bail while the victim was still in hospital and her condition was uncertain. She described the conduct as ‘questionable and worrisome.’ Indeed many victims expressed worry about being left in the dark yet the cases concerned them. Paragraph 6(a) of the Victims Declaration requires that victims should be informed of their role, scope, timing and progress of their cases. Shapland (1986: 213) found that the major reason for victim dissatisfaction with police was lack of information which leads to the feeling that the police did not care. Such an uncaring attitude toward traumatised victims is a sign of lack of empathy which is a result of lack of gender sensitivity. Victims do not demand much, all they need is a listening ear, caring and supportive attitudes are victim’s subject for praise (Howley, 1982). Shapland (1986) found that most victims do not desire to take over the criminal justice system or the decision making power, but merely to be informed about the progress of their case and be consulted when making important decisions. Gender sensitive and victim friendly training should and does impart such values in police officers.

### ***5.2.2 Attitudes and stereotypes***

As stated in chapter 2, the hall mark of stereotypes is that ‘it precedes the use of reason; is a form of perception, it imposes certain a character on the data of our senses before the data reach the intelligence’ (Cook & Cusak, 2010: 9). A stereotype tells us:

‘About the world before we see it. We imagine most things before we experience them. And those preconceptions, unless education has made us acutely aware, govern deeply the whole process of precipitation. They mark out certain objects as familiar or strange, emphasising the difference, so that the slightly familiar is seen as very familiar, and the somewhat strange as sharply alien’ (Cook & Cusak, 2010:10).

Consequently human beings do not see the world outside exactly as it is; rather we preconceive ‘pictures in our heads, or stereotypes that we rely on to give meaning to the world we perceive’ (Cook & Cusak, 2010: 10). Accordingly individuals are placed in

categories or stereotypes according to various criteria such as gender, age or sexual orientation.

Cook & Cusak (2010) noted that stereotypes help to maximise simplicity and predictability hence they are economic. People are labelled so that no time is wasted to make an effort to understand their differences and to know them as individuals. Stereotyping and gender sensitivity are incompatible hence the need to deal with stereotypes in police officers is crucial.

It was difficult to identify negative attitudes and stereotypes among police officers when handling cases of sexual violence. Through observations and interviews however it was possible to find out about them. Some of the insensitive practises found can easily be linked to stereotypes made about victims of sexual violence. For instance, the physical inspection of a rape victim comes from a popular non-controversial rape myth in which the assailant is a stranger possessing a weapon. It qualifies as rape if the victim is injured (Scully, 1990: 100). It was difficult to believe this girl because she was raped after being given a lift by a known person so there was need to find evidence that she really resisted it – a clear demonstration of lack of gender sensitivity.

One of the clear cases of police stereotypes and lack of gender sensitive training was a case of abduction involving a 20 year old female. The girl was abducted by an ex-boyfriend in the course of her preparation for an engagement to a new boyfriend. The matter was reported at Kawale Police and as the docket was in the process of being opened, a senior male police officer arrived at the front desk and he was briefed about the case. His response to the case was:

‘Abduction? How old is the victim?... she has not been kidnapped, a 20 year old girl is a grown up person; you can’t say that she has been kidnapped by her ex-boyfriend; that was an agreed move. So please don’t bother us, just go home and relax, she has gone for marriage and don’t trouble us anymore we can’t assist in that matter.’

The boss then directed the CID officer to close the matter. Despite this labelling this was a real case of abduction. Lack of gender sensitivity combined with the economics of stereotypes operated to the mind of a police officer and generalised the case in view of his

pre-conceived ideas about adult females. This was a case of a lack of effort on the part of the officer to examine this individual case closely and process and articulate its distinctive features. I advised the relatives of the victim to report the matter to Lilongwe Police Station where they were assisted.

A case study group discussion discussed in the methodology chapter was essential to find out about attitudes and stereotypes made about victims of sexual violence and to find a possible link to lack of gender sensitive training. A comparison was made between front desk officers, prosecutors, VSU officers and CID officers. Theoretically police officers appreciated the socio-cultural factors that affect victims of sexual violence such as shame, stigma or fear that delays their reporting of cases. The case studies were properly answered in a gender sensitive manner. However, during a general discussion that ensued, a question was posed to them as to whether their written responses reflected what they actually do in practice. It clearly emerged that the written responses were based on what they wanted me to hear. It was apparent that practically police officers seem not to appreciate socio-cultural factors and realities that affect victims of sexual violence. They do not do what ought to be done. Attitudes, stereotypes and myths about sexual offences clearly affect police officers' thinking and handling of cases.

During the open discussion about the first case study of a young lady who was wearing a miniskirt and was raped (see Appendix 1), the following comments were made by the officers with reference to the miniskirt:

‘For the Judith case (a lady in a miniskirt) we will dig more, to be honest, we probe, we really do talk that this is like she was inviting it.’

Another one said:

‘To be honest a miniskirt is provocative, it ignites sexual desires in men.’

Such comments were not uncommon and as noted in the introduction chapter, such stereotypes do not end in their hearts. They are voiced out to the victim consequently frustrating their efforts of reporting cases of sexual violence because victims end up bearing the blame. These voices were a true reflection of all the groups for those were the arguments they were making in their discussion before reporting ‘what they wanted us to hear’. The

VSU officers were an exception to this and they blamed their colleagues for being gender insensitive and failing to appreciate the freedom to choose one's clothing. This confirms the concept of 'victim precipitation' which entails a belief that characteristics and behaviour of women cause men to rape (Scully, 1990: 88) and confirms her findings about beliefs that women cause their own rapes by the way they act and the clothes they wear.

In the second case study of date rape (see Annexure 1 as well) the groups (except for the VSU officers) were of the view that there was no rape because the victim and assailant were in a relationship. One CID officer however differed from the other group members and said that there was a rape. Her reasoning was not based on the law or gender sensitivity but that the Bible prohibits sex outside marriage hence the case would be treated as a rape. This shows how influential religion and cultural aspects are and how they find their way into the minds and voices of law enforcement officers. Similarly, the position taken by the VSU shows how training influenced their thinking while other police officers displayed their lack of gender sensitive training. Another CID officer invoked their experience and said that in such cases of date rape:

'We invite both parties to discuss, of course we also consider the gravity of the matter. Mostly such cases you will find that the victims later come to withdraw the case sometimes because of pressure from relatives or because she reported out of emotions.'

In the absence of gender sensitive training the victims of date rape run the great risk of not being believed or if believed their cases may simply be mediated by the police. A combination of gender stereotypes and gender insensitivity influenced the mind of police officers here probably through a hasty generalisation of the common law position that a husband cannot rape his wife which was acknowledged in the case of *Republic v Mwasumora*.<sup>11</sup> Eventually gender stereotypes intersect with other traits in a wide variety of ways to create compounded stereotypes that impede the elimination of discrimination against women and the attainment of substantive equality (Cook & Cusac, 2010: 29). Such stereotypes are absorbed as we interact with families and friends and through exposure to our cultural heritage and other influences such as religion, media, and literature. Unless deliberately deconstructed through training, such stereotypes over the time become deeply

---

<sup>11</sup> (1966-68) 4, ALR (Mal) 569.

embedded in our unconscious minds to the point that we come to accept them uncritically as the normal or inevitable understanding of life.

Stereotypes sometimes can deprive people of access to justice. It was found during the research that although the VSU handles sexual offences, its focus is on offences relating to female victims and male children only. Cases of sodomy against adult males are not considered as cases worthy of being handled by the VSU. The reasoning was that a male adult cannot be penetrated by force but must have consented to it. Such a stereotype view as regards men is dangerous as it prevents most men from accessing justice. Stereotypical perceptions of male rape (e.g., that both the victim and perpetrators are usually gay, and the readiness of men to have sex, and that rape is a type of sex so men enjoy being raped or sodomised) may result in male rape victim-blaming behaviour (Jamel, 2010). Male victims are therefore prevented from reporting because of the perceived negative police response to their sexuality; that is, the assumption that the victim is homosexual. This neglect of male victims is of greater concern, given the findings that many suffer prolonged psychological and behavioural effects (Walker *et al.*, quoted by Jamel, 2010: 691). This is where gender sensitive not a mere victim friendly training becomes important because the former considers the unique position of males and addresses their concerns from that perspective.

Gender stereotypes therefore operate to the disadvantage of both men and women. Stereotypes should not be tolerated in policing. They deny the recognition of individual dignity. When a state applies, enforces, or perpetuates gender stereotypes in its laws, policies and practices, it institutionalises that stereotype, giving it the force and authority of the law and of custom. Hence the need for states to take appropriate measures to modify social and cultural patterns of the conduct of men and women with a view to eliminating prejudices or stereotypes role of men and women under article 5(a) of CEDAW becomes essential. One of the best ways of doing this is the introduction of a gender sensitive training of the enforcers of the law.

### ***5.2.3 Beyond gender sensitive training: Corruption and abuse of office***

During the study there were several categories of cases of sexual violence of which either little data was found (such as sodomy, rape, indecent assault) or there was no data at all (such as incest, sexual harassment, marital rape and other harmful cultural practices). A deliberate effort was made to visit what were considered potential victims of sexual violence, called sex

workers. Sex work is another vulnerable profession. Sex workers have been viewed as deviants and criminals (Sanders, 2007: 453). They have been portrayed as vectors of STI's and HIV/AIDS (Tamale, 2009: 79). It was found that police officers abuse, stigmatise and stereotype sex workers due to their vulnerable position in society.

Apart from mentioning sexual abuse (which sometimes sex workers suffer in the hands of their male clients), all the sex workers interviewed mentioned police officers as their 'worst enemies'. Since sex workers were interviewed at a place where they ply their trade and it is also frequently visited by police officers who drink beer, they complained that whenever they have been attacked by a client and they want to make a report to the police, it is these very police officers who terrify them into believing that if they go to the police they will be arrested because they are prostitutes. It was also found that sex workers are arrested for charges that are alien to the law. One sex worker at Centre Point in Lilongwe said:

'The police don't help at all. You cannot be a rogue and vagabond in your own room. They invade our rooms. They take our things and when you complain at a police station, they don't assist. They say we are prostitutes (but) we are victims of their brutality. Arresting people in their room, in their privacy I think that is the best expression of ignorance by police officers.'

Similar sentiments about challenges sex workers face were even confirmed by some senior police officers who were interviewed. The worse conduct mentioned by sex workers was that sometimes police officers arrest them and demands sexual favours so that they are not dragged to the police station. One sex worker at Mugasa House in Lilongwe said:

'In December 2013, it was around 10pm the police caught me, I was with a female relative and all of us had our boyfriends. They arrested us all. The boys managed to pay K2,500 (about \$6) each to police in what they call *kudziombola wekha* (rescuing yourself). The boys were released. They asked me and my relative to rescue ourselves. We had nothing so they ended up raping my relative. They also wanted to rape me but buy chance I was spared. With such experiences with the police can you report anything to them?'

Such insensitive events are given room partially due to the criminalisation of the sex trade. Criminalisation affords sex workers little to no legal recourse and denies them the rights granted to other citizens (Chi Mgbako & Smith, 2011: 1206). While penal laws frighten away the 'good guys' they leave untouched the dangerous and abusive clients and also give the police officers (who are supposed to protect all members of the public, including sex

workers) room to abuse and commit crimes against sex workers with impunity. Sex workers are members of the community just like residents, colleagues, peers, patients and citizens who are entitled to the protection of the police rather than some 'other' category of people who somehow, outside the Constitution, do not deserve their protection (Quadara, 2008: 4). This kind of police conduct was deemed to go far beyond a lack of gender sensitivity. It was more a case of misconduct involving corruption, abuse of power, ignorance of the law and generally a criminal mind.

### **5.3 Protecting or violating rights?**

The present findings disclose a mixture of both protection and violation of the rights of victims of sexual violence with the latter arising mainly out of lack of gender sensitive training. While VSU officers make an effort to create a victim friendly environment through their charming principles of customer care among others, front desk officers and other police officers pose a potential threat to rights of victims of sexual violence because of their insensitivity. However this is just a general statement. This is not to say that police officers did not do a commendable job in protecting rights of victims of sexual violence. A classical example of a brilliant job done by police officers not in the VSU was found at Dedza Police, where the police did an excellent job of tracking down 4 men who gang raped a 14 year old girl and made sure that the case was speedily prosecuted and the accused were convicted.

However the point is that massive victim unfriendly services were found from police officers other than those in the VSU. Although VSU officers were also found lacking in many respects. This can partially be attributed to the lack of gender sensitive training since not all VSU officers have attended such trainings. In fact others merely attend a victim friendly training. Again this should not obscure the fact that individual personalities also have a role to play in the sense that some people can be unteachable or 'un-trainable' while others are naturally caring and empathetic. Despite all these variables, the power of knowledge cannot be underestimated. Knowledge is power and just as police training can change an individual from a civilian to a para-military officer, so to can gender sensitive training bring about a significant improvement in the way the police treat victims of sexual violence.

The value of gender sensitive police training is of great importance because it directly influences the police's treatment of victims of sexual violence which in turn has an impact on

the victim's human rights ranging from inhibiting their right to access to justice and effective remedies (Article 8 of UDHR; Article 2(3) ICCPR); their right to reparation (paragraph 2 (b, d) of the Victim's Declaration); their right to victim protection [paragraph 3(5), 8(b)]; their right to receive humane treatment with respect to the victim's physical and psychological well-being and privacy and avoiding re-traumatisation (paragraph 6). It would be a challenge on the part of the police to respect these rights if they are either gender insensitive or not aware about these rights and the obligation to protect, respect and fulfil these rights.

Although some of the victim's rights are not expressly stated under the national laws in Malawi, some of these rights can be deduced from other rights such as the right to access to justice and effective remedy (section 41 of the Constitution). The same provisions can also form a local basis for introducing gender sensitive training. That aside, it is apparent that most insensitive practices of police officers discussed equally affect other Constitutionally guaranteed rights such as right to dignity (section 19 of constitution), security of the person and privacy among others which can be easily enforced.

#### **5.4 Gender sensitive training and gaps**

The function of the police among others is the enforcement of all laws. If a country has legislation that does not meet minimum human rights standards, the police still has to enforce it. Undemocratic legislation therefore poses a challenge to human rights and policing because the laws are such that police cannot help but violate human rights (Mudzongo, 2003: 27). Therefore, for police officers to implement human rights standards and be gender sensitive it is imperative that a country should have gender sensitive laws and legislation that is human rights friendly.

Many gaps were found during the research that affected or can affect the police's response to victims of sexual violence. For instance, there is no law that criminalises marital rape. This forces police to conduct mediation, counsel the victims and tell them to go. There are no deterrence mechanisms to help prevent a re-offence. Acts of sexual violence are traumatic for anyone to endure including rape perpetrated by an intimate partner. Although there may be no crime for the police to investigate, there may be a need to offer some form of protection to the victim (UNODC, 2010: 55). To this extent the VSU was doing a commendable job.



Further, the rape law (under section 32 of the Penal Code) is biased as it is crafted in such a way that legally it is impossible for woman to rape a man under any circumstances. Yet about two cases were found of men who complained about being raped by women. Due to the absence of legal redress the only thing the victims could do was to go to hospital in order to get Post Exposure Prophylaxis. Further the law on indecent assault only favours females and boys under the age of 14. This leaves males above the age of 14 with no legal redress. Similarly the absence of an enabling law to support the operation of the VSU is another setback. An inquiry by the Law Commission revealed that although there was an admission that it must have been an oversight to leave out victim support services in the Police Act there are no immediate plans to review the Police Act let alone amend it since it has only just been reviewed in 2010.

Apart from the above lacunas in the law, some other grey areas were also found in the area of policy and practice. For instance, it was found that there is no policy on gender not only in the MPS, but within the whole Ministry of Gender. Since the first policy on gender expired in 2005, there have been draft policies in 2008, and the recent one which covers the years from 2012 to 2017; yet as of early February 2014 the policy had not yet been endorsed by Cabinet. Further, it was found that there is poor knowledge of gender issues in the Malawi Police Service. An inquiry of the Ministry of Gender about any plans to incorporate gender training at the basic recruit training showed that there were no such plans, but the officers interviewed described the idea as ‘brilliant.’

Another anomaly was the arrests of sex workers in their rooms and charging them with the offence of ‘being rogue and vagabond’ or as ‘common prostitutes who behave in such a disorderly or indecent manner in a public place’ to which although they plead guilty, there are no facts to support the charges. Such conduct was already condemned by the High Court in the case of *Bridget Kaseka and 6 others v Republic*.<sup>12</sup> The court held that such charges are discriminatory against women for they leave out men who are a party to it.

The dilemma with lacunas or gaps in Malawian law itself is as follows. While most of the gaps relating to police practice may be rectified by gender sensitive training, the lacunas in the law itself pose a much greater challenge because even if officers are gender sensitive,

---

<sup>12</sup> [1999] MLR 116.

there is almost nothing they can do about a situation in which a Malawian law may contravene international law.

## **5.5 State party obligations under international law**

A state obligation is a ‘legally binding obligation meaning that all constituent units of the State Party are expected to comply with such obligations’ (UNIFEM, 2007: 23). Thus limitations of internal laws may not be used as an excuse for failure to comply. In cases of a conflict between internal laws and treaty obligations the state is obliged to change its internal laws to comply with treaty obligations (UNIFEM, 2007: 23).

As outlined in chapter 2, various international legal instruments impose different obligations on the state relevant to gender sensitivity and the protection victims of sexual violence. Article 2(1)(c) of the Women’s Protocol obliges State Parties to integrate a gender perspective in, among others, policy decisions, programmes and activities and in all spheres of life in order to combat discrimination. Further there is a requirement for the provision of necessary support to victims of harmful practices such as emotional and psychological counselling and health services, rehabilitation services to women suffering sexual abuse and harassment (Article (5)(d); 12(d) of the Women’s Protocol).

Article 24(a) of the SADC Protocol imposes a duty to introduce, promote and provide gender education and training to service providers in GBV including the police. There is also a duty to adopt and implement gender sensitive educational policies and programmes to deal with stereotypes and gender based violence by 2015 (article 14(2)).

### **5.5.1 Nature of obligations**

It can be deduced from the above human rights instruments that international human rights law imposes three layers of obligations which are the duty to respect, protect and fulfil human rights. Benninger-Budel (2008: 11) explains that the duty to respect requires the state to refrain from violating human rights by itself or its agents. The duty to protect demands the state to take measures to prevent non-state actors from interfering with the human rights of individuals. The duty to fulfil requires states to adopt appropriate positive measures such as laws, policies and promotional measures in order to improve the full realization of human rights of individuals. State responsibility can also arise out of an omission or failure to take

positive measures such as law reform or law enforcement or any measures to protect or ensure human rights (Benninger-Budel, 2008: 11).

Apart from taking these effective measures, states must also work meticulously to prevent and punish acts of private actors that violate other people rights (Fried, 2008: 256). It follows that when the police deal with victims of sexual violence, should they consider it a private matter or that the victim must have 'asked for it' and as a result allow impunity for the perpetrators, the state has failed to protect the human rights of victims of sexual violence (Fried, 2008: 256). This state obligation is clearly reflected in police work. The police come into frequent contact with victims of sexual violence. Accordingly, this necessitates that the police become conversant not only with gender issues, but also what sexual violence itself is in its multiple forms, its impact on victims and the rights of such victims.

## **5.6 Conclusion**

The police have a duty to protect individual's rights including those of victims of sexual violence. They are often the first respondents and people view them as source of help. If police officers are not properly trained or they are not sensitive to victims needs they are, instead of offering assistance to victims, more likely to end up not only violating their rights but even completely shutting the victims out of the criminal justice system. First impressions are usually very important. This demands gender sensitivity and good customer care relations on the part of all police officers whether they be officers conducting street patrols, front desk officers or those in specialised branches because at some point in their work they will all come into contact with victims of sexual violence.

## **CHAPTER 6**

### **6.0 THE WAY FORWARD**

#### **6.1 Introduction**

In an open and democratic society like Malawi, the police are accountable for their actions, decisions and processes to the public whose lives they affect and to the government. However, many police subcultures are resistant to outside ‘interference’ and controls (UNODC, 2010: 84). For an effective change to occur it must come from within and knowledge is the best tool for such change. As noted in chapter 4, the power of knowledge and police training cannot be under-estimated. Hence incorporation of gender sensitive training can go a long way to improving police responses not only to victims of sexual violence but other victims as well. The impact of gender neutral training in handling victims of sexual violence has been discussed in this paper. This chapter concludes the paper and makes some recommendations.

#### **6.2 Conclusions**

It has been found that the police training is gender neutral which is attributed to its sources which are neutral and sometime gendered laws such as the Penal Code, the CP&EC and the SSO among others. This is compounded by the absence of a policy on gender not only within the MPS but the country as a whole. Although some gender sensitive topics were found, such as domestic violence, they were watered down by an inadequate coverage of the topics by trainers and their limited knowledge of the issues.

It has also been found that there is a limited knowledge of gender issues which are mingled with sex and considered to be women’s issues. This inadequate knowledge extends to women’s rights on the part of trainers which sometimes causes them to ignore or simply mention some human rights instruments in passing without elaborating on them or teaching them subject to cultural values which has the effect of entrenching discrimination against women who are the prime victims of sexual violence. The training curriculum was also found to be outdated in some respects such as the law on children and is not reflective of recent changes in the law.

As far as victims' rights are concerned, it was apparent that they are put on the periphery of police training and greater emphasis is given to the rights of the accused person. Most police officers demonstrated a lack of knowledge of victims' rights although they are mentioned in police training manuals. In this regard, the VSU was found to be better acquainted with the rights of victims.

Although the VSU was found to be sensitive to victims' needs, they failed to provide counselling services to victims of sexual violence. Counselling services were limited to victims of domestic violence. No victim interviewed in the research indicated that they had been counselled by any police officer. For victims of sexual violence, the VSU duties were limited to referring them to hospital for medical examinations and conducting investigations in some instances.

Due to the lack of gender sensitivity, the treatment of victims of sexual violence was marred by many irregularities and insensitive practices. While some victims were properly treated, others were insensitively handled, shouted at, or even sent away. On many occasions victims arrested suspects on their own and most of them were not kept informed of the progress of their cases. This led to an infringement of the right to access to justice and effective remedies among many other rights.

It was also found that police officers, like other members of the community are equally affected by social autonomous social fields' influences such as family, religion and cultural norms. These forces end up forming stereotypes in their minds. Thus some cases were filtered through a cultural and/or religions lens and sometimes societal attitudes played an even bigger role. For example, the perception that women wearing miniskirts provoke the sexual desire of males and cause them to rape them contributed to the rape crisis and left their victims without a remedy. Such stereotypes affected the way cases were handled which led to treating some victims with suspicion, or stereotyping others thereby mishandling or mistreating them in the process. All these were due to lack of gender sensitive training which is instrumental in deconstructing stereotypes, prejudices and biases.

Sex workers proved to be another category of victims of sexual violence who have no voice in the criminal justice system. Apart from being abused by their clients, sex workers were found to lack any protection from the police. Instead, they were subjected to police abuse

ranging from sexual abuse, demanding money from them and arresting them on charges unsupported by any facts. Sex workers literally lacked any legal redress.

In general terms, comparing the treatment of victims or attitudes of officers in the VSU with other police officers in general, it was clear that training has an impact in the way police officers treat people. It follows that the lack of gender sensitive training in police contributes to insensitivity in the treatment of victims of sexual violence in Malawi which in turn violates their rights.

### **6.3 Recommendations**

In view of the conclusions drawn in this paper, different recommendations are made as outlined below.

#### **6.3.1 Short term**

##### **6.3.1.1 Sensitisation**

Police officers should be sensitized on gender, gender sensitivity, women's rights and victims' rights. This may be in the form of training or short courses and should apply to all police officers with police trainers being given priority.

The community policing branch should take a leading role in ensuring that there is awareness in the community about the impact of sexual violence on victims, the court process and the need to report urgently.

##### **6.3.1.2 Enhanced co-ordination**

There should be improved coordination within police branches to ensure victims of sexual violence receive proper counselling. Victims of sexual violence should not just end up at the front desk of a police station or at the CID they should be referred to the VSU for psycho-social support.

##### **6.3.1.3 Emphasis on victims' rights**

Police training should strike a fair balance by emphasising victims' rights as well as the rights of an accused. Changes in the criminal justice system necessary to meet the expectations of victims are not major or structural ones. They are primarily attitudinal. They involve training professional participants in the criminal justice system to treat the victim courteously, and

keep them informed and consulted about all the stages of the process (Shapland, 1986(a): 218).

#### **6.3.1.4 Psycho-social support**

On the part of the VSU, treatment of victims of sexual violence should not be limited to referring them to hospital. The victims should be given much needed psychosocial support; they should be counselled. Indeed victims are looking to the police for support, reassurance and personal contact (Shapland, 1986(a): 212). The counselling services rendered to domestic violence victims should be equally and consistently available to victims of sexual violence.

#### **6.3.1.5 Due diligence**

Due diligence in treating victims of sexual violence should be emphasised during training and should be equally applicable in practice starting from the time of the reporting of the crime to avoid secondary victimisation.

For some marginalised victims like sex workers, there is a need for police officers as law enforcers to adhere to the law and cease arresting and charging them with vexatious charges which have no basis in fact. Likewise, magistrates should be diligent in their work when recording pleas and ensure that the charge to which an accused has pleaded guilty is supported by the facts.

### **6.3.2 *Medium to long term***

#### **6.3.2.1 Gender sensitive training**

The introduction of gender sensitive training at basic recruit level should be a priority and this should extend to other levels of training such as at refresher, intake, promotional courses, and cadet courses, among others. It is a priority that a subject on 'Sex and Gender' should be included in the training. The subject should include modules on gender, sex and gender analysis and its implications, gender roles stereotypes and gender ideology; mechanisms and institutions of socialisation, gender fair language, prevalent patriarchal influences and changing social contexts. The modules should focus on deconstructing stereotypes and examining and understanding the social context of victims of GBV.

### **6.3.2.2 Review of police training curriculum**

There is a need to review the police curriculum to ensure that it is up to date with the current laws more especially those related to women and children. There is need to abolish the use of Children and Young Person Act since this piece of legislation was repealed by Parliament; instead the Child Care Justice and Protection Act of 2010 should be used. This should be included with adequate training of police trainers so that they may become conversant with the new Act.

### **6.3.2.3 Establishment of an independent complaints commission**

The Police Act already provides for the establishment of the Independents Complaints Commission. What is needed is to put the logistics together in order to ensure its operation. This will provide a platform for victims of sexual violence to be able to report abuse they might suffer in the hands of police or any improper treatment at the hands of the police, thus enhancing police accountability.

### **6.3.2.4 Amendment to the Police Act**

The Police Act should be amended in order to expressly incorporate VSU services. In this way accountability of police would be enhanced.

### **6.3.2.5 Laws on victims' rights**

There is also need to have clear laws on victim's rights other than deducing what they may be by reading between the lines, by improvising them or merely by making reference to the Victims Declaration. Just as the provisions canvassing the accused person's rights constitutes one of the longest sections in the Constitution, at least just as much attention should be dedicated to victims' rights so that a fair balance is struck between them.

Ultimately, a state response that places the burden on police alone is bound to fail. Rather a holistic and multi-sectoral approach needs to be adopted, including the creation of culture that does not tolerate sexual violence (UNODC, 2010: 10), for it is likely to prove the best prevention strategy.



## **Bibliography**

Adjetei, Fitnat and Osei-Boateng (1998) Forms of Violence against Women in the Ghanaian Setting. Paper Presented at the SADC Conference on Preventing Violence Against Women, Johannesburg, South Africa. Available on [www.sn.apc.org/sadc\\_pvaw/papers/ghana.html](http://www.sn.apc.org/sadc_pvaw/papers/ghana.html)

Bachman R. (1998) "The Factors Related to Rape Reporting Behaviour and Arrest: New Evidence From the National Crime Victimization Survey." *Criminal Justice and Behaviour*, (1998):25:8-29.

Benninger-Budel, ed. (2008) *Due Diligence and its Application to Protect Women from Violence*. The Netherlands, Martinus Nijhoff Publishers.

Bentzon A. *et al*, (1998) *Pursuing grounded theory in law: South-North experiences in developing women's law*. Harare, Monds Books and Oslo Tano Aschehoug.

Campbell T (1988) 'Sex Discrimination: Mistaking the Relevance of Gender.' In: Mclean, S. and Burrows, M., eds. *The Legal relevance of gender*. Hounds Mills and London, MacMillan Press.

CEDAW. General Recommendation Number 19.

Chi Mgbako & Smith (2011) 'Sex Work and Human Rights in Africa.' In: *Fordham International Law Journal*, 4: (2011): 33: 1178-1220.

Chuunga (2010) *Gender Sensitivity in Training: An Evaluation of the Zambia Police Training College ('ZPTC') Curriculum in Lilayi, Zambia*. Dissertation, submitted in partial fulfilment for the Masters Degree in Women's Law, University of Zimbabwe. Unpublished.

Cook and Cusack (2010) *Gender Stereotyping: Transnational Legal Perspectives*. Philadelphia and Pennsylvania, (USA). University of Pennsylvania.

Eckhoff T. (1988) 'Can We Learn Anything from Women's Law in Methodology of Women's Law?' In: *Studies in Women's Law*, (1988):7:38-53.

Fried S. (2008) 'Controlling Women's Sexuality, Sustaining Dominant Cultures, Legitimatising Gender Based Violence: The Case for Due Diligence.' In: Benninger-Budel, ed. *Due Diligence and its Application to Protect Women from Violence*. The Netherlands, Martinus Nijhoff Publishers.

Gartner R. and Macmillan R. (1995) "The Effect of Victim-Offender Relationship on Reporting Crimes of Violence against Women." In: *Canadian Journal of Criminology*, (1995):37:393-429.

Hilaire B. (1998) *Introduction to Feminist Jurisprudence*. Sydney and London, Cavendish Press.

Howley J. (1982) *Victim-Police Interaction and its Effects on Public Attitudes to the Police*. Cranfield Institute of Technology.

Jackson L. (1996) *Recent Initiatives in Addressing gender Violence in South Africa*. Institute for Security Studies. Available at [http://dspace.cigilibrary.org/jspui/bitstream/123456789/31598/1/Paper\\_14.pdf?1](http://dspace.cigilibrary.org/jspui/bitstream/123456789/31598/1/Paper_14.pdf?1) [Accessed on 19/02/2014].

Jamel J. (2010) "Researching the Provision of Service to Rape Victims by Specially Trained Police Officers: The Influence of Gender – An Exploratory Study." In: *New Criminal Law Review*, 4 (2010):13:688-709.

Krug E.G. *et al.*, eds. (2002) *World Report on Violence and Health*. World Health Organisation. Available at [http://whqlibdoc.who.int/publications/2002/9241545615\\_eng.pdf?ua=1](http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf?ua=1) [Accessed on 26/02/14].

Malawi (2010) Guidelines for the Support and Care of Victims of Gender Based Violence, HIV and AIDS Related Abuses and Other Human Rights Violations. Lilongwe, Malawi Police Service.

Malawi (2012) Draft National Gender Policy (2012 – 2017). Available online at <http://www.ndr.mw:8080/xmlui/bitstream/handle/123456789/986/Nationa%20Gender%20Policy-%20Submitted%20to%20OPC%20Final%20Vesion%20JUNE%202011.pdf?sequence=1> [Accessed on 18/02/14].

Malawi (1995) Police Service Standing Orders.

McLean S. (1988(a)) ‘The Legal Relevance of Gender: Aspects of Sex Based Discrimination.’ In: Mclean, S. and Burrows, M., eds. The Legal relevance of gender. Hounds Mills and London, MacMillan Press.

McLean S. (1988(b)) ‘Female Victims in the Criminal Law.’ In: Mclean, S. and Burrows, M., eds. The Legal relevance of gender. Hounds Mills and London, MacMillan Press.

Moller-Leimukuhler A. (2002) ‘Barriers to Help-Seeking by Men: A Review of Social-cultural and Clinical Literature with Particular Reference to Depression.’ In: Journal of Affective Disorders, (2002):71:1-9.

Mont, Miller and Myhr (2003) “The Role of Real Rape and Real Victim Stereotypes in the Police Reporting Practices of Sexually Assaulted Women.” In: Violence Against Women, 4 (2003): 9:466-486. Available online at <http://www.d.umn.edu/cla/faculty/jhamlin/3925/4925HomeComputer/Rape%20myths/Real%20Rape.pdf> (accessed on 19/09/2013).

Mudzongo G. (2003). Promoting Police Observance of Human Rights: The Mainstreaming Model of Human Rights Education in Police Training. Harare, Human Rights Trust of Southern Africa.

Neville H. A. and Pugh A. O. (1997) “General and Culture Specific Factors Influencing African American Women’s Reporting Patterns and Perceived Social Support Following

Sexual Assault. An Exploratory Investigation.” In: Violence against Women, (1997):3:361-381.

Nyong L. ed. (2002) Police Training Manual on ‘Gender and Human Rights.’ Nairobi, Federation of Women’s Lawyers.

Organisation for Economic Cooperation and Development (2009). Handbook on Security System Reform: Supporting Security and Justice. OECD. Available at <http://www.oecd.org/dac/incaf/42168607.pdf> [Accessed on 26/02/14].

Quadara A. (2008) Sex workers and sexual assault in Australia: Prevalence, risk and safety, Melbourne, Commonwealth of Australia.

Resick P.A. and Nishith P. (1997) ‘Sexual Assault.’ In: Lurigio D.A.J. and Skogan W.G. Victims of Crime. Thousand Oaks, Sage.

Sanders (2007) ‘The Politics of Sexual Citizenship: Commercial Sex and Disability.’ In: Disability and Society, 5: (2007): 22: 439-455.

SARPCCO Code of Conduct (2003) Human Rights and Policing: Towards Ethical Policing Training Manual. Sable Press Limited.

Scully D (1990) Understanding Sexual Violence: A Study of Convicted Rapists. New York and London, Routledge.

Shapland J (1986 (a)) ‘Victims and the Criminal Justice System.’ In: Fattah, E.A., ed. From Crime Policy to Victims Policy: Reorienting the Criminal Justice System. London, Macmillan Press Limited.

Shapland J (1986 (b)) ‘Victim Assistance and the Criminal Justice System: The Victim’s Perspective.’ In: Fattah E.A., ed. From Crime Policy to Victims Policy: Reorienting the Criminal Justice System. London, Macmillan Press Limited.

Smart C. (1989) 'Rape: Law and the Disqualification of Women Sexuality.' In: Smart, C. *Feminism and the Power of Law*. London, Routledge.

Stang Dahl T. (1988) *Towards an Interpretative Theory of Law - The Argument of Women's Law in Methodology of Women's Law: Studies in Women's Law*. Oslo: Norwegian University Press.

State of Victoria (2011) *Service Guideline on Gender Sensitivity and Safety: Literature Review*. Department of Health. Available at <file:///C:/Users/city%20tech/Documents/Dissertation/Other%20Readings/Gender%20sensitivity%20gss-lit-review.pdf> [Accessed on 26/02/14].

Tamale S. (2009) 'Paradoxes of Sex Work and Sexuality in Modern-Day Uganda.' In *East African Journal of Peace and Human Rights*, (2009): 15: 69-109.

Tong R. (1994) *Feminist Thought: A Comprehensive Introduction*. London, Routledge.

United Nations Development Fund for Women (2007) *Training Manual on Gender Sensitivity and CEDAW*. Makali City, Ateneo Human Rights Centre. Available at [http://cedaw-seasia.org/docs/Philippines/P9\\_CEDAWTrainingManual\\_PhilJA.pdf](http://cedaw-seasia.org/docs/Philippines/P9_CEDAWTrainingManual_PhilJA.pdf) [Accessed on 09/09/13].

United Nations Evaluation Group (2011) *Integrating Human Rights and Gender Equality in Evaluation: Towards UNEG Guidance*. UNEG. Available at <file:///C:/Users/city%20tech/Documents/Dissertation/Other%20Readings/HRGE%20Handbook%20Intergrating%20Human%20Rights%20and%20Gender%20equality%20in%20Evaluation%20towards%20guidance.pdf> [Accessed on 1/03/14].

United Nations High Commissioner for Refugees (2003) *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*. United Nations High Commissioner for Refugees. Available at [http://www.unicef.org/spanish/emerg/files/gl\\_sgbv03.pdf](http://www.unicef.org/spanish/emerg/files/gl_sgbv03.pdf) [Accessed on 30/08/2013].

United Nations Office on Drugs and Crime, (2010). Handbook on Effective Police Responses to Violence against Women. New York, United Nations. Available at [http://www.unodc.org/documents/justice-and-prison-reform/hb\\_eff\\_police\\_responses.pdf](http://www.unodc.org/documents/justice-and-prison-reform/hb_eff_police_responses.pdf) [accessed on 09/09/2013].

United Nations Women (2009) Gender – Sensitive Police Reform in Post Conflict Societies. United Nations Entity for Gender Equality and the Empowerment of Women, Available at <http://www.unwomen.org/~media/Headquarters/Media/Publications/en/04BGenderSensitivePoliceReform.pdf> [Accessed on 11/09/2013].

Wagner N. (1999) ‘Sexual Violence Against Women: A Key Element of Institutionalised Patriarchy’. In: Southern African Feminist Review, 2 (1999):3:59-65.

Walker, Archer and Davies (2005) “Effects of Rape on Men: A Descriptive Analysis” In: Archives Sexual Behav. 34 (2005):69.

Weisstub D.N. (1986) ‘Victims of Crime in the Criminal Justice System.’ In: Fattah E.A., ed. From Crime Policy to Victims Policy: Reorienting the Criminal Justice System. London, Macmillan Press Limited.

West R. (2007) “The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory.” In: Becker M. *et al.* (2007). Excerpts from Feminist Jurisprudence: Taking Women Seriously Cases and Materials. Thomson West.

Wolhuter, Olley and Denham (2009) Victimology: Victimisation and Victim’s Rights. London and New York, Routledge - Cavendish.

World Health Organisation (2012) Understanding and Addressing Violence Against Women. World Health Organisation. Available at [http://apps.who.int/iris/bitstream/10665/77434/1/WHO\\_RHR\\_12.37\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/77434/1/WHO_RHR_12.37_eng.pdf) [Accessed on 26/02/2014].

Zedner L. (2002) ‘Victims.’ In: Maguire, Morgan and Reiner, eds. The Oxford Handbook of Criminology. Oxford, Oxford University Press.

## Appendices

### **Appendix 1: Two case studies for focus group discussion held at the Police Training Centre situated at the Central Region Police Headquarters**

#### CASE STUDY 1

On 1st October 2013, Alice a 22 year old young lady was coming from a friend house. She was putting on a tight miniskirt and it was around 5 pm. She decided to take a shortcut in the process she met Frank a 35 years old man who stays in the same location with Alice. Although Alice was about 100 metres away from where there were houses, Frank decided to ambush her. He grabbed her by force, threatened her and forcefully raped her. During the rape Alice did not resist as she was so shocked with what was happening to her. After the incident she felt ashamed such that she did not tell anyone. After 3 days she informed her close friend Maggie who encouraged her to report to police. After another 3 days and that was on 6th October, she came to police to report the matter bringing with her a soiled miniskirt which she was putting on the fateful day which you confirmed that it was indeed tight and short for her body. Alice has found you at police and narrated the story to you.

#### Questions

How would you handle such a case? Explain the procedures you would take.

According to Alice, one of the reasons she delayed in reporting the matter was shame would you believe such explanations and why?

Would you treat this case differently if she reported immediately after the ordeal?

Would the fact that she reported late affect the way you would conduct your investigations or offer psycho-social support or other assistance to her?

Would the fact that she dressed in a miniskirt not be regarded that she partially contributed to the rape? How about her failure to struggle against Frank?

What injuries if any would the woman have suffered and how would you help her?

What are the most common sexual offences handled by your branch?

#### CASE STUDY 2

Judith a working young woman of 25 years went to visit her boyfriend's home. They started chatting and later went to his bedroom. He started touching her and she did not resist. Later on he started kissing her. However, when he wanted to take an extra step of wanting to have

sex with her (penetrative vaginal sex) she refused and said to him “no, stop it, I don’t want!” The man refused to listen and forced himself on her. She immediately after the act comes to you complaining that she has been raped.

#### Questions

How would you treat or handle such a case? Would you consider that as rape? Why or why not?

What injuries if any would Judith have suffered and how would you help her?

If the matter was to go for prosecution what orders would you be asking the court and why?



## **Appendix 2: The Table of Contents of the Human Rights Training Manual: A Resource And Training Manual For The Malawi Police**

### TABLE OF CONTENTS

- Introduction: Police work and Human Rights

Recognises Cardinal principles of Human Rights, Historical background of Human Rights in Malawi, definition, examples and origins of Human Rights.

International Instruments important to Police official; Bill of Rights and policing; whether police have rights; whether criminals have any rights; policing and limitation of rights.

- Policing: Rights and Duties and Responsibilities

Police and Rights essential in a democracy; Powers and Functions of Police, Policing and non-discrimination; Arrest; Treatment of Juveniles, Torture, Police Investigations, detention, search and seizure and Use of force in policing.

- Policing and Police Work

Policing and Development, Fundamental Principles on Ethical Policing; The U.N. Code of Conduct for Law Enforcement Officials; Statement of Common Purpose and values.

- Management as a Key to Human Rights and Policing

Providing Leadership, Decision Making, Communication, Motivation, Selection of People, Developing People; Human Rights Standards for Police Command and Management; the Responsibilities of Police Commanders and Supervisors; Purpose and Objective of Police, Strategic Planning and Policy Making, A Responsive and Accountable Policing and Police Training.

- Community Policing

Rationale and Principles of Community Policing; Understanding the Community; Neighbourhood Watch Schemes, Lay Visitors Schemes; Police Public Relations; Communication; Implementing Community Policing at a Police Station; Street Level Leadership; Implementing Community Policing and Community Policing Forum.

- Maintenance of Public Order

Rights of free Association; Assembly and Demonstration; Public Order v, Public Security; Basic Principles in Policing Public Disorder; Measures of Derogation in Exceptional Circumstances; Police and Labour Rights.

- Use of Force by Police

Arrest; Powers to Use Firearms; The Use of Force to Search Persons and Premises.

- Protection of Victims of Crime

Who are Victims of Crime; Fundamental Principles in Protection of Victims; Human Rights for the Victims of Crime; Police Officers as Victims of Crime.

- Vulnerable Persons

Children and young Persons; International Instruments and Convention on the Rights of the Child; women as a Vulnerable Group; refugees and Aliens; Victims of Crime as Vulnerable Persons; What are the rights of Victims.