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**In search of relief for the rape victim – making the criminal justice system work for her**

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*Dedication*

This research project is dedicated to my husband, Simbarashe.

Thank you for believing in me and for being there for me.

And to my children, Simbarashe Jnr and Rumbidzai for your encouragement  
and putting up with a weekend mother!

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GOD BLESS YOU ALL!

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*S v Canaan Sodindo Banana* 2000 (1) ZLR 207 (SC)

*S v D and Another* 1992 (1) SA 513

*S v Sibanda* 1994 (1) ZLR 394 (SC)

## **List of legislation**

### *Zimbabwe*

Criminal Procedure and Evidence Act, Chapter 9:07

The Constitution of Zimbabwe

### *Regional and international*

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (African Union, 2003)

Prevention and Eradication of Violence Against Women and Children, Addendum to the SADC Declaration on Gender and Development (SADC Gender Monitor, 1998)

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Organization of American States, 1994)

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (United Nations, 1979)

Universal Declaration of Human Rights (United Nations, 1948)

Declaration on the Elimination of Violence Against Women (United Nations, 1993)

## Introduction

I have been a magistrate for close to 16 years now and a regional magistrate for 6 years. In these six years most of my court work has involved rape cases. I have therefore seen first hand the way rape victims are affected when testifying in court especially when they are subjected to cross-examination.

‘If I had known that I would go through this I would never have reported.’

This is a statement I have frequently heard, spoken with emotion-charged voices and in between sobs, such was the general feeling of the rape victims I have dealt with over the years.

I would sympathise with them oblivious of the fact that I was also contributing to their misery. How so, you may ask. At law school I learnt about the types of offences and how each one is proved. I therefore grasped the essential elements of the different types of offences. When I graduated and joined the Ministry of Justice, Legal and Parliamentary Affairs I had long made up my mind that I wanted to be on the bench, to help ensure the wheels of justice were turning. Years down the line, my preoccupation during a rape trial was to be satisfied the prosecution had meticulously presented evidence allowing for a ‘safe conviction’. This translated into a thorough questioning of the complainant, drawing out such detail that I would never dream of giving to anyone were I to be in the complainant’s shoes.

‘Rape is easy to allege but very difficult to refute’ were words that would play themselves over and over in my head and so when it came to ‘testing’ the complainants’ evidence, I would allow the defence to go to town in the belief that this had to be done. An insistence on calling a spade a spade by either the prosecutor or the defence made me cringe, in so far as it was a cause of embarrassment to me, but I allowed it believing that it had to be done. I did not think rape victims needed protection from the use of explicit and embarrassing language.

I knew my work had to go on review before the High Court, so I was anxious to ensure there was no ambiguity in the use of words. The evidence had to clearly show that there was penetration of the female organ by the male organ. For the avoidance of doubt, I had no qualms about having the victims spell out what exactly happened, including reference to the different parts of the body.

A rape trial to me was not like any other trial. There was a lot at risk, especially considering the usual sentences for rape which ranged from 7 to 10 years’ imprisonment. False incrimination would translate into the incarceration of an innocent man and so the greatest care had to be taken to ensure the victim was being honest and not vindictive. This therefore meant that the witness had to go through a thorough examination by the prosecutor and an equally thorough cross-examination by the defence. The defence would always find ways of introducing the witness’ previous sexual relationships in a bid to discredit the witness and somehow the offender’s plight appeared to take centre stage. He had to be given leeway when asking questions, after all, he risked a lengthy term of imprisonment if convicted. The trauma all this caused to the victim was not a primary consideration.

With the passage of time, I began to think about the trauma rape victims had to go through and it appeared to me that the trial was more an injustice to the victim. I got increasingly unhappy with my routine, ‘Thank you, you are excused’ – these were the words I said before allowing the complainant to leave the witness’ stand. She

would have given evidence, been cross-examined by the defence and re-examined by the prosecutor marking the end of her testimony. Throughout this process she would have gone through a variety of emotions, from calmness to frustration and eventually tears. The most I would do was allow for an adjournment to give her time to 'calm down'. Her time in the witness stand amounted to a barrage of questions leaving her emotionally wounded and there was nothing I would offer her except to thank her for coming to court. I could not refer her for counselling as there were no such facilities. Her time with the criminal justice system ended with the end of her testimony. When I excused her it was like closing the door on her, as the criminal justice system, leaving her to her own devices. My feelings of disquiet intensified when a close relative had to go through this experience. Her description of the trial process showed that it was more of a harrowing ordeal for her than a fulfillment of her quest for justice.

I believed the introduction of victim friendly units (VFU) at the police stations and the hospitals adequately addressed the trauma that victims used to suffer at these places hitherto. It therefore logically followed that the trial was undoing the good work done by the police and doctors or so I thought. Something had to be done but what that was and who was to do it was the issue.

I therefore decided to research on this topic in fulfillment of my Masters in Women's Law programme. I decided to focus on the rape trial and show how the rape victim fared, in an effort to make a case for counselling after court. I was, however, not shooting in the dark as I already had my views based on my work experience. It was on this basis that I originally came up with this topic: 'So what after court? Making a case for counselling for rape victims.'

I started on the premise that the rape trial traumatizes victims and so there is need for counselling after the trial. This explains the focus on counselling as my initial topic clearly stipulates. However, in coming up with the objectives and assumptions, I sought to include the other stages a rape victim goes through before the trial. My aim then was to show that if there is trauma at these stages, then all the more reason why counselling should be introduced. As the research progressed it became clear that these other stages contributed significantly to the trauma a victim suffers and so there was need to look at each stage with a view to addressing the cause of the trauma. I therefore decided to leave my assumptions and questions as they were but became alive to the issues which were emerging, issues which showed that there was more that needed to be done; it was not just about counselling. This necessitated a re-focus as evidenced by the change in my topic.

The major aim was to uncover the trials and tribulations faced by rape victims in their quest for justice thereby addressing all the areas which traumatize them with the hope of finding some 'relief' for them.

### **Objectives of the research**

A lot has been said about the treatment of rape victims and there is a general consensus that they receive a raw deal at the hands of those who they turn to for justice. Solutions to any problem have to be guided by an informed and knowledgeable appreciation of the problem itself and the cause of the problem.

It was therefore important to look at the journey rape victims travel, see the pitfalls which add to their trauma and address these areas. My concern was with the criminal justice system which I took to start from the police station where the report is made, through to the hospital where the medical examination is conducted and finally to the courts where the case is tried. The inadequacies and shortcomings of the system have to be brought into the open if the plight of rape victims is to be meaningfully addressed.

The research was meant to show whether the answer lies in counselling or much more than that and how, where and when rape victims are traumatized. As stated earlier, I had my own assumptions which guided my research.



## **Assumptions**

- 1 The criminal justice system, from the gathering of evidence to the leading of evidence in court, traumatizes rape victims.
- 2 The criminal justice system focuses more on the offender than the victim.
- 3 The criminal justice system has no mechanisms to deal with a victim's trauma.
- 4 There are no specialized personnel to deal with rape victims within the criminal justice system.
- 5 There are no structures to provide counselling for rape victims.

The questions which flowed from these assumptions and which underlay the research were as follows:

## **Research questions**

- 1 Does the criminal justice system, from the gathering of evidence to the leading of evidence in court, traumatize rape victims? If so, how so?
- 2 Where does the criminal justice system put the emphasis when dealing with rape offenders?
- 3 In what ways does the criminal justice system deal with a victim's trauma?
- 4 Are there any specialized personnel within the criminal justice system to deal with rape victims?
- 5 What are the reasons for lack of structures to provide counselling for rape victims?

## **Demarcation of the study**

I initially decided to limit myself to Chinhoyi area, the reason being that I reside in Chinhoyi and I am also based at Chinhoyi magistrate's court. This meant I did not have to do a lot of travelling, which made sense given the fuel woes bedevilling the country. I however had to reconsider and cast my net wider to include Harare and Chitungwiza. This was due to the difficulties I encountered in locating rape victims in Chinhoyi. Harare and Chitungwiza also have regional courts and so visits there enhanced the prospects of locating more victims.

Rape cases are only tried by regional magistrates and Chinhoyi has a resident regional magistrate. I therefore could easily access the courts which are a mere three-minutes drive or 20 minutes' walk away. Either way I could never be bogged down by lack of transport.

Chinhoyi also has three police stations, all with victim friendly units and within walking distance so I could easily find my way to each police station. Chinhoyi is a small town where almost everyone knows everybody else which meant I did not have to knock on too many doors before accessing the police stations.

The Chinhoyi provincial hospital is a referral hospital where most rape victims from the whole of Mashonaland West (Chinhoyi is in Mashonaland West province) get medically examined and I considered it easy and convenient to find my way to the hospital.

I however did not confine myself to Chinhoyi urban but decided to include Banket and Zvimba police stations; these two places are 20 kms and 50 kms respectively out of town and are both easily accessible. Banket is along the Chinhoyi-Harare highway and Zvimba is along the Chinhoyi-Chegutu highway. Both routes are serviced by conventional and commuter buses and so transport is not a problem. Both places could be accessed with no problems of having to put up there for the night – one can easily get there and back on the same day. Besides accessibility, Banket and Zvimba cover rural, farming and mining communities. The experience of the urban population is not always the same as that of people from these areas and so it was important to know whether the victims' place of residence exacerbated their plight. The further they are from police stations and hospitals

makes their situation different from the urban victim who is closer to both police stations and hospitals. It was therefore important to focus on both areas, more so as the bulk of the rape cases Chinhoyi regional court deals with are from rural, farming and mining communities.

I had not planned on visiting Harare and Chitungwiza due to their distance from Chinhoyi but I eventually had to, due to reasons I will explain later.

## Law and literature review

There is a lot of literature on rape, what it is, its effect on the victims and the trauma victims' experience from the time of reporting to the police through to giving evidence in court. Many authors focus on particular aspects, from the law itself and how it furthers the perpetrator's interests at the expense of the victim and evidentiary rules and their effect, through to the types of trauma rape victims suffer. Looking at the law and literature already existing is crucial in mapping out one's own contribution on a subject already researched. What then has been written on this subject and what does the law say and where do I come in?

Prior to the amendment of the Criminal Procedure and Evidence Act, all rape trials were held in open court, except where the parties were juveniles. The law was later amended in recognition of the need to protect vulnerable witnesses and this includes rape victims.

It is however not always the case that once there is a law to address a particular situation, that situation will be adequately addressed with no room for any improvements. Nevertheless, having the law is in itself a good start.

To this end the Criminal Procedure and Evidence Amendment Act No 8 provides for the protection of vulnerable witnesses in Part XIVA. Section 319 A defines a vulnerable witness as: 'a person for whom any measure has been or is to be taken in terms of section 319B.'

Section 319B sets out the measures to protect vulnerable witnesses. It reads:

'If it appears to a court in any criminal proceedings that a person who is giving or will give evidence in the proceedings is likely –

- (a) to suffer substantial emotional stress from giving evidence or... the court may, either *mero motu* or on the application of a party to the proceedings
  - (i) appoint an intermediary for the person
  - (ii) appoint a support person for the person
  - (iii) direct that the person shall give evidence in a position or place, whether in or out of the accused's presence, that the court considers will reduce the likelihood of the person suffering stress or being intimidated.'

Victims of sexual assault fit into the vulnerable witnesses category and so are covered by these provisions. These provisions embody the whole essence of the victim friendly courts.

It is however interesting to note that the decision is made by the court on its own initiative or on application by a party to the proceedings. For the six years that I have been a regional magistrate I have not dealt with such applications from victims. I will show later that it is actually the prosecutor who makes that decision which invariably sees children under twelve automatically being afforded the use of the victim friendly court and adult women considered able to testify in open court.

It must be acknowledged that these provisions show an appreciation of the need to protect vulnerable witnesses when testifying in court. The law however has no provision for pre and post-trial counselling in the event that vulnerable witnesses require such a service. Section 363 of the Criminal Procedure and Evidence Act Chapter 9:07 mentions the award of compensation to any person who has suffered personal injury as a direct result of the offence and this falls short of addressing psychological injury for victims of rape.

Turning to the Constitution of Zimbabwe, section 18(1) thereof states that the law shall not be discriminatory in its application. This should translate to fair treatment of both the offender and the victim. However, the fact that rape victims are regarded as ‘suspect’ witnesses exposes them to rigorous questioning which is in itself discriminatory as complainants in other cases are not treated like this.

The discrimination is amply demonstrated in case law. In *S v Zinyando* 1989 (2) ZLR 203 the judge expressed the view that a conviction should not be based on the mere say-so of the complainant. This statement is pregnant with meaning because what it boils down to is the idea that rape victims’ evidence should not be taken at face value. In practice, therefore, these victims are the ones who are literally put on trial.

‘In rape trials as in pornography, the female body is publicly portrayed and debated. It is her body not his that is put on trial. The body’s secretions and underclothing are scrutinized, her photographed injuries distributed as exhibits, her body’s level of sexual arousal debated without regard to her testimony. She is objectified in similar fashion to her objectification in rape itself; this is the meaning of the term judicial rape’ (Lees, 1997:78).

In saying this I do not lose sight of the change in our law on the issue of corroboration. Before *S v Canaan Sodindo Banana* 2000 (1) ZLR 207 (SC), a rape victim’s testimony had to be corroborated. I can do no more than quote from the South African Law of Evidence, on the reasons for this where it is stated:

‘It is very dangerous to rely upon the uncorroborated evidence of the complainant in cases which involve a sexual element. Bringing of the charge may have been motivated by spite, sexual frustration or other unpredictable emotional causes’ (Hoffman and Zeffert, 1988: 415).

In the *Banana* case (supra) Gubbay CJ (as he then was) effectively removed the corroboration requirement and with it the cautionary rule of practice. Hitherto the courts had to approach a rape victim’s evidence with caution. He however hastened to add:

‘Yet I would emphasize that this does not mean that the nature and circumstances of the alleged sexual offence need not be considered carefully.’

It is my considered view that this exhortation to exercise care still exposes the rape victim to rigorous questioning justified by the long-held view that such witnesses are not to be readily trusted. The element of discrimination is still there. In every case, the degree of proof is beyond a reasonable doubt and that is what the court has to be satisfied with. To emphasize the need to consider carefully the nature and circumstances of the sexual offence suggests different treatment of complainants. It is in this careful consideration that the rape victim ends up being the one on trial.

The case however shows the law’s response to rape victims’ plight – a realization that the law had hitherto been insensitive. There is reference to the Namibian case of *S v D and Another* 1992 (1) SA 513 where it was held that:

‘in the end only one test applies, namely, was the accused’s guilt proved beyond reasonable doubt, and the test must be the same whether the crime is theft or rape.’

Still on the Constitution, section 18(11)(a)(i) provides for the exclusion of the public during trial. The grounds for such exclusion are specified and the protection of the private lives of the persons concerned is one of them. Issues of sex and sexuality qualify to be considered as belonging to one’s private life. It follows therefore that

rape victims have a right to this protection which also encompasses the protection of the integrity of their bodies. It therefore follows that whether the victim is a young child or an adult woman is neither here nor there, section 18 (11)(a)(i) affords all this protection justifying the exclusion of the public during a rape trial.

There is also literature on rape and the effect it has on women, how the victim's plight is exacerbated by the police, doctors and the court. As regards the effect of rape on women, Alice Armstrong states that:

'Women who have been raped, rape victims, often feel scared and confused and angry. They do not know where to turn for help. They deserve support and tender, caring treatment (Armstrong, 1988:1).

On the same issue Brownmiller had this to say:

'...what remains is the basic male-female struggle ... a brief expression of physical power, a conscious process of intimidation, a blunt, ugly sexual invasion *with possible lasting psychological effects on all women*' (Brownmiller, 1975:377) (my emphasis).

This observation justifies the focus on rape victims and the need to alleviate their difficult plight. One may argue that it is not all rape victims who suffer from the effects of rape and so there is no justification in singling out rape victims out of all other victims of crime. If there are rape victims who suffer no ill effects they can only be in the minority:

'... almost every woman who is raped feels guilty to some extent for what has happened' (The London Rape Crisis Centre, 1988:15).

The writers go on to enumerate the different reactions women have to rape, including shock, loss of control, nightmares, fears, shame, guilt and anger. Depending on the way a victim is handled, her situation may be worsened as she interacts with those to whom she turns for help. Research done by WLSA showed that victims find recovery more difficult if they are confronted by distrustful or rude police officers (Taylor and Stewart, 1991).

The asking of crude and humiliating questions by the police was shown to be one of the unpleasant experiences rape victims go through. Relating her own experience, one victim had this to say:

'The questioning at the station was much more brutalizing than it had been in my apartment. They asked me, for instance, how long the man's penis was ...' (Connel and Wilson, 1974:40).

These authors' work was meant to raise consciousness on rape, looking at its effects and the reactions of society and law enforcement agents. The dialogue of rape victims underscored the long-term effects of rape, the fact that they were scared to live alone and had tremendous fear of anything happening at night shows the need for intervention to give back to the victims what the rape experience took away. The issue therefore is how to address these problems, especially within the criminal justice system, for the benefit of the victims.

Coming to the trial itself, in her book, *Women and rape in Zimbabwe*, Alice Armstrong observed that:

'A rape trial is very difficult for a complainant. She must describe intimate details in front of a magistrate, the prosecutor, a translator, the accused and the public. Many women fail to report or prosecute the crime of rape because of their reluctance to appear in public to give evidence' (Armstrong, 1990:6).

It is a fact that a rape trial is a harrowing experience for the victim but should this be allowed to go on? Are there no means to make it less of an ordeal; as Bridgeman and Millins (1998) say the trial is a 'second rape or ordeal'. It is all very well to point out how the trial traumatizes victims but it is also important to determine whether a change of the law or attitudes is what is required as the solution to this.

Carol Smart observed that preconceived notions about women's sexuality leads to the 'whole trial being a process of disqualification of women' (Smart, 1989:34).

She cites statements which amply demonstrate why women are subjected to rigorous and aggressive cross-examination. The fact that the statement was made by a judge speaks volumes of the extent of the harm caused by attitudes. The statement attributed to Judge Wild is:

'Women who say no do not always mean no. It is not just a question of saying no, it is a question of how she says it, how she shows and makes it clear. If she does not want it she only has to keep her legs shut and she would not get it without force and there would be marks of force being used' (Smart, 1989:34).

She goes on to explain how the trial humiliates the victim, having to name parts of her and the man's body, all in an effort to dispel any doubts about her account of the event.

Her situation is worsened by the fact that she is treated as a 'suspect' witness from the outset. She is discredited before she even opens her mouth. The discrediting has its foundation in attitudes people have about women. Attitudes which are also evident from statements made by trial judges:

'Human (sic) experience has shown that girls and women do sometimes tell an entirely false story which is easy to fabricate but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all (*R v Henry and Manning* 1968: 23; Cr.App.R. at 153; Smart, 1989:35).

The rape trial is a double-edged sword for the victim. Not only does she start off as a 'suspect witness' but she must also repeat the 'violation' in words.

'It is not just that they must repeat the violation in words, nor that they may be judged to be lying, but that the woman's story gives pleasure in the way that pornography gives pleasure. The naming of parts becomes almost a sexual act in that it draws attention to the sexualized body. But her account, distorted by the cross-questioning techniques of the defence counsel, does not only sexualize her, it becomes a pornographic vignette' (Smart, 1989:39).

The trauma a victim is likely to suffer as a result of this is lost to both the prosecutor and the defence. In fact the victim has no control over the proceedings and it is not up to her to decide on what she can be comfortable with in the course of the trial.

'You do not bring the case against the rapist. The police and the prosecutor bring the case against him' (Armstrong, 1988:12).

It follows therefore that the ones who bring the case against the rapist, decide on what is important in proving the case against the rapist. In leading evidence the prosecutor will therefore seek to show that the victim did not consent and she has to show that she resisted and how she did so and finally how she was ravished in spite of her resistance.

'Although a woman may desire sexual intercourse, it is customary for her to say, "No, no, no" (although meaning "yes, yes, yes") and to expect the male to be the aggressor... It is always difficult in rape cases to determine whether the female really meant "no" ... The problem of determining what the female "really meant" is compounded when, in fact, the female has no already determined attitude – that is, her attitude was one of ambivalence. Slovenko explains that often a woman faces a "trilemma", she is faced with a choice among being a prude, a tease or an "easy lay." Furthermore a woman may note a man's brutal nature and be attracted to him rather than repulsed' (Estrich, 1987:38).

This statement puts into perspective the reason why a rape victim ends up being the one on trial. She has to show that her 'no' meant 'no' and could not possibly have been mistaken for a 'yes'. The gruelling process makes it imperative to focus on the effect this has on the rape victim for:

'...who can say what condition a woman might be in after being raped, grilled by the police, and then subjected to an unfair and violent court procedure which many women refer to as the "second rape", in which even the effects of the crime inflicted upon her are used against her' (Hall *et al.*, 1984:34).

There can be no doubt then that a rape victim suffers trauma, as MacFarlane noted:

'Sexual assault is much more an issue of power, domination, control, invasion, humiliation... It is about women losing control over their safety, losing autonomy over their bodies, and often fearing for their lives while being subjected to an attack...and it is the experience of [death] that creates the significant physical and emotional disturbances in victims [both short term and long term] identified as rape trauma syndrome' (MacFarlane, 2004:78).

The above literature touched on almost all the areas which add trauma to a rape victim. What needs to be done then given this unhealthy state of the criminal justice system? My focus is in searching for relief for the victims, drawing on my knowledge of a key player in rape trials.

The above literature touched on almost all the areas which add trauma to a rape victim. What needs to be done then given this unhealthy state of the criminal justice system? My focus is in searching for relief for the victims, drawing on my knowledge as a key player in rape trials.

When the victim friendly courts (victim friendly courts) were introduced, it was believed the trauma of testifying in court would be alleviated. However, previous research has shown that this is not necessarily so (Makazhe, 2001; Ndlovu, 2001). Even in the victim friendly court, children are subjected to lengthy and rigorous cross examination. The children are traumatized by the rape and giving evidence and, to compound matters, there is lack of training on child psychology, communication skills and counselling for court officials. According to the research, a Mrs Rudd, a psychologist at family support clinic, stated that:

'... after trial some of these victims went back to her to ask why they were asked these questions...'  
(Makazhe, 2001).

She went on to reveal that lack of training led to the use of insensitive language and that training changed attitudes towards rape victims, leading to more sensitivity and patience.

This research focused on victim friendly courts and young rape victims. My focus is on rape victims in relation to the different stages of the justice system that they have to engage with.

The issue of trauma and the effects of rape and the consequent trial were also the subject of research by Mary Gurure. Two rape victims revealed the extent of the trauma:

'It was quite evident during the interview that she was at pains to specifically put in words what the rape had done to her as the experience had overwhelmed her. She also stated that she desperately needed counselling but did not know where to get it from' (Gurure, 2001).

The focus for this research was on making a case for compensation awards for rape victims. My focus is on psychological relief and hopefully the answer to the questions posed by Mary when she said a victim who had received counseling still had to go through the trial and re-live the harrowing experience:

‘...would the initial counselling carry her through and sustain her after trial? Is there no need to mend the damage wreaked through provision of counselling services after the trial?’

Finally, I had occasion to read articles in our local newspapers where the effects of rape were highlighted. In one article, the writer, a woman, wrote:

‘Rape sucks and makes one feel rotten deep inside. It takes decades for someone to recover from it if they ever do. The best one can have at that time is lots of love, understanding and acceptance, and, most importantly, the right support one requires’ (*Sunday Mail*, 11 September 2005).

And in yet another article, the woman was a victim of rape at a young age and she stated:

‘... I have never been able to forget it... I always wish I were dead. You cannot have a life partner if you become a rape victim’ (*Sunday Mail*, 4 September 2005).

Whilst none of these articles mention experiences at the police, hospital or court, the point is clearly made that rape victims deserve a sensitive criminal justice system, a system which will not exacerbate their trauma but aid their healing and rehabilitation.

How then is my research different from what has been done already? The effects of rape, insensitive treatment at the hands of law enforcement agents and doctors and the rape trial ordeal are areas which previous literary works have covered. My initial aim was to zero in on the integration of counselling into the criminal justice system, looking at how the structures could be set up as I considered this to be the solution to the problem.

The re-focus on the issue of counselling allowed for a multi-disciplinary approach that is looking at the police and investigating how they interacted with the victim, the hospital and then the court. The issue of trauma was still the primary focus but focusing on how each stage traumatized the victim with a view of addressing each stage in turn. Instead of leaving all the other hurdles and seeking to ‘undo’ the damage at the end by providing counselling, the focus was now on highlighting the shortcomings of the justice system and finding solutions at each stage. I was not abandoning counselling altogether but dealing with each stage of a victim’s journey, as counselling done at the end of the trial may not heal wounds inflicted at the other stages. Cognizant of the changes in the legal system, I sought to find out whether the rape victim’s plight has significantly changed or whether there is room for improvement.

‘What is most disturbing ... is the fact that women can be held responsible when men rape. The whole defence of rape seems to rest on three basic principles: “she asked for it”; “she deserved it” or “He had a right”. It is outrageous that in the case of rape the victim of the crime is put on trial’ (Hall *et al.*, 1984:33).

This observation appears to capture the reason behind the lack of sensitivity towards rape victims, a lack of sensitivity and prejudices which explains why ‘...women who are raped still face an ordeal at the hands of the criminal justice system and women are still reluctant to complain of rape’ (Smart, 1989:43).

Finding solutions to these shortcomings within the justice system will translate to relief for rape victims and this is what my research seeks to do.



## **Methodology**

The aim of this research was to identify the areas which contribute to the trauma suffered by rape victims as they navigate through the justice system. To this end it was imperative to hear from the victims themselves and these victims are the women who were raped. The methodology had to be one which would enable me to get to know the lived realities of the rape victims and the approach which best suited my research was the women's law approach.

This was so because methodologies are ways of asking why. Why things are the way they are and when the why question is answered, then you look at how to change the situation. One may ask why I have taken rape victims as equal to women victims. This is because our law defines rape as:

‘Intentional unlawful sexual intercourse by a male with a woman without her consent’ (Feltoe, 1989:119).

Since my topic is on rape and the focus is on the victims, I was looking at the plight of women.

### **The women's law approach**

‘Women's law is a legal discipline which explores the reality of women's lives and from that perspective interrogates and investigates the law’ (Bentzon, 1998:26).

The women's law approach therefore affords flexibility; one can explore why things are the way they are from a variety of angles, the starting point being the women themselves. I had to find out whether the justice system, from the gathering of evidence to the trial itself, traumatizes the victims. I was able to interview the women victims, girl child victims and their guardians so as to get empirical data showing whether they were traumatized and how.

The use of the women's law approach informed my research in that I was able to come up with specific methods of gathering the data I needed. I decided on in-depth interviews for the victims for it was clear that group discussions were out of the question. Rape is such a sensitive issue and a subject that cannot be discussed in a group.

In gathering the data, I was looking at the way rape victims were handled at the time they report and also at the hospital when they went for a medical examination. Turning to the rape trial I was looking at the leading of evidence from the victim, the nature of the questioning and the details she was expected to give. I also was looking at the cross-examination by the defence and the effect this has on the victim.

As for the law, I wanted to see whether the ‘post-Banana’ period meant a change in the way a rape victim was treated in court. If the Banana case removed the need for corroboration and also the cautionary rule of practice, did it mean in reality that the victim was no longer subjected to rigorous and humiliating questioning because she was no longer viewed as a suspect witness?

This meant that I had to talk to the women and to the judicial officers as well as the police and hospital personnel. Interviews were also the best method to get the required data from these people as compared to group discussion.

I also had to peruse court records to see what type of questions the victims were subjected to by both the prosecutor and the defence and the nature of details they had to reveal. Observations were also important to see how rape victims fared during the time they gave evidence and were subjected to cross-examination.

Using the 'bottom-up' approach which is the essence of the women's law approach, I was able to see how victims are traumatized and the possible solutions. Case law and statutes were interrogated so as to see the law's role in traumatizing victims.

The women interact with other people in their quest for justice so it was also important to see how these actors and the corresponding structures aided or exacerbated the women's plight.

### **Actors and structures**

Looking at my topic it was important to see how rape victims navigated through the maze of reporting the rape, being medically examined, through to appearing in court. Their experience at each stage was important to determine whether their interaction with the different officials was traumatizing and, if so, how.

The police are the first port of call for the victims and so they are the actors at this stage. Lack of privacy can be a source of discomfort for rape victims so police stations can prove to be a hindrance. The attitude of the police when receiving the report and the manner in which they interview the victim also makes a difference between harassment which leads to traumatization and understanding which mitigates trauma.

From the police station the victim goes to the doctor for a medical examination. The doctors and nurses are the actors at this institution. Again the privacy afforded to the victim during history taking and the examination can be a source of trauma if such privacy is not respected. If the examination is not done promptly it is also traumatizing when victims go back and forth without being attended to. I therefore had to look at the police and the hospital personnel to see whether victims were traumatized and if so, how.

Finally, the victim goes to court for the trial. The prosecutor leads evidence from her and his attitude can be a source of trauma. The type of questions asked and the language used in court have a bearing on how the victim fares in court. The presiding magistrate also makes the difference in moderating the proceedings in order to balance the interests of both the victim and the offender, especially in view of the fact that a rape trial is seen as a second rape. The interpreter can also make a difference depending on the manner he or she relates to the victim, especially considering the use of language. These actors' roles and functions showed how victims were affected when interacting with them and whether anything was in place to mitigate trauma in the event that victims were traumatized. The defence in cross-examining the victim can also cause distress with insensitive, embarrassing and aggressive questions.

The actors and structures approach was ideal in getting data on whether the justice system has ways of dealing with a victim's trauma, either by providing counselling or by having specialized personnel within the system to deal with rape victims. Using this approach I was able to target all the relevant people, that is the police, nurses, judicial officers, prosecutors, interpreters, Ministry of Justice officials and counsellors.

### **Research process**

Pursuant to going into the field for data collection I prepared interview guides. I had five in all and I prepared the five so as to cater for the different people I wanted to interview. The five composed of the victim, the police, the regional magistrates or prosecutors, the Permanent Secretary for the Ministry of Justice and finally counsellors, women's non-governmental organizations and hospital psychologists. These are the people deemed important and who could provide the relevant information.

## **Shortcomings of archival data**

Having completed this task of preparing interview guides, I went to the magistrates court (Chinhoyi) where I asked for records of all the completed rape trials. Being in the system, I did not need authority to gain access to the court records. I intended to get details pertaining to the victims so as to trace them for interviews. Unfortunately most of the records were of plea proceedings which meant the complainants had not testified in court. The others had farm addresses and these could not be pursued due to transport considerations and the mobility of people as a result of the resettlement programme. I eventually managed to get the addresses of only three rape victims before abandoning the exercise of using court records to trace respondents.

## **Difficulties in locating victims**

I was not able to find any of the three victims whose addresses I got from the court records. In one case the victim was a schoolgirl whose father had since re-located to the rural areas. No one knew where that was and the school records only had the father's work address. The father's workplace records did not have his rural address. This put paid to any hope of locating this girl. I turned to the other woman and a visit to the given address revealed that she was a 'lodger' who had since left that house. The landlady did not know her new address and the police had no alternative address in their docket. It was another dead end. Almost despairing I turned to the third respondent. I had dealt with her case and she was yet to testify in yet another rape case, both cases had her father as the offender and I assumed finding her was not going to be a problem. Unknown to me she had received threats from her father's sister after the first trial and she had disappeared to a destination unknown. Efforts to locate her with the help of the police came to nought.

As fate would have it, I lost my husband and with that I lost focus for the next month. I therefore was not able to pursue the tracing of victims and when I eventually regained some semblance of focus time was running out. My initial target of at least ten rape victims was seriously under threat. I abandoned my focus on Chinhoyi only and eventually travelled to Harare and Chitungwiza whenever there was a rape trial. This meant that I had to contact the Chinhoyi, Harare and Chitungwiza court to find out who had rape trials. This was done a day before so that the following day found me travelling to either one of the three places. I would not have had to do this were it not for the dearth of rape trials at Chinhoyi. The acting regional magistrate happened to be the provincial magistrate for the Mashonaland West province and so he had to make time for his other duties.

## **Hitches in accessing other respondents**

There was a little hitch when I sought to make appointments to see the police. A call to the provincial coordinator of the victim friendly unit was met with enthusiastic support but he required an introductory letter so as to get the green light from his superiors. I had not anticipated this, erroneously assuming that since they all knew me I would not need formal introduction. A telephone call to my supervisor was all I needed to do to get the letter. It was faxed to me and I promptly took it to the police. Authority was granted there and then and the provincial public relations officer graciously offered to make appointments for me with all the other police officers working within the victim friendly unit. He duly did and relayed the dates and times to me.

The same happened for the hospital, social welfare department, ministry and court officials, as well as counsellors. I made appointments over the telephone and had no problems securing same. Two women's non-governmental organizations insisted on getting introductory letters and only then could I be granted permission to see them. Two colleagues who were also conducting their research and who had already gained access took me to each of these organizations and I was able to talk to the officials without prior arrangements. The two colleagues once worked for a women's non-governmental organization and so were known to the officials concerned. In spite of all these hurdles I eventually managed to go into the field and finally the data collection process began in earnest.

## **Research methods – primary sources of data**

### **In-depth interviews – victims**

This was the main method of data collection. I managed to have interviews with nine rape victims. The victims were key informants as they spoke of their experiences from the reporting to the police right up to attending court. With my first interviewee I almost slavishly followed my interview guide. This was mainly because rape is a sensitive issue and it is not easy to talk about it, not that we were going into details of the rape itself but it was a reminder of the incident.

I sought to find out about the victim's experiences at the police station, the hospital and the court, how she was received and whether there was anything that made her uncomfortable. As regards her hospital visit, I wanted to know who she was with, how long it took before she saw the doctor and, finally, the nature of the examination.

As for the victim's court experience, I wanted to know when she eventually testified compared to the time of her report. I also wanted to know what happened in the prosecutor's office and then in court. My main focus was on her experience when she gave evidence and when she was subjected to cross-examination. Finally I wanted to find out what could have been improved on to make her experience better throughout her interaction with the system. The interview took almost forty-five (45) minutes, I was careful not to interrupt the victim when she volunteered information I had not specifically asked for. Fortunately she did not break down or show any signs of distress.

### **Chitungwiza – interviews**

When I learnt that the Macheke trial was on at Chitungwiza, I decided to go there hoping to see a number of victims. This case occurred at a government primary school in Macheke, a provincial town in one of Zimbabwe. It involved the sexual abuse of 20 girl school children by a teacher and a groundsman who were employed at the school.

Chitungwiza is 30 kms from Harare and Harare is 125 kms from Chinhoyi, so it was a day of jumping from one bus onto another. The first day was almost a disappointment as the Macheke trial did not start. However, another rape trial did start and I was able to observe the proceedings and interview the victim afterwards. This was a young girl who was accompanied by her grandmother, aunt and uncle and I took the opportunity to talk to them as well.

Unlike my first interview, this time I referred to the interview guide once in a while just to make sure nothing had been left out. I also had had the opportunity to see my supervisor who had pointed out the wisdom of semi-structured interviews to allow victims' experiences to emerge. I introduced myself and my mission and the girl's grandmother excitedly related her daughter's experiences. This must have been because she believed some good would come out of it. It did to the extent that I was able to refer them to Childline and I also gave them food at lunch break.

The young girl did not talk much but her grandmother accompanied her throughout her interaction with the system and so all was not lost. The interview took twenty-minutes and I was anxious not to keep them for too long as they had come from out of Harare and had not eaten for two days. I offered them lunch and on the way to the shops took the opportunity to talk to the uncle while the others remained at the court house. I sought to hear the uncle's views as regards the effect of rape and what victims go through from the police right up to court. I had no problems getting him to express his views, maybe the food and the walk did the trick!

The next day found me back at Chitungwiza as the Macheke trial was rolled over to that day. I managed to talk to two more victims, one was with her aunt and the other with her parents. The regional prosecutor introduced me to them and they were very willing to talk to me. I interviewed one victim at a time and invited the guardians who I also interviewed. I just asked each one to take me through their experience up to the court proceedings and I allowed them to talk without interruption. I came in here and there just to seek clarification and to introduce the subject of counseling so as to hear their views on this subject. Information gathered from the guardians was invaluable as they were more open and keen to have issues they were raising addressed. Guardians' observations of the changes in their loved ones' behaviour as a result of the rape experience and the interaction with the criminal justice system was also very valuable.

### **Harare – interviews**

Three days later a telephone call to Harare court confirmed there was to be a rape trial and I made my way to Rotten Row. I was able to make observations during the trial and to interview the victim afterwards. She was distraught and broke down during the interview. I referred her sister to Childline and hopefully she took her there for counselling.

The interview took more or less the same format as the Chitungwiza ones. The prosecutor had introduced me to the girl who was with her father and sister and she appeared to trust me; she even excused her father who I talked to later on. The interview took close to thirty minutes mainly because I had to reassure the girl and give her time to just express her feelings without interruption.

### **Chinhoyi – interviews**

The following day I was back at Chinhoyi. I managed to observe rape trials and to talk to one victim. The other victim, a young girl, had to have her case rolled over to the following day because she would not talk at first; she refused to talk to the prosecutor and the interpreter tried but it was only late in the day that she started to open up.

On this day my interview did not take long. The victim, an adult woman, was very open and forthcoming with information. Maybe it was because she was confident I was not just out to engage her in aimless talk. I had to use my office during the interview and I had also introduced myself. I just allowed her to tell her story and only came in to seek clarification and also to introduce counselling so as to hear her views.

For the other three victims, I did not personally carry out the interviews. Two of them involved young girls who had difficulty opening up even to the court officials. The regional court intermediary finally succeeded in gaining their confidence and so I asked him to interview the girls for me. I gave him the interview guide but explained that he should allow them to just tell their story and use the guide as a checklist to ensure that all the relevant details had been canvassed. He managed to interview both girls, a feat I would not have accomplished, and he saved the day for me.

The last interviewee had appeared in my court before I took study leave. I had heard her evidence but the trial was yet to be finalized. I therefore considered it imprudent to interview her; Chinhoyi being a small town people could misinterpret what was going on so I asked the intermediary to come to my rescue and he graciously obliged. It was just as well as he had to make use of his basic counselling skills to reassure the victim who broke down during the interview.

## Key informants

**Table 1: Key informants who were interviewed**

KEY INFORMANT	NUMBER INTERVIEWED		TOTAL
	Male	Female	
Victims of Rape	-	9	9
Regional Magistrates	3	2	5
Regional Prosecutors	3	1	4
Interpreters/Intermediaries	2	-	2
Ministry Officials	2	-	2
Nurses	1	1	2
VFU Police Offices	7	3	10

### Interviews with officials

The victim friendly unit police officers were interviewed to give insight into their interaction with victims of rape. I had to meet each one in their offices. At Chinhoyi central police station I had planned on meeting the victim friendly unit officer but it ended up as a group discussion as the district coordinator and the community relations liaison officer joined us to give their input. My working relationship with them has always been good and it showed throughout the discussion. Information flowed freely and I hardly referred to my interview guide as it was a lively discussion which touched on all the areas I had set out to probe. I wanted to know where rape victims reported to, who attended to them first and how and where the interviews were conducted. I also wanted to know who took them to hospital and how long it took for them to be seen by a doctor.

At Banket, Chinhoyi rural, Chemagamba and Zvimba the interviews touched on the same issues and all the police officers were very forthcoming with information. I witnessed the office space shortage first hand as we had to use the officer-in-charge's office at Banket and I had to politely ask him to excuse us so as not to inhibit his juniors by his presence. He obliged and I was most grateful.

### Regional magistrates and prosecutors

Chinhoyi has only one regional magistrate and I interviewed the one who was acting at the time. I also managed to interview three regional magistrates at Harare court. I managed to see them during their tea break; the third one walked in as I was talking to the other two so it ended up being somewhat a group discussion. One of them did not stay long as she was anxious to clear her in-tray. I also took advantage of a colleague who was also doing her research and was in her office so I interviewed her in her office.

My questions were about how long they have been dealing with rape trials, whether they received any training on how to handle rape victims and what they were mainly concerned with during the trial. I also wanted to know whether victims break down and, if so, what they do. I also sought their opinion based on their observations in court on the importance of counselling and whether they knew of any places which offer such services.

As I am also a regional magistrate I had no problems interviewing my colleagues. I was one of them and so they were forthcoming with information, they knew I also was aware of how victims fare in court and what they are subjected to.

The information I sought from prosecutors was exactly the same. I could not have group discussions as I could not get them all together due to pressure of work on their part. I had to visit them in their offices but again due to our working relationship I had no problems talking to them.

### **Nurses**

I was able to talk to two nurses attached to the Maternal and Child Health Care section where rape victims are examined. It was not easy to interview doctors. When I got to the hospital the doctor who conducts the examinations was leaving for a meeting and he had theatre duties that afternoon. He offered to contact me when he had victim examinations but I felt that to attend such examination was in itself traumatizing to victims.

I had to contend with interviewing the nurses and the sister-in-charge introduced me to them and assured them that they need not be circumspect with information. She encouraged them to be open with me and that is exactly what happened. I interviewed the two nurses together but since it was a Wednesday it was not 'victim examination' day so I did not see any victims there.

I sought to find out where, how and when examinations were conducted. I also wanted to know who would be with the victims and what tests, if any, are done and how the victims react to the examination and the tests. Their views on the importance of counselling were also sought and I wanted to know whether they offer such services to the rape victims they attend to.

### **Social welfare and school psychological services officers and counsellors**

To each of these people my questions focused on the effect of rape on victims and the importance of counselling. I also wanted to know whether they handled cases of rape victims and how often.

I must comment on the reception I got from all these people. They were ready to see me at the time they had allotted for me. They were very courteous and went out of their way to accommodate me although I could tell they were busy people. Except for two of them, they were strangers to me but this did not matter. They were all forthcoming with information but were true to their profession, they could not assist with victims' addresses as they saw victims in confidence and respected their confidentiality.

However, at one non-governmental organization we had to wait for hours before my colleague, who had worked there before, decided to approach the one woman she had met previously. We had unrestricted access to rape victims' files, at times being left on our own in the office. The subsequent interview with one of the counsellors was constantly interrupted by colleagues asking for food or just popping in for a quick chat. The counsellor would also call out once she saw a colleague walking along the corridors. I had to resort to my interview guide in order to remain focused on what I needed to find out. She, however, had an uncanny way of picking up from where she had left off without much difficulty! The interview consequently took longer than was anticipated but I did get information and it was all worthwhile.

I must say the willingness of these interviewees to grant interviews was unparalleled. Two counsellors were prepared to grant interviews during their lunch break because they were extremely busy that week. The number of women anxiously waiting in their waiting room bore testimony to just how busy they were. They even offered to share their lunch and, although my stomach was loudly protesting (I had to shuffle my feet to muffle the noise), I could not invade their lunch hour and their food as well!

## **Interpreters and intermediaries**

I wanted to know whether they were trained to deal with rape victims and how victims fared both in the victim friendly court and in open court. I also wanted to know how they reacted to victims who broke down.

I found it easier to talk to the interpreters based at Chinhoyi court. I visited them during their tea break and had no problems engaging them. The one interpreter was on circuit duties (going out to out-stations) and was prepared to see me after hours which is what happened. I did not need to use my interview guide as I just asked them to tell me their experience on the areas I was interested in. It was an unstructured interview.

Finally, interviews with the ministry officials were meant to find out about training for court officials and also the ministry's views on introducing counselling within the criminal justice system and ways to introduce it. The Permanent Secretary as the head of the ministry can facilitate the changes necessary and that is why I included him as one of the key respondents.

My interview with the Permanent Secretary was not long, and did not need to be. He had agreed to see me at very short notice and he was out of the office for most of the day due to his busy schedule. I literally ambushed him as he had intimated that he could see me that day but left the time of the appointment to his secretary. As he was in and out of the office she could not give me a definite time slot so she suggested I just wait in her office which I did. When the Permanent Secretary arrived, he first saw someone else who was also waiting for him and soon after that I went in to see him and got my interview! He made it very easy for me to talk to him as he did not intimidate me by exuding that 'air of authority'.

## **Court observations**

I used this method during the rape trial. I made sure I was in court from the time the victim was sworn in and started testifying up to the time she was excused. My eyes would dart from one person to the other, including the audience, as their expressions are not lost to a victim who is on the witness stand. I was just sat like any other member of the audience in the gallery and keenly following the proceedings.

The first trial involved an adult woman and it was held in open court. I was therefore able to go into the court room just like any other member of the public. The other trial involved a juvenile but was held in camera in the main court room as the Harare victim friendly court was not functioning. In the court room was the girl's father and I was allowed in by virtue of my position as a regional magistrate. I compromised the girl's right to privacy in the hope that my research would benefit other victims who would come after her. The prison officers, recorder and court orderly's presence who were all male had already compromised the need for privacy. As the only female I hoped my presence was perhaps reassuring rather than intimidating.

The rest of the trials were done in the victim friendly court, again my position enabled me to observe one of them but the other two I was like any other member of the public. The victim was in the separate room but the main court room was full of members of the public. It would appear the presiding magistrate assumed that the child's absence in the main court room made it unnecessary to clear the court room of members of the public. Although I also sat in during the child's testimony I found it disturbing that whenever the trial adjourned the victim would come out and we would meet her on our way out of the main court room. The very purpose of affording her privacy was defeated and the importance of clearing the court of all members of the public was clearly demonstrated.

I took note of the witness' facial expressions, body language and general demeanor. It was interesting to note how expressions would change from bland to frustration and then tears. I would record the change of expression or even tone of voice and the reason for the different changes. I would capture the event which caused the different reactions. I also took note of the composition of the court. In one case all were male, that is, magistrate, interpreter, recorder, prosecutor, court orderly and prison officers. I would also note the number of people in the gallery and their constant movements, coming in and going out during the victim's testimony. I noted the victim's reaction when the court posed questions and the reaction of people in the court room to



the proceedings. During cross-examination I observed the offender's behaviour towards the victim, things like pointing an intimidating finger and laughing at the victim's responses.

My assumption on the trial's traumatizing effect did not change. Victims' angry expressions, tears and embarrassed looks bore testimony to the way the proceedings were affecting them.

## **Use of court audio-tapes**

All regional court proceedings are mechanically recorded. The court records were there but I preferred to listen to the audio-tapes. I listened to a total of seven tapes. The tapes would include everything whereas the written record would not be that comprehensive. I was able to get the 'unedited' version of the trial. Listening to a tape I could hear every sigh, sob, outburst and emotion-charged voice. I listened from the time the witness started testifying until she was excused. Although in some instances the tape's sound was muffled, most of them were clear.

I took note of the fact that at times a question would be posed and the witness would take time before responding. This happened whenever the question was insensitive or embarrassing. There was also a difference in the tone of voice at the time the witness was giving evidence and the time she was responding to questions under cross-examination. The aggressiveness in the defence's voice came out clearly and the exasperation and anger could equally be heard in the witness' voice as the cross-examination progressed.

In one case, I listened to the tape from 1410 – 1533 hours and this gives an idea of how long the witness was on the witness stand. In yet another case which had a defence lawyer I listened to the tape from 1216 until around 1530 hours. The court adjourned for lunch and continued into the late afternoon with the witness still on the stand. The sharp exchanges between the defence and the witness were clearly audible so were the occasions when she broke down and started speaking between sobs. I could picture the 'scene' in my mind's eye, just from listening to the exclamations and spontaneous answers, her voice projecting different emotions, at times impatience, exasperation and frustration. All in all I listened to ten audio tapes. I found this method useful as it enabled me to get the 'feel' of what was going on which confirmed my assumption about the effect of a rape trial on the victims.

## **Secondary sources of data**

### **Library research**

The law was analyzed in an effort to see how its provisions influence the way rape victims are handled and to see whether it affords some protection to them. Literature on rape and its effect on women gave an insight into the extent of the harm women and girls suffer as a result of rape. As the literature was from different countries it also helped to show whether the treatment of rape victims was different depending on where one was from or if it was a pattern, thereby showing the extend of the problem. Previous research on rape and the handling of the victims by the criminal justice system was invaluable as it showed how the changes in the legal system still fall short of effectively addressing the rape victim's plight.

### **Newspaper articles**

The newspaper articles were on rape and its effect on women. These were important as they showed what rape victims go through, thereby justifying the need to seek relief for them. One correspondent in a letter to the editor showed how prevalent rape is, almost a daily occurrence and remarked on what he called 'permanent psychological scars' which victims have to contend with. This brings in the subject of counselling which my research was initially all about. All four articles were from current newspapers showing that this is not something which is no longer happening, thereby showing the relevance of the research in trying to address the plight of rape victims.

## **Conclusion**

Gathering data for any purpose is not an easy task; the problem can be compounded if the methods used are not thought out. The use of the women's law and the actors and structures approaches enabled me to cover all the areas and people I needed to talk to so as to get all the relevant and necessary information to address the objectives of my study.

### **Findings and analysis**

#### **A victim's experience – her journey**

In this chapter, I discuss the findings which came out of my research. I traced the rape victim's journey from the time of reporting through to the time of giving evidence in court, which translated into two distinct stages. These stages I prefer to call (i) the gathering of evidence and (ii) the leading of evidence in court. These are the two stages which capture the rape victim's journey through the justice system. The victims' voices are given prominence as this research is all about them and I also show the views of the different people the victims interact with. As this is all about finding relief for victims, the possible antidotes are also discussed.

#### **The first stage: gathering evidence**

The reporting of rape used to be done in the charge office where there was no privacy. Police officers would gather just to listen and ask questions at the expense of the victim's peace of mind.

With the introduction of victim friendly courts there was need to also address the situation at the police stations. This realization heralded the introduction of victim friendly units (VFUs) at police stations. These are units specifically meant for victims of sexual abuse. The establishments of the units meant the officers who were to work in them had to be trained. The training covers the handling of rape victims, basic counselling and the various forms of sexual abuse – the signs and symptoms. A victim of sexual abuse will only be in the charge office for a brief period, as soon as the nature of her complaint is known she is referred to the victim friendly unit where she will be attended to for the duration of her interaction with the police. Instead of dealing with many police officers she will deal with one person, away from prying eyes.

According to the victim friendly unit provincial coordinator for Mashonaland West, victim friendly units were introduced at every police station as from mid 2003. Sadly, though, only one officer works in this office and from 8am – 4pm. What this means is that victims who seek to report outside these hours are turned away. They can be turned away three or four times because of the non-availability of the victim friendly unit officer. The district victim friendly unit coordinator and other officers confirmed this set-up.

When anyone visits the police station to report they are anxious to get it off their chest and entrust their problem to law enforcement agents. To be asked to go back over and over again can only increase the victim's anxiety. I was able to talk to only two victims who were unable to see the victim friendly unit officer on the first day.

One victim went to report at night and some curious police officers listened to her story only to ask her to come back the following day. The following day she saw yet another police officer before she eventually saw the victim friendly unit officer. She however had to relate her story to each one. This could have been avoided were it not for the rigid victim friendly unit operating hours. The other victim had to sleep over at the police station as she had travelled from far but could not report due to the non-availability of the victim friendly unit officer.

The police officers were right when they said this situation adversely affects victims as one victim had this to say:

‘I was so depressed and I was not sure whether that was the procedure.’

If victim friendly units are for the benefit of rape victims, to open offices from 8am – 4pm is tantamount to suggesting that rape only occurs inside these hours which is sadly not the case.

Interviews with police officers also showed that there is lack of privacy due to inadequate office accommodation. Of the ten police officers I interviewed, only the provincial and district coordinating officers have offices and yet they do not deal with rape victims unless they are referred to them for exceptional reasons. All the other victim friendly unit officers have no offices of their own and so even when they ask those they share with to leave for the duration of an interview this does not guarantee that no one will come barging in unannounced. An example was given of Siakobvu which has only two offices and the victim friendly unit officer ‘improvises’ by going under a tree if the charge office is busy.

By its very nature, rape is not a subject someone is comfortable talking about and privacy, especially at reporting stage, is called for. Having people walking in and out must be unnerving to a victim who is in the process of relating such a sensitive matter. Miss L had this to say on this issue:

‘When I went to report I was scared, I had never been to a police station. Many police officers kept coming in and out of the office.’

If the provision of offices is not a priority to ensure privacy and victims still suffer the indignity of prying eyes and curious ears three years after the introduction of victim friendly units it surely shows that women’s concerns are not a priority in a male-dominated society.

The inadequacy of office accommodation is compounded by lack of food and transport. All the police officers interviewed spoke of victims who are kept at the police station pending medical examinations. Due to shortage of transport, victims cannot be taken to the hospital timeously. Whilst ‘detained’ at the police station they sleep along corridors or in offices and since there are no food rations for them, they are either given detained suspects rations or the victim friendly unit officer has to part with his or her own food. At times victims are given suspects’ blankets and one can only imagine the condition such blankets are in.

For those victims who would have presented with ‘fresh evidence’ of the abuse they eventually have to bath. I was not able to talk to a victim who went through such an experience but two police officers related instances where they had to ask victims to bath after 48 hours because they had failed to get them examined on time. In one case the victim friendly unit officer had five victims who needed medical examination and they shuttled with them back and forth for two weeks before she finally was able to get them examined. This is how she put it:

‘Most times we are never able to get victims examined, after travelling to Chinhoyi you would come back with them, for example in October I had five victims and I had to go back and forth for two weeks without any joy.’

A police station is not a pleasant place to be and having to stay there for a week must be a nightmare, with no decent place to sleep, no food and no change of clothes. Miss F, who spent four days at the police station, shared her experience:

‘I was made to feel as if I was the offender. I would spend the whole day just sitting outside and sleeping in an office, getting prisoners’ food. I spent four days at the police and I wished I had not reported. I was even given a nickname by the police for my long stay at the police station.’

There really is nothing friendly about a system which has victims regretting over reporting. These experiences confirm Carol Smart's observation when she said:

'It must by now be well known that the trial and *even the pre-trial events in police stations* are experienced as profoundly disturbing by many women who have been assaulted' (Smart, 1989:34) (my emphasis).

It is not about the law for there is no law which condones this treatment but it is about attitudes. If the police prioritized examination of victims they would ensure a motor vehicle is provided to ferry them to hospital and the hospital personnel would in turn give priority to victims once they present at the hospital.

The re-living of the rape ordeal through repeated interviews and having to deal with male officers were issues raised by both victims and the police. The police explained that at times it was necessary in order to capture all the important details and so it was inevitable. They confirmed the effect this had on victims as some would break down and one victim friendly unit officer said he at times asks a female colleague to assist when he is having difficulty in consoling a victim. According to this police officer:

'On many occasions victims break down whilst relating the ordeal. When that happens I explain to her that I'm the one who can assist her and therefore it is important for her to tell me the story. If I fail, which at times happens, I ask a female police officer to assist and I advise her on the questions to ask. At times I leave the victim for a while so she can calm down. It is difficult to have one interview.'

The victim's interaction with the police is indeed a traumatic experience as borne out by what the victims had to say. This may sound like a sweeping statement given the number of victims I managed to talk to but even the ten victim friendly unit police officers confirmed the not so pleasant scenario.

There is no set criteria on the sex of the police officers deemed suitable to work at the victim friendly unit. Of the ten police officers I spoke to, seven were male. It would appear though that the police appreciate the need to have female officers. I say so because two victim friendly officers based at Chemagamba police station stated that when going to hospital for a medical examination a female officer is asked to accompany the victims.

Relating a rape incident is not easy and from my experience on the regional court bench victims find it difficult to talk to their parents, especially the father, about such an issue. A male police officer has a double handicap, being male and also a stranger to the victim. Constable Manyangadze underscored the advantage of having female victim friendly unit officers. She is based at Chinhoyi central police station and her male colleague used to ask for her assistance in recording statements from rape victims. She developed an interest in the victim friendly unit operations and asked to be transferred to this unit and this where she is now working.

It therefore makes sense to have female police officers attending to rape victims. One victim who was attended to by a male police officer stated that it would have been better had she dealt with a woman. She felt embarrassed to talk about the incident with a male officer.

### **The medical examination – another nightmare?**

Interviews with nurses revealed that there are set days for medical examinations and these are Mondays and Wednesdays only. It follows therefore that victims who are abused on Thursday have to wait until the following week. Although a victim friendly clinic has now been set up, it is not operational due to staff shortages and so the non-availability of doctors sees victims going for days on end without being examined. According to sister Malaidze:

'Examinations are done on Mondays and Wednesdays only, if the victims come on any other day, we take them to out-patients department. At times they fail to get a doctor and we tell them to come back some other time. At times they come two to three times before they finally see a doctor, especially if it is a weekend.'

If the police get frustrated one can imagine the effect this has on victims. One police officer had this to say on the challenges they face in dealing with rape victims:

‘The main one is doctors. They do not take these cases seriously. You can spend a week taking a victim to the doctor with the doctor saying bring the victim tomorrow. It is difficult to overcome such challenges. You come back angry from the hospital.’

His frustration was shared by another police officer who said the main problem at the hospital is:

‘... failure to co-operate from doctors, sometimes fresh evidence is wasted due to doctors’ reluctance to give such cases priority, you are told to wait and after waiting you will be told the doctor has left. There is no hospital in Zvimba so we have to travel to Chinhoyi.’

These police officers’ assertions were not an exaggeration as the nurses confirmed this and the victims did as well.

When victims manage to see a doctor they have to relate their ordeal to the nurse when she takes their history and some of them break down. The examination itself is conducted in the presence of the police officer and at times by a male doctor. In examining the victims the doctor conducts HIV, sexually-transmitted infection (STI) and pregnancy tests. According to the nurses they offer counselling to victims before the tests and they are supposed to offer post-test counselling as well. However they hardly ever do this due to time constraints. Due to the distances they would have travelled the police would be anxious to go back. Unfortunately follow-up mechanisms are non-existent and so the victims are left to cope as best as they can.

Of the nine victims I interviewed, two of them were examined by a female doctor and they both expressed their appreciation, stating that it would have been worse had it been a male doctor. One victim was examined in the presence of a nurse and the headmistress of her school and the doctor was male. According to her, she felt embarrassed and would have preferred a female doctor. The examination was painful but she was too scared to tell the doctor. All the victims stated that none of the doctors ever talked to them except to ask them to undress. They also revealed the anxiety caused by the tests for HIV, STI and pregnancy. One victim stated:

‘I was tested for HIV, STI and pregnancy. I was really scared when the HIV test was done for I was panicking wondering what would happen if I tested positive.’

This experience can only worsen the victim’s pain. It would appear pressure of work gets the better of all these people the victims interact with, coupled with a failure to appreciate the victims’ situation.

‘The *recognition* that many victims of rape and sexual assault have suffered significant losses, as well as physical trauma, and that their reactions may represent unresolved grief responses enables those who assist in their recovery, whether they be ... doctors, nurses ... to provide the most appropriate therapy and support’ (Hopkins, 1984:107) (my emphasis).

The hospital is the last place anyone would expect to be met with indifference, especially those of us who are in need of care and support. Hopkins’ observation underscores the need for those who interact with rape victims to be sensitive to their needs. The need for care and support is important because:

‘Women who have been raped, rape victims, often feel scared and confused and angry. They do not know where to turn for help. They deserve *support and tender, caring treatment*’ (Armstrong 1988:1) (my emphasis).

The above findings do not afford victims this treatment. One victim said when she went to hospital she just wanted the examination to be done quickly but with this kind of set-up it could only be a wish. When she was taken to Chinhoyi hospital there was no doctor to examine her and she had to travel to Banket. Fortunately for her, her uncle took her in his motor vehicle and offered the escorting police officer a ride!

The police, nurses and the victims were agreed on the treatment victims get at the hospital and the findings show that the experience is traumatizing. The whole process of gathering evidence is fraught with unpleasant hurdles for the victim. And yet these victims have rights, rights which should be respected. What are these rights?

The inherent dignity of every person is a value espoused in the Universal Declaration of Human Rights. Article 1 of the declaration and article 3 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) state that all human beings are born free and equal in dignity and rights. When rape victims are kept at the police station under conditions which compromise their right to dignity, it is a sad indictment of the criminal justice system. There is no dignity in sharing prisoners' food and blankets and sleeping in an office or corridor.

If our constitution respects people's right to dignity and provides that no one shall be subjected to inhuman and degrading treatment, thereby promoting respect for every human being, the rape victim also deserves that respect.

The right to dignity is again violated by the failure to examine rape victims timeously. One can imagine the indignity of going back and forth without bathing so as to preserve evidence. The presence of other people other than the doctor further violates the woman's right to dignity and respect for the integrity of her body.

Article 3(e) and 4 (g) of the Declaration on the Elimination of Violence Against Women provide for the right to the highest standard of physical and mental health and the right to specialized assistance which includes treatment, health and social services. Rape victims who present within 48 hours of the rape receive prophylaxis treatment to guard against HIV infection. Their physical health is compromised when they are turned away due to the non-availability of doctors.

The importance of privacy cannot be overemphasized where rape victims are concerned. Not affording them privacy at both the police station when reporting and at the hospital during an examination, is a violation of their right to dignity and respect as espoused in articles 3 (1) and (2) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Protocol). Article 3(1) of the Protocol to the African Charter states:

'Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.'

Rape victims should be accorded this dignity and failure to do so is a violation of their rights. Ideally, complainants should never be kept at police stations and that is why the Zimbabwean law does not specifically cover such situations. The practice need not be regularized by making legal provisions for such situations. In other words we cannot advocate for legal provisions governing the care of rape victims whilst they are 'detained' at police stations awaiting medical examination. To do so will be tantamount to condoning a situation which should be discouraged.

It is better for the police to provide a bus warrant for the victim to go back home until such time that a doctor is available to conduct the examination. This may be inconveniencing to the policeman who will be anxious to ensure the victim is available as and when he requires her but the victim's interests should be given priority. Going to the police and being escorted to hospital is distressing enough and keeping her at the police station only makes it worse. If resources in the form of motor vehicles are made available for each victim friendly unit this problem could be addressed. The police can then ferry the victim to hospital and back without worrying about transport problems.

Lack of appreciation of the women and girls' needs may be the reason why efforts to alleviate the rape victim's trauma have still not been fully realized despite the introduction of victim friendly units at both police stations and hospitals. The need to provide 'gender sensitization and training of all service providers engaged in the administration of justice, such as judicial officers, prosecutors, police... and health officials' (paragraph 20 of

the Prevention of Violence Against Women and Children – SADC Gender Monitor) stems from the realization that a change of attitude may be all that is required to address the plight of victims of violence. Resources will be made available to ensure victims are examined timeously and so avoid all the indignity they have to endure at the gathering of evidence stage.

I will be the first one to admit that the situation portrayed by those I interviewed may not obtain at all police stations and all hospitals but the fact is it should never be condoned even if it is happening at some police stations and some hospitals. Is the situation any better when she finally appears in court?

## **The second stage: leading evidence – the trial**

### **Finding her way to court**

Witnesses' attendance at court is supposed to be at the state's expense, they are subpoenaed and provided with bus warrants and once at court they are entitled to receive witnesses' expenses.

Section 239 of the Criminal Procedure and Evidence Act provides for the payment of expenses for persons attending court and the allowances '...shall be paid out of monies appropriated for the purpose by Act of Parliament'.

The victims interviewed revealed that when the bus drivers refuse to accept bus warrants they use their money but find it difficult to get it back as witnesses' expenses are not always paid on time. Due to the distances they travel, they come to court a day before and have to sleep at the police station where they are not provided with food. Since they will have used the little money they had on bus fare, they go without food for up to two days or more. With no food and no decent accommodation they are expected to come into court at the pain of being penalized for non-attendance.

Section 231-233 of the Criminal Procedure and Evidence Act clearly states that witnesses who fail to attend and to remain in attendance will be penalized. Surely if their presence is that important, the state should fulfill its end of the 'bargain'? The subpoena should not just benefit the state in ensuring the attendance of witnesses without them providing the necessary facilities for the witnesses' wellbeing. One victim who suffered the indignity of sleeping at a police station with no food and no blankets put it thus:

'We slept at the police station yesterday in an open space. We had no blankets. We did not have food, thank you for the food you gave us here, we could have died of hunger.'

She was thanking the intermediary who had given her food at court. Save the Children Norway donated some money to buy food to cater for young children who use the victim friendly court. The children are given dry food in the form of loose biscuits, korn kurls, sweets and cool drinks. The intermediary enquires from them when they come in the mornings as to whether they would have eaten. If not they get biscuits and a drink or coffee. If they spend the day at court they get the same food for lunch.

A guardian of a seven year old rape victim also shared the same experience. She and her granddaughter spent two days without food on their way to court. On the first day their bus warrant was rejected and they had to go back to the police station until they eventually managed to board a bus which accepted the warrants. I am not suggesting that only rape victims go through this ordeal but it is a fact that they are the most vulnerable and so should be treated well.

### **Delay in commencing**

The rape trials take long in commencing and victims find this disturbing. All nine victims I talked to mentioned the delay in commencement of trial as an area of concern. Having gone through the not so pleasant experiences at the police station and the hospital one understands the victims' desire to go through the trial with minimal delay and get it all over with.



A father of one of the victims stated that cases of this nature should be fast tracked so that children can testify and forget about it. He was clearly frustrated at the time it had taken for his daughter's trial to commence. The offence occurred in May 2004 and this was now January 2006. These sentiments were echoed by one victim who said:

'I feel that the cases should be tried quickly when events are still fresh. In my case the delay caused me to panic and resent the police and courts. I was now afraid of everything and that is why I was now running away.'

This child's father explained that he had to lie to her that they were going to Chinhoyi to fetch her aunt who was coming from South Africa. This victim's frustration was shared by yet another victim who said:

'I was called to come to court after a very long time, more than a year. I no longer wanted to talk about the matter although I initially was prepared to.'

To illustrate that these victims' complaints are genuine I obtained a record of the rape cases currently pending at Chinhoyi Court, as illustrated below:

Table 2:

<b>Year of offence</b>	<b>No of cases</b>	<b>position</b>
2002	12	Trials yet to commence
2003	9	Trials yet to commence
2004	41	Trials yet to commence

If the victims express such frustration it shows they are psychologically affected by the delays. Article 3 (f) of the Declaration on the Elimination of Violence Against Women provides that women have the right to the highest standard attainable of physical and mental health. These women's mental health is obviously adversely affected. They have a right to equal protection under the law (article 3[d]), a right they also enjoy in terms of section 18(1) of the Zimbabwean constitution. Offenders are to be afforded a fair trial within a reasonable time (section 18(2)), the same right should extend to rape victims, more so as the trial itself affects them more compared to the offender.

The Declaration on the Elimination of Violence Against Women has not been ratified by Zimbabwe, a cause of concern given the need to address issues of violence against women, rape being one form of such violence. The government needs to ratify and domesticate the declaration for the benefit of women and in this case, rape victims.

Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women provides that the state is to establish fair and effective legal procedures for women subjected to violence and timely hearing and effective access to such procedures. The delay in commencing trials violates this right.

### **Trial proceedings**

Coming to the trial itself, all nine rape victims mentioned that they relived the experience in court. The regional magistrates who try rape cases confirmed that victims often break down in court, so did the prosecutors and interpreters.

The court room is more of a battlefield where victims are left wounded and bleeding. They are subjected to intensive questioning by the prosecutor and an even more intense and brutal cross-examination by the defence.

It amounts to playing over the incident in one's head and then verbalizing it to complete strangers – a second rape indeed! This is amply illustrated by Miss X and I will let her speak for herself:

‘In court I felt like I was going through the terrible ordeal again. At times I would break down. I tried very hard to compose myself but it was difficult. I however managed to narrate everything. The man (offender) was represented by a lawyer who was very rough and inconsiderate. The lawyer seemed to be accusing or blaming me for what happened. For a moment I thought that maybe there was something wrong with me or that I was supposed to have done something to avoid the rape. I felt empty and worthless and the lawyer kept asking me questions which hurt me. I felt a lump in my throat and I thought of walking out of the court room and leave everything to God.’

It was quite an experience for her, an experience shared by others who suffered the same fate-rape, Miss V had this to say about the experience:

‘The perpetrator had a lawyer and he was harassing me and also not giving me the chance to answer what he had asked. At one time I wanted to cry. He also asked me embarrassing questions, the questioning was unpleasant. I gave evidence in open court and the court room was full of the man's relatives. I was shy but I decided it was better for me to talk and get it over with.’

Talking about sex and sexual experiences is not something most women are comfortable with and yet they are expected to mention body parts in a court room full of strangers. One regional magistrate stated that he allows the use of euphemism with young girls because some of these things are never mentioned by name but with adult women he insists on ‘calling a spade a spade’ because they know. But these adult women were young girls once and such things were never mentioned, that is how they were socialized, it can therefore not be easy for them to mention these ‘things’ in court. It is not surprising that most of the victims found the use of explicit and embarrassing language as the most distressing. It becomes worse when the composition of the court consists of an all-male ‘cast’ as was the case in a trial I attended. This is an excerpt of what went on between the offender and the victim:

Accused: When people have sex, substances come out, you did not bath but you managed to sit next to your mother-in-law.

Victim: You wiped the sperms and so they were not coming out for me to be unable to sit.

Accused: I could not wipe off the smell of sperms.

Victim: Even if I was smelling my mother-in-law would not have told me.

Accused: Tell me, how does my penis look like, is it circumcised or not?

Victim: You just opened your zip and inserted your penis but I did not notice what your penis looked like, you ejaculated.

Accused: You saw the zip, what about my penis?

Victim: I can look at my husband's penis, not yours. Why would I look at your penis?

There was no use of euphemism throughout this exchange and even I was feeling a bit uncomfortable. The men in the gallery including the prison officers appeared to be enjoying every minute of it. The witness's demeanor, looking down and at times shuffling her feet spoke volumes about how the proceedings were affecting her.

This confirms Carol Smart's observation:

'... giving a detailed account of every aspect of the sexual abuse makes women a sexual spectacle' (Smart, 1989:38).

The use of the victim friendly court does not spare victims from this embarrassing and intensive questioning. I earlier on mentioned the research done on victim friendly courts. The only difference is the fact that at least the victim does not get to see the reactions of those who are in the court room and also she cannot be intimidated by the offender but she is not spared the questioning.

The one magistrate I talked to who said he had received some training on how to handle victims said he spares victims from such embarrassing questions. Any question he deems to be bent on embarrassing the witness he says he disallows. Unfortunately he was the exception as most magistrates received no such training and that includes the writer.

This lack of training must be the reason why one magistrate allowed an eight year old child to be subjected to embarrassing questioning by a 45 year old offender. It went thus:

Accused: After I had got on top of you after removing my clothes what did you observe on my person.

Victim: I observed your urinating organ.

Accused: If you may describe how it looked like.

Victim: It looked like a stick which had ears. Like the face of an elephant.

Accused: This stick which you saw was it facing downwards or upwards.

Public prosecutor: Objects, question is useless and irrelevant your worship.

Magistrate to offender: Can you rephrase your question, I want to hear it to determine whether to allow it or not. Are you saying in what condition was it.

Accused: Yes.

Magistrates: So I will allow that question.

Accused: Since you are saying you saw my urinating organ in which direction was it facing.

Victim: It was pointing downwards.

Phew! After the session I understood the child's frustration and her complaint that she felt 'bored' (popularly used here to mean annoyed). Her guardian was equally unamused and stated that such questioning should not be allowed. The rape trial does humiliate victims.

Articles 2, 4 and 5 of the African Charter on Human and People's Rights talk of the right to integrity and dignity. There is nothing dignified about reducing her story into a '...pornographic vignette ... unfortunately for the woman in the dock she differs from the photograph because she is there in the flesh to feel her humiliation' (Smart, 1989:39).

Human rights instruments set the standard and to fail to live up to these standards is a sad indictment especially where it concerns the rights of those who need care and protection. These rights are emphasized by Armstrong:

‘A woman, as a human being, is entitled to respect for the dignity of her body and protection of the integrity of her body’ (Armstrong, 1990:6).

The pervasive notion that women and girls tend to lie about sexual matters sees them going through a gruelling experience in court. Whilst the rule on corroboration and the cautionary rule of practice were ‘outlawed’ in the Banana case (supra), in practice rape victims are put on trial because they are perceived as ‘suspect’ witnesses.

‘Human experience has shown that in the courts girls and women do sometimes tell an entirely false story which is very easy to fabricate but extremely difficult to refute. Such stories are fabricated for all sorts of reasons and sometimes have no reason at all’ (Andrews and Hirst: 2001:205).

These sentiments find expression in the court where the preoccupation is in thoroughly ‘testing’ the victims’ testimony. She has to show that she was indeed raped. All the regional magistrates I spoke to emphasized that they are mainly concerned with the complainant’s ability to narrate all that happened and to see if she is being honest with the court.

In S v Mabinya S-16-91 there was reference to the three normal dangers in rape cases and the first two being (i) lying against an innocent person, in order to protect a lover, and (ii) crying rape when she had consented, in order to preserve her honour. This is why magistrates are anxious to determine the complainant’s honesty. This is why she will be on the witness stand for hours on end being grilled. The reason for this is:

‘Preconceived notions about women’s sexuality leads to the whole trial being a process of disqualification of women. ... the rape trial in practice means that a woman must show, beyond all reasonable doubt that she could not possibly have enjoyed it’ (Smart, 1989:46).

Young girls also go through a torrid time due to the perceived risks in their testimony. In S v Sibanda 1994 (1) ZLR 394 (SC), Ebrahim JA looked at six main objections to children’s evidence as listed by Spencer and Flin (1993) in their book, *The evidence of children*. These are:

- children’s memories are unreliable
- children are egocentric
- children are highly suggestible
- children have difficulty distinguishing fact from fantasy
- children make false allegations, particularly of sexual assault and
- children do not understand the duty to tell the truth.

It is because of these notions that the rape victim is turned into the offender and this is discriminatory. Article 8(f) of the Protocol to the African Charter states that there should be reform of existing laws and practices in order to protect the rights of women. In practice, women are discriminated against in a rape trial. The elimination of discrimination against women is also espoused in article 18 (3) of the African Charter.

Article 2 of CEDAW condemns discrimination in all its forms and states are to adopt policies to eliminate discrimination against women. Article 2 (d) of the Protocol, although not yet ratified by Zimbabwe, also states that states are to take corrective and positive action in the areas where discrimination against women in law

and in fact continues to exist. There is discrimination in fact in a rape trial. The woman is put on trial due to her 'disqualification' by virtue of being a woman. On paper, corroboration is no longer a requirement but girl children and women are discriminated against in cases of a sexual nature.

The African (Banjul) Charter on Human and People's Rights provides for equality before the law and equal protection of the law (article 3).

In a rape trial the offender has the benefit of the presumption of innocence whilst the victim is discredited even before being heard. There is need to be fair and to strike a balance between the interests of both the offender and the victim.

Whilst case law states that a complainant in a rape case should not be treated any differently from a complainant in a theft case, the fact stands that a theft case complainant is never put on trial and therein lies the offending discrimination.

### **Choice of court**

Turning to the choice of court between the victim friendly court and open court only one magistrate stated that he does not consider the victim friendly court as a court reserved for young children. The other magistrates leave the decision to prosecutors who invariably use the victim friendly court whenever they deal with young children. Section 319B of the Criminal Procedure and Evidence Act provides guidelines on what the court looks at before deciding on employing measures to protect a vulnerable witness. One of the measures is the use of the victim friendly court. The law is clear and affords the protection to all rape victims but because from inception the victim friendly court was seen as a system meant to protect young children who have been sexually abused, the court officials through practice 'reserve' it for young victims.

However, at the time of the research the Harare victim friendly court was not operational so children were testifying 'in camera'. Of the nine victims I talked to, two opted to testify in open court, four were children who testified in the victim friendly court and three were not advised of the victim friendly court facility but stated that they would have preferred to use the victim friendly court. The use of the victim friendly court would have spared Miss P this experience:

'My heart was pounding with fear being in an environment I am not used to and before strangers. My stomach is now still painful.'

Rape victims are vulnerable witnesses and the choice of court should be left to them. Where a victim testifies in court the exclusion of the public, as provided for in section 18 (11) (a) (i) of our constitution, ensures the protection of the woman's dignity and the integrity of her body.

My findings showed that the rape trial is a distressing experience for rape victims and I sought to find out whether those who deal with them are able to assist in any way.

### **Where to for relief?**

All the regional magistrates I spoke to stated that when victims break down they adjourn and allow them to 'compose themselves'. They cannot assist as they lack the expertise. Prosecutors stated the same. Although intermediaries and interpreters said they received some training in basic counselling, they however said the training did not equip them sufficiently. There is therefore no one with expertise to help distraught victims.

At the end of her testimony all the magistrates said they thank the victim and excuse her. Two magistrates referred to cases they dealt with where they advised the children's guardians to seek counselling services for the children and one magistrate said he includes a recommendation for counselling in his judgments but there is no mechanism to ensure that is done.

The Permanent Secretary for Justice expressed the view that rape victims are traumatized and said that was why there were training programmes for judicial officers to try and mitigate the trauma. He also said counselling was important but due to limited resources and lack of expertise within the criminal justice system they had left this to non-governmental organizations who had shown interest in assisting. He was however prepared to have a budget for training of personnel and also to have counsellors 'of our own to do the work, we can do that'. But before counselling it is prudent to address the practices which distress victims as they go through the different stages of the system.

### **Addressing the pitfalls**

My findings reveal the need for an inter-disciplinary approach to the problem. This is so because there is distress for the victim at the time of reporting, during the medical examination and finally at the trial. Counselling at the very end may not address the effect of sleeping at a police station for days on end. It may also not address the trauma of pre-testing and post-testing at the hospital and so I will endeavour to suggest possible solutions to the problems encountered at the different stages.

At the police station the rigid victim friendly unit operational hours result in victims being turned away if they come to report outside the hours of 8am – 4pm. Police stations are open 24 hours a day as offences are committed any time. The victim friendly unit would serve its purpose better if it is also operated 24 hours a day on the same basis as the other police officers who perform other duties.

Due to shortages of office accommodation, the very essence of victim friendly units is compromised as privacy is not guaranteed. Constant interruptions during interviews distresses victims. Every police station has a charge office and its purpose is never in doubt, every visitor knows where to go to make enquiries. The same should happen for the victim friendly unit, an office must be set aside for interviews. It is better for other police officers to share so as to ensure the availability of a private office for victim friendly unit operations.

The shortage of transport at police stations results in victims who live some distance from the police station having to sleep at the police station pending a doctor's examination. The stay at the police station means having to eat poor food and sleep in an office or corridor. There is need to have a motor vehicle assigned to the victim friendly unit officer. Traffic police do not seem to ever experience transport problems. Police stations have station vehicles which should be used whenever there are rape victims to be ferried to hospital. The delays in taking a victim to hospital also results in those victims who present with fresh evidence delaying in taking a bath; a reliable transport system would minimize the delays.

Dealing with male police officers presents problems to some victims. Since victim friendly unit officers are trained, using female officers would be desirable and the training will take care of any fears that being a woman does not necessarily mean the woman officer is sensitive and knows how to handle rape victims.

Finally there is need to reduce the number of interviews with rape victims. The police can draw up a checklist canvassing all the important areas to ensure they cover all aspects in one interview with no repeats.

Turning to the hospital, the non-availability of doctors resulting in a week or two's delay before a victim is examined is unacceptably insensitive. The shortage of doctors is a nation-wide problem but this can be addressed by training nurses to carry out the examinations. The Family Support Trust has expert doctors who offer training to other doctors on the examination of rape victims. The training should be extended to nurses as they are always available, be it at a village clinic or a district hospital. This would also address the problem of specific examination days which are currently Mondays and Wednesdays only.

The examination should be done in private allowing for the guardian's presence where the victim is a child. The examination by a male doctor was found to be distressing to some victims. Female doctors should carry out the examinations.

Victim friendly clinics which deal with victims of sexual abuse should be set up at district and provincial level to ensure that victims are attended to without delay.

The conducting of HIV, STI and pregnancy tests is in the interest of the victims and so cannot be avoided. However there is need for pre and post test counselling and nurses are capable of providing this service. At the moment they are unable to provide counselling due to time constraints as the police are usually anxious to find transport back to their respective stations. The provision of transport to the police will ensure they do not rush the victims, depriving them of the opportunity to be counselled.

The last stage is the court. In order to address the trauma caused by delays in commencing trial and the humiliation suffered by victims when explicit and embarrassing language is used, I suggest that regional courts be categorized as specialized courts. This would translate to the training of judicial officers, prosecutors and interpreters on how to handle rape victims, gender sensitization and communication. Judicial officers will then be alive to the need to moderate the language and appreciate the use of euphemism. Victims will then be spared from crude and insensitive language. The trials will also be expedited. Rape cases are not complicated matters which would require prolonged and extensive investigations, a limit of six months as the period within which the matter should be set down for trial would be realistic and achievable.

There is also need to deconstruct the long-held views regarding women's duplicity which justified the requirement for corroboration and the cautionary rule of practice. Although the law has changed, in practice rape victims are still treated as 'suspect witnesses' and they are subjected to rigorous and unfair questioning which at times is aimed at humiliating them. Conscientization of judicial officers on the importance of treating rape victims like any other complainant will minimize the harrowing experience of being put on trial which has been aptly described as the 'second rape'.

On the aspect of witnesses' expenses, these must be a priority and a specific allocation needs to be set aside for 'specialized court witnesses' so that victims are not prejudiced.

Adoption of the foregoing measures may mitigate the trauma. However it is all very well to talk about mitigating trauma but is crucial to know how important it is and whether there is such a need, especially after these other traumatizing stages have been addressed. It was therefore important to find out from the experts what effect rape had on victims and what role counselling plays. The issue of counselling is also one of my assumptions and I will canvass it hereunder.

### **A case for counselling?**

I spoke to seven counsellors in all who explained the effects of rape. According to them the effects range from hopelessness, suicidal tendencies, guilt, low self esteem, marital problems and truancy in young children. One organization is already training the police in basic counselling skills and they are prepared to offer counselling to rape victims referred from court. Three organizations stated that it was quite possible to work in collaboration with the government in providing counselling which they said is important for all rape victims.

'Long after the physical injuries have healed, and even more so when there are none in the first place, the emotional scars of rape and the toll it exacts from its victims is by far the least understood by the public in general, by the criminal justice system and its prosecutors and even by the victims themselves. I have often had women approach after hearing me speak, and for the first time confide that they were themselves victims of rape as long as 30 or 40 years before, that they have lived with the confusion, the shame, the guilt, the helplessness, only now coming to understand the reasons' (Rowland, 1985: xiii).

This confirms the counsellors' assertions on the importance of counselling for rape victims. But do the victims share the same sentiments? Is it not patronizing to speak for them when they are the ones who experience the trauma. Miss C had this to say about counselling:

‘After I gave evidence in court I was supposed to receive counseling so that I could forget about the trauma but nothing was done. To me it seems as though they are saying because you reported the rape, you should face the repercussions.’

She needs counselling not only because she said so but her ‘confessions’ speak for themselves:

‘I am devastated and I have thought of committing suicide. I just feel empty and worthless.’

Contrast this with Miss V who was fortunate enough to receive some counselling. She was referred for counselling by a nurse who attended her at the hospital, and she had this to say:

‘I was referred for counselling at a place called Family... (I cannot recall). They also talked to my grandmother. I appreciated the counselling I received, it made me feel better as they told me it is something that happens and I must accept it and eat properly to maintain good health.’

Of all the nine victims I talked to she was the only one who received counselling. The behaviour of the other victims as related by their guardians shows that they too could do with counselling. One grandmother said her grandchild is now losing weight, she does not eat and keeps to herself. And the guardian of one of the Macheke girls said the girl grew up as an extrovert, very clever and intelligent but since the incident she is now unusually quiet. She is no longer the happy child she used to be. At one time she was taken ill and she started crying when a male doctor asked her to lie down for an examination. They had to find a female doctor after the guardian explained the child’s problem. She is fearful of all male adults.

The same story was related by the mother of a 14 year old girl who said the girl could no longer concentrate at school and started playing truant. They had to look for her after she ran away from home. The emotional effects of rape cannot be wished away and they are a reality, varying in the degree of seriousness as shown here:

‘Counsellors who have worked with rape victims all over the world have found that the emotional effects of rape are usually very serious’ (Taylor and Stewart, 1991: 14).

This further confirms the need for counseling.

From a human rights perspective, rape victims need to be rehabilitated. There is therefore need to establish mechanisms for their rehabilitation. Article 4(2)(e) and (f) of the Protocol to the African Charter states that state parties are to implement programmes for the rehabilitation of women victims of violence and establish mechanisms aimed at providing effective information and rehabilitation for victims. Article 4(g) of the Declaration on the Elimination of Violence Against Women also espouses the right to specialized assistance including counselling.

The need to introduce legal and administrative mechanisms for women and children who are victims of violence so that they receive effective access to counselling was recognized in the Prevention of Violence Against Women and Children – SADC Gender Monitor. The most effective way will be to incorporate counselling within the criminal justice system so that victims get a complete package.

Access to counselling and rehabilitation services for women who suffer abuse is a right espoused in article 12 (d) of the Protocol. Absence of such facilities readily made available is therefore a violation of women’s rights.

‘It is individual women – the victims of rape and sexual assault – who experience the insult, feel the pain and humiliation and suffer the resultant emotional problems. Emotional problems need treatment and the development of special counselling, the application of crisis intervention techniques and the creation of rape crisis centres and support groups are all a response to the need’ (Hopkins, 1984:104).

The response to the need has to be all-inclusive as shown by Hopkins, for there to be meaningful relief for the rape victim. And an all-inclusive package has to include some legal education.



## **Legal education**

Whilst counselling is important, legal education is equally vital. The victims' knowledge of what to expect from the time they report right up to the trial will help in preparing them and thus reduce the trauma.

One regional magistrate said there was need to prepare victims for the court process, 'not rehearsing the witness as such but making her aware of what will happen in court.'

It would appear this is what one victim had in mind when she said:

'From the time I reported I was not told why I had to go through what I went through. From the doctor, I went back home and I did not know what was happening. It is better to be informed on what is going on.'

Most of the victims stated that after the doctor's examination they wondered whether the cases had been finalized. Their anxiety could therefore be allayed by telling them what to expect throughout their interaction with the system. The concept of rape crisis centres where victims also get psyched up for the court session should be embraced. Legal education is not synonymous with witness rehearsal but seeks to empower a witness so she knows what to expect.

The provision of accessible services for effective information is a right which women are entitled to and rape crisis centres will be the ideal places to access such information. (article 4:2(f) of the Protocol).

In searching for relief, one does not have to necessarily focus on one remedy, a combination of remedies may prove more effective. Counselling may not be every victim's solution but providing it gives the victims a choice as to what suits them. It is for this reason that I did not abandon counselling altogether in preference of legal education, more so given the victims' views on counselling.

## **Conclusion**

When rape victims seek the law's intervention, they hope to get justice. They however tend to get more than they bargained for as evidenced by the foregoing findings. Their quest for justice appears to leave them worse off.

Credit must be given to the realization that rape victims were getting a raw deal and the subsequent changes in the legal system which sought to address this. This realization saw the introduction of victim friendly units at police stations and hospitals and victim friendly courts. Some training was also done and some, although not all the relevant personnel, were trained on handling rape victims. All this was meant to alleviate the distress suffered by rape victims when navigating through the criminal justice system.

However this study has shown that there is still no relief for the rape victim. The system is not yet there and more still needs to be done. The victim's journey from the police through to the courts is still littered with pitfalls and unless these are addressed the system will not effectively work for the rape victim.

The changes in the legal system should be complemented by changes in attitudes, availability of resources, adequate training for all the officials who deal with the victims and supportive infrastructure. Failure to address all these areas will result in the noble intentions to improve the lot of rape victims being just that, unfulfilled intentions. Well, there has to be action if relief for rape victims is to be a reality.

## Recommendations

The rape victim's journey within the criminal justice system starts at the police station and proceeds to the hospital and finally to court. There is therefore need to address distressing situations at each and every stage.

### The police

- *More than one victim friendly unit officer at each police station*

Police stations operate on a 24 hour basis and the same should be the case for the victim friendly unit. The provision of at least two police officers who would alternate for night duties will ensure victims are attended to as and when they present.

- *Provision of a specific victim friendly unit office*

In order to ensure privacy and confidentiality the victim friendly unit officer must have an office of her or his own. Wooden cabins can serve the purpose, currently some police stations have such offices, they are also cost effective.

- *Reduction of interviews*

A single interview should suffice. Astuteness on the police's part will ensure victims are not subjected to numerous interviews. Police should have a checklist to ensure all the relevant information has been captured. It is better to have one long interview with breaks whenever required rather than repeats.

- *Provision of a motor vehicle for the victim friendly unit*

A motor vehicle specifically set aside for the victim friendly unit will ensure transport availability to ferry victims to hospital without unnecessary delay.

- *Training*

Police officers are already receiving some training but 'they are not yet there' as revealed by the provincial victim friendly unit coordinator. There is need to train more police officers and ensure continuity with refresher workshops. Connect and Childline are already involved in the training. Since all the interviewed police officers emphasized the inadequacy of counselling skills there is need to give more time to this area.

### The hospital

Victim friendly clinics should be established at district and provincial hospitals. This will minimize travelling for victims and also ensure that victims are examined with minimal delay.

- *Nurse training*

Since there is a shortage of doctors, nurses should be trained so that they can carry out the required medical examination and ensure the clinic is open each day of the week. For example, the Mental Health Act used to require affidavits from two doctors but due to the shortage of doctors, psychiatric nurses can now complete these affidavits. It is not as if it is a complicated examination that only a doctor is competent to conduct. Using nurses will save the situation.

- *Attendance at the examination*

Only the doctor or nurse should be present in the examination room unless the victim is a child who requires the reassuring presence of her guardian.

- *Gender of doctor or nurse conducting the examination*

Whenever possible a female doctor or nurse should carry out the examination. Being 'poked' by male doctors was shown to be unsettling to some victims.

- *Counselling*

Counselling before and after HIV, STI and pregnancy tests should be provided. The nurses confirmed that they have the capacity to do so. Time constraints on the part of police will be taken care of once they have reliable transport.

- *Workshops*

Workshops on gender sensitization and handling of rape victims, the importance of the medical examination and appreciation of the trauma suffered by victims should be conducted for medical personnel. Regional magistrates, counsellors and psychologists can conduct such workshops. Family Support Trust can also assist in the training of doctors as they have doctors with expertise in handling rape victims.

## **The court**

- *Pre-trial counselling*

Pre-trial counselling should be done by victim friendly unit officers in liaison with the prosecutors.

- *Specialized court category*

Rape trials should be in specialized court category. This will ensure judicial officers and prosecutors and intermediaries receive training on ;

- (i) how to handle rape victims,
- (ii) gender sensitization,
- (iii) communication and
- (iv) basic counselling skills

The use of euphemism will be covered under communication skills. Being specialized courts the trials will also be expedited. Currently economic crimes courts are deemed specialized courts. The magistrates were trained and the trials are expedited so the same concept can be used for rape trials.

- *Training workshops*

Training workshops can be held once a year and can be conducted by counsellors from non-governmental organizations, for example, Childline and Connect can provide the trainers. Training had stopped due to lack of funds but the chief magistrate intimated that it will soon resume and Childline will be responsible for the training.

The Jurisprudence for Equality Project (JEP) is a project which trains judicial officers throughout the Commonwealth. A total of four magistrates have been trained and these in turn are equipped to train other magistrates. Their training skills can be used to train judicial officers. Magistrates who have gone through the Masters in Women's Law programme can also be enlisted to train fellow judicial officers.

- *Deconstructing notions*

De-construction of long held notions about women and their perceived inability to be truthful concerning their sexual experiences is essential.

- *Integration of counselling within the criminal justice system*

Counsellors from Connect, Childline, Msasa and Girl Child Network indicated that they are prepared to receive referrals from court and so coordination will be the only issue to tackle. With the introduction of community service as a form of punishment, community service officers were attached to every magistrate's court and they coordinate the placement of victims. The same can be done with counselling. A counselling officer will be based at court and have a referral-roster system. Instead of just thanking and excusing the rape victim, the court will refer her to that counselling officer's office. Expenses to meet transport costs will be met by the state.

- *Amending the law*

This would necessitate amending the Criminal Procedure and Evidence Act so as to include provision of counselling. Section 363 provides for compensation for personal injury. A section 363 A could be inserted and to read as follows:

S363 A: Provision of counselling for victims of sexual abuse:

Every victim of sexual abuse shall be afforded the opportunity to receive counselling, notwithstanding the outcome of the case.

Provided that no victim who has attained the age of majority shall be referred for counselling unless the court has sought her views on the matter.

- *Legal education – rape crisis centres*

In the United Kingdom, rape crisis centres help victims psychologically by offering emotional support and legal and medical information, meeting each individual victim's needs in information provision. This is empowering and makes the victim aware of what lies ahead. Such centres should be introduced in Zimbabwe and they will be the best places for a victim to get all the information she needs. She will know what she will face at the police station, hospital and court. Granted, Zimbabwe is currently reeling under a difficult economic climate but Save the Children Norway is already funding training for the police and judicial officers. Such organizations may assist in establishing rape crisis centres. Girl Child Network has safe houses but not in the 'mould' of rape crisis centres but they can be the starting point.

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