

**“MORE THAN ADVICE!”:
AN ANALYSIS OF THE IMPLEMENTATION OF
COUNSELLING AS AN EFFECTIVE REMEDY FOR WOMEN
COMPLAINANTS OF DOMESTIC VIOLENCE AS PROVIDED
FOR BY THE PREVENTION OF DOMESTIC VIOLENCE ACT,
2006, IN MALAWI**

Abstract

Four years after the passing of Malawi’s Prevention of Domestic Violence Act, 2006 (the ‘PDVA’), the writer of this dissertation, a Magistrate, sets out to evaluate the quality and extent to which counselling is offered as a remedy to victims of DV (mostly women) and/or its perpetrators, their intimate (and mostly male) partners. By utilising several gender-focused methodologies, in particular the Women’s Law and Human Rights based Approaches, she constructs the ‘lived realities’ of its victims who find that, as a result of the State’s various shortcomings in failing to bring this Act properly to life for their benefit, this remedy is neither properly understood nor offered as an effective remedy to them, as a result of which their Human Rights are breached even further. In order to improve the implementation of the Act in accordance with binding and persuasive regional and international Human Rights Instruments which inspired its passing, the writer finally proposes various recommendations. They include the proper training of its mainly male enforcement officers (including Magistrates and Police Officers) and the establishment, in terms of regulations yet to be passed under the Act, of professional counselling service providers with whom they should closely work.

BY

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DEDICATION

To my family: the Magombo, Lidamlendo, Kanthambi and Namata clans. Thank you for your confidence and support!

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ACRONYMS AND ABBREVIATIONS

AIDS- Acquired Immuno - Deficiency Syndrome

AU- African Union

CEDAW – Convention on the Elimination of All forms of Discrimination Against Women

DV- Domestic violence

HIV – Human Immuno Virus

MHRRC - Malawi Human Rights Resource Centre

NRCGBV: The National Response to Combat Gender Based Violence.

NGO -Non Governmental Organisation

NSO- National Statistics Office

PDVA - Prevention of Domestic Violence Act

PTSD - Post Traumatic Stress Disorder

SADC-Southern Africa Development Community

UN-United Nations

UNFPA- United Nations Populations Fund

UNICEF - United Nations Children

VSU – Victim Support Unit

WHO- World Health Organisation

WLSA – Women and Law in Southern Africa

LIST OF HUMAN RIGHTS DOCUMENTS

The Beijing Declaration and Platform for Action, Fourth Conference on Women, 15 September 1995.

The Convention on the Elimination of all forms of Discrimination Against Women.

The UN General Assembly Declaration on Domestic Violence.

The UN General Assembly Declaration on the Elimination of Violence against Women.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

The SADC Declaration on Gender and the Addendum on the Prevention and Eradication of Violence against Women and Children.

The Universal Declaration of Human Rights

LIST OF STATUTES

The Prevention of Domestic Violence Act No. 5 of 2006

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CHAPTER ONE: INTRODUCTION

1.1 Background of the Research

In the year 2008, about two years after I joined the judiciary, I was one of seven Magistrates working in Blantyre Magistrates Court to be assigned to handle domestic violence ('DV') cases. Until this time, I had heard about the Domestic Violence Bill but I had never found out more about it prior to its drafting or being passed into law. It was only when I was assigned domestic violence cases that I learnt of the existence of the Act (the Prevention of Domestic Violence Act, 'PVDA' or 'the Act') which had been passed into law in 2006.

As a magistrate handling domestic violence issues, I discovered that most of the women who sought the assistance of the court did not want "more trouble between them and their spouses" but just wanted the violence to end. They did not want to divorce their spouses but they just wanted the perpetrators to change so they could live in peace and harmony. They would often ask the court to just sit the husband down and "counsel" the perpetrator. Indeed as a mere human being I could sometimes perceive that in some cases counselling would indeed help, but not the kind that we offered- if at all we could call it that!

Since the matters were proceeding as divorce cases, the Act was invoked when a protection order needed to be made for the survivor of domestic violence. This is when I discovered that there was a provision that a judicial officer could make an order for the parties to undergo counselling as a remedy. However, I was disheartened because, in spite of the provision for counselling, I did not know where I was supposed to send the people for counselling. Yes, if the court decided that the parties should be sent for counselling, the Act did provide for them to be sent to certain traditional institutions, but it did not specify which professional counsellors had been established by the state for this purpose. I was uncertain about this and kept questions I had about it to myself. I did not ask whether those who had joined the judiciary before me had any knowledge as to how this procedure worked.

Thus this paper offered me an opportunity to interrogate the issues without appearing incompetent as one assigned to handle them, but more importantly because I truly believe there are instances where counselling would really help, whether for the offender or for the survivor, especially in cases where the parties have expressed a willingness to resolve their issues and continue together as a married couple.

1.2 Statement of the Problem

This time around, the issue of domestic violence is no longer a novelty. A lot of research of has been done internationally, regionally within the continent as well as nationally. Violence against women has been held to be a form of discrimination and a violation of human rights, causing untold misery, cutting short of lives and leaving countless women living in fear in every country in the world. It harms families across generations, impoverishes communities and reinforces other types of violence throughout societies. Violence against women, of which domestic violence is a part, stops them from fulfilling their potential, restricts economic growth and undermines development. The scope and extent of violence against women are a reflection of the persistence of discrimination that women continue to face. It can only be eliminated, therefore, by addressing discrimination, promoting women's equality and empowerment, and ensuring that women's human rights are fulfilled.¹

The international instruments, commentators as well as several scholars have recognised that the consequences of violence against women, of which domestic violence is a part, extend beyond physical harm and injury to include economic, social, and psychological impacts and thus the need to address these different dimensions of harm. It is further noted that there different forms of violence which differ in terms of, among other things their nature, but that they these different acts have a similar outcome of fear and pain for women and girls, but also have a single underlying cause: unequal power between women and men. (Pickup, 2001:109)

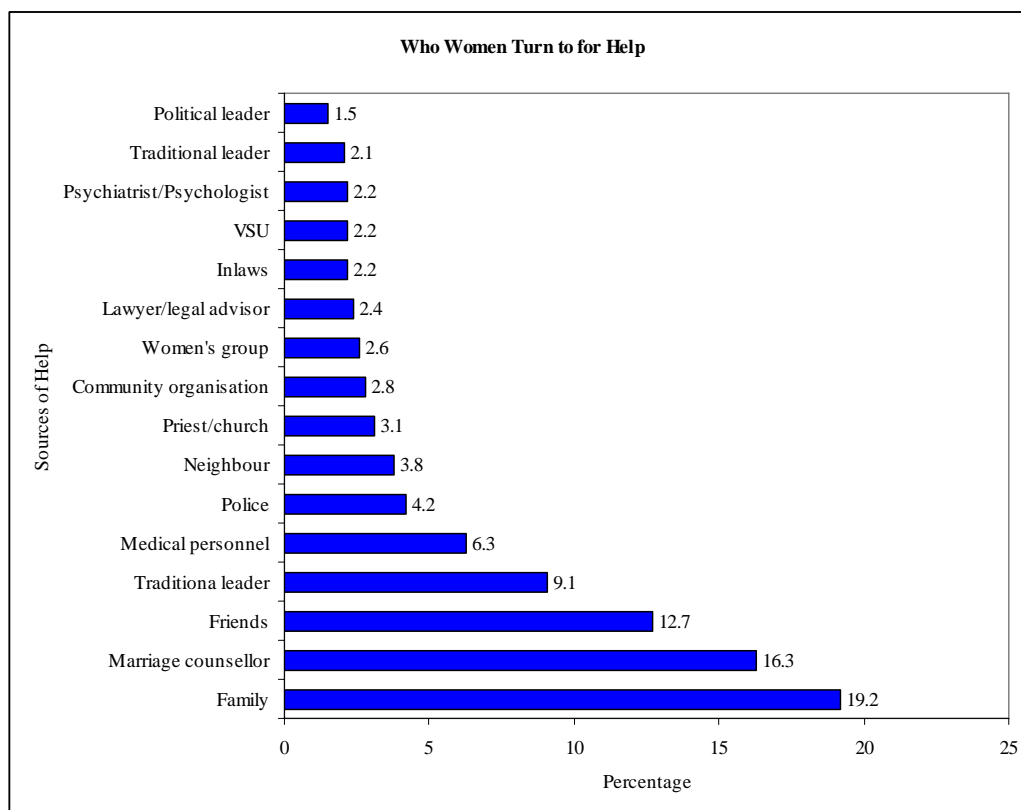
¹ Study of the Secretary General of the United Nations 'Ending Violence Against Women: from words to action' 9 October 2006, available at <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-exeE-use.pdf> (accessed March 2010)

In the same vein, various state parties have instituted various programmes to implement the commitments made at international and regional levels. Malawi equally recognises that domestic violence is a serious issue with physical, economic, psychological and other ramifications needing redress. For example, in a study done in three district of the country, there is evidence that the people in Malawi including those in the rural areas understand what domestic is and in all its forms (Saur, et al, 2005). It includes what has already been identified by the international instruments as constituting domestic violence, as well as what the people themselves in their contexts experience and view as domestic violence.

Another study identified that the impact of abuse on women in Malawi included such psychological or psychosocial/emotional harm as expressed in insomnia, depression, irritability, changes in sleeping and eating patterns, panic attacks and flashbacks ((Pelser, et al, 2005;32). This study is important because it highlights the need for measures to be put in place to address such negative impacts of abuse on women seeking the indulgence of the court, for the sake of their well-being. In addition, the study also identified the institutions that are involved in justice delivery when providing remedies to women who have suffered such violence at the hand of their intimate partner. Problems faced by women in accessing such justice delivery institutions have also been highlighted in the same study.

As a state party to various international and regional instruments Malawi also made commitments to ensure that everyone whose rights have been violated is granted effective remedies, and for complainants of domestic violence this includes counselling services. However, although a lot has been said and written on condemning domestic violence and what has been done in Malawi so far to deal with the problem, including access to justice for the complainants and how women's choices are limited or affected, I am yet to come across documented evidence on the evaluation of the performance of the service providers in providing counselling as a remedy. One study indicated that as in 2005 there were some women who turned to psychologists or counsellors for help, besides turning to family, marriage counsellors, friends, victim support unit, priests/ the church, traditional leaders, political leaders, among others. See table below.

Figure 1: People to whom Women turn for help



Source: Pelsler, et al (2005; 39)

Granted, there are institutions that are recognised as being the ones sought out by women who suffer violence, but so far there has not been an assessment of whether, four years on, as provided for in the Act, such systems are working effectively to provide counselling as a remedy envisaged by the Act. The most important questions at this point being, what did the framers of the Act have in mind when promulgating the Act, and was it well conceived, at this point would the counselling help to achieve what the framers had in mind; did they adequately consider women's needs and the capacity of the service providers?

1.3 Objectives of the Study

The overall objective of the study is to critically look at how the Government of Malawi has undertaken to fulfil its legal obligations under international law to

promote women's enjoyment of effective protection by the law by implementing counselling as a remedy in cases of domestic violence.

Therefore this study seeks to:

- Highlight the instruments creating legal obligations for Malawi to protect the women's right to effective protection under the law in cases of domestic violence and how those international legal obligations have been translated into national measures;
- Analyze whether the counselling as a remedy as provided for by the Act is sufficiently efficient to ensure such protection and promotion of the right in question;
- To highlight some of the legal and non legal barriers, if any, to the protection and promotion of the women's right to effective protection under the law in Malawi where counselling as a remedy is concerned, and
- The study will also propose or recommend a relevant course of action where the existing counselling proves to be insufficient or inefficient so as to effectively protect and promote the women's right to enjoy effective protection by the law in cases of domestic violence.

1.4 The Assumptions

Having the foregoing objectives in mind, the research was conducted based on the following premises;

1. That following on its international and regional commitments, the Government of Malawi has in its Constitution, among others, enshrined the right to effective remedies where one suffers domestic violence at the hands of her intimate partner;
2. That the Government has put in place proper measures and structures to ensure effective implementation of counselling as a remedy for the

benefit and protection of women survivors of domestic violence as provided for in the Prevention of Domestic Violence Act;

3. That the structures provided for by the Prevention of Domestic Violence Act of 2006 for implementation counselling as a way of promoting women's right to effective protection under the law are insufficient to ensure that women are fully protected by the law due to a lack of proper training and skills to carry out such work;
4. The social and cultural norms, beliefs and practices of most of Malawian society also militate against the effectiveness of counselling as a remedy for women in cases of domestic violence.

1.5 Research Questions

Following from the abovementioned assumptions that were generated, the following research questions emerged:

1. What rights do the Constitution of Malawi entrench to ensure the effective protection of women against domestic violence?
2. What are the institutional structures that have been put in place to effectively protect the enjoyment of the right in question by women in Malawi?
3. How effective are the institutional structures in providing counselling as a way of ensuring an effective remedy to women survivors in cases of domestic violence
4. What are the social and cultural norms, beliefs and practices behind the inefficacy of using counselling as a remedy for women in cases of domestic violence?

1.6 Importance of the Study

I believe this study is relevant in so far as it contributes to the existing jurisprudence on the promotion of the enjoyment of the right to effective remedies by women who have been abused by their intimate partners in Malawi. The paper is not exhaustive but it may serve to jumpstart more research in the area of effective remedies for women who suffer violence at the hands of their intimate partners everywhere in

Malawi. I am also hopeful that the study will help to show that access to effective remedies (in so far as counselling for both women complainants and male perpetrators of DV is concerned) is an important issue that has a direct bearing on the extent to which women are able to enjoy other human rights which are crucial to their living a full and dignified life.

1.7 Outline of the Study

This paper contains six chapters. The first chapter is the introductory part where the background to the study is laid out and the problem stated. The purpose and specific objectives of the study are also highlighted in this part, after which follows the assumptions and research questions that informed the study. Then a brief presentation on why the study is important is narrated, followed by the limitations of the study.

The second chapter lays out the methodological approaches that informed the study as well as the methods of collecting data that were engaged.

The third chapter is a discussion of the human rights instruments relevant in the discussion of the right to an effective counselling remedy.

The fourth chapter unpacks all about counselling that informs the assertions made herein when analysing the efficacy of the counselling offered in Malawi to women complainants of domestic violence. It also briefly highlights the important points about counselling and its purposes.

Chapter five discusses the findings of this particular research.

Concluding remarks and recommendations on the way forward are located in the sixth and final chapter.

CHAPTER TWO: THE METHODOLOGICAL FRAMEWORKS

This chapter contains a discussion of the methodological frameworks that informed the research.

2.1 Women's Law Approach

Since the study concerns women's lives and how women are affected by the laws, in this case the Prevention of Domestic Violence Act ('PDVA'), this framework provides room to examine the effect of counselling on the woman's life as it plays out, taking into account her position and role in the home as well as the community at large. This perspective does not regard women as a homogenous group, (Bentzon et al, 1998). Thus, employing this method, it became clear that the women entitled to the remedy of counselling from the court are not just those women regarded by the courts as 'properly married' according to custom, but also those women who would not have formalised their marriages and are recognised by the Constitution of the Republic of Malawi as being married by permanent cohabitation or repute. Thus it allowed for an analysis of counselling as a remedy available to women who suffer violence at the hands of their intimate partners, but who have different needs, and having different socio-economic backgrounds.

2.2 Legal pluralism

As is the case with most African States, the position of a woman in a country or community is also influenced by a multiplicity of cultures and systems of law. Malawi is no exception in this matter. As a post colonial African state, the law governing the people is made up of imported common law of the United Kingdom, statutory law as well as the customary law of different ethnic groups. This phenomenon has been recognised in the Prevention of Domestic Violence Act, which recognises that other rule making bodies, like religious leaders and village heads could also legally intervene in domestic issues and offer guidance and so settle the issues. On the other

hand such recognition also goes to show the extent to which the state law is recognised and enforced as the most important normative order and all other norm creating and enforcing social fields, institutions and mechanisms are relatively insignificant, shown by the provisions in the Prevention of Domestic Violence Act where the court has the discretion to order the parties to resort to the other rule making bodies.

It must be noted that the PDVA has placed itself above the other social institutions which can only be resorted to at the order of the court operating under state law. On the other hand, the inclusion of other normative orders within the Prevention of Domestic Violence Act, is a recognition, albeit unintended, of the fact that women's experiences with the law extends beyond the borders of Legal Centralism which regards customary law and general law as distinct systems of laws.

2.3 Actors and Structures

Counselling as a remedy is a service. It therefore follows that there are key players in the provision of such a service in the course of translating the commitments made at International Human rights level. An examination of the operations of such key players and how they interact with the women seeking their services in so far as carrying out the counselling, or even making orders for the same in the first place, gave insight into how the orders are been carried out, and whether the actors are effectively discharging their responsibilities and effectively implementing the human rights commitments.

The advantage of this approach is that it does not focus on the woman alone and her actions cannot be explained solely by reference to her own character and beliefs. Therefore, by focusing on the woman and her relationship with men, other women and the society of which she is a part, this approach allowed me to uncover the norms, expectations, social and economic forces which influence women to seek or not to seek counselling or therapy in the event of domestic violence in Malawi.

2.4 Sex and Gender Analysis

Gender as an analytical variable refers to the social construction of male and female roles and relations. It entails on the one hand, men's and women's active roles in society and on the other hand, ingrained social ideas about what men and women should do and how they ought to behave and interact (Bentzon, et al; .p83). This approach was an effective aid in the analysis of whether counselling as a remedy might be rendered ineffective due to the gendered and stereotypical beliefs about the role and position of women and men held by most societies in Malawi and perpetuated by the institutional structures that have been allocated the task of providing counselling services.

2.5 The Human Rights Based Approach

This approach looks to fulfil the rights of people, rather than the needs of beneficiaries. There is a critical distinction: A *need* not fulfilled leads to dissatisfaction. In contrast, a *right* that is not respected leads to a violation, and its redress or reparation can be legally and legitimately claimed. A human rights-based approach recognizes the existence of rights. It also reinforces capacities of duty bearers (usually governments) to respect, protect and guarantee these rights.



Source: UNFPA 2010.

In a rights-based approach, every human being is recognized both as a person and as a right-holder. A rights-based approach strives to secure the freedom, well-being and dignity of all people everywhere, within the framework of essential standards and principles, duties and obligations. The rights-based approach supports mechanisms to ensure that entitlements are attained and safeguarded.

Governments have three levels of obligation: to respect, protect and fulfil every right.

To *respect* a right means refraining from interfering with the enjoyment of the right. To *protect* the right means enacting laws that create mechanisms to prevent violation of the right by state authorities or by non-state actors. This protection is to be granted equally to all. To *fulfil* the right means to take active steps to put in place institutions and procedures, including the allocation of resources to enable people to enjoy the right. A rights-based approach develops the capacity of duty-bearers to meet their obligations and encourages rights holders to claim their rights. The human rights-based approach focuses on those who are most vulnerable, excluded or discriminated against (UNFPA, 2010).

The approach was therefore instrumental in aiding me to decide the extent to which the government of Malawi is implementing or is in violation of the obligations it undertook, to provide counselling as an effective remedy to complainants of domestic violence. Since the obligations were incurred by signing various human rights instruments at International as well as Regional level, the Human Rights based Approach was employed as a very useful framework for identifying Malawi's international obligations to its citizens and hence for analysing government's actions/omissions and forms the basis for holding government of Malawi accountable for its commitments made at regional and international levels to provide effective remedies to its injured citizens through the law.

2.6 The Research Process

The research focused on the implementation of counselling as a remedy under the PDVA. To that end therefore, the actors mentioned in the PDVA were my main targets for interview, and these were: the presiding court officers, professional

counsellors, the village headpersons, and the social welfare officers. I chose the service providers who interact with Blantyre and Limbe Magistrates courts in the course of their work. My main concern with these service providers was the kind of knowledge that they possessed and whether or not it sufficiently equipped them to effectively discharge their duties in a gender sensitive manner.

In order to achieve the aforementioned, I chose to limit the research to Blantyre and Limbe. This is so because I thought that being the commercial hub of the country, I assumed it would have most of the required structures for the implementation of the Act than any other district in the country. Besides, the area also has the largest number of magistrates in the country and so was going to provide a larger sample. The nature of the city enabled me to collect information from a rural as well as urban population sample.



Map showing Location of Blantyre and Lilongwe

For comparative purposes I was also compelled to go as far as Lilongwe because, in the course of the research I learnt that the Lilongwe has some VSUs and a Social Rehabilitation Centre which have the best practices in providing counselling in the country which are to be replicated throughout the country.

In selecting my study sample I chose purposive random sampling. I purposively went to the VSUs and the magistracy because I knew before I set out that that is where most of the women report their abuses. I adopted the same method when choosing to interview the other actors like the village heads and religious leaders, because I had prior information from reading the PDVA.

2.7 The Research Data Collection Methods

In this part of the paper, I explain the kind of tools I used to gather the information used in this paper.

2.7.1 Individual in-depth Interviews

This method was mostly engaged to gather information from a number of officials and local leaders involved in providing counselling as a remedy. Thus structured interviews were conducted with the aid of questionnaires. However the questions were open ended to allow the respondents freely express their views. The magistrates were also interviewed, separately and at different times and occasions using this method and it was the best in the circumstance because it enabled me to get individual views on how each one of them handles domestic violence cases and there was no room for influence by another's answers.

I also interviewed some of the women who were experiencing domestic violence in their marriages and had sought the assistance of the marriage advocates, and village

heads to resolve their issues. These marriage advocates and chiefs are part of the structures to handle counselling at the order of the courts.²

This method was very useful in that the one-on-one interaction provided me with a platform to observe the demeanour of the interviewees and assess the individual emotions attached to the views that were being expressed such that I was able to capture the spirit behind each story.

2.7.2 Focus Group discussions

This method proved most useful in a number of events. First I employed it to interact with a group of women who I had the opportunity of addressing at one of the religious functions. In this meeting there were over 30 women and the method enabled me to get the views of a lot of women. These women had come from all over the six villages I had chosen to randomly interview some women from. Since they were familiar with me, the method was like a platform for them to freely air out their views seeing as it is that they often not heard, but rather preached to. The method was most useful because it encouraged the women to engage freely with me in a familiar setting as they felt they were in a safe environment while anticipating assistance as I was introduced as “a lawyer who has come to help us so that we should not be left behind in these matters”.

In addition I also used this method to solicit the views of some women who I found waiting their turn at a water pump in one of the villages in Blantyre. This was especially important because the women came from the three surrounding villages, and so I was able to capture views of women on how they had been assisted by the marriage advocates as well as some religious leaders within their location. The women had come from three different villages and so I was able to compare the practices of the three village heads when it came to provision of what they regarded as ‘counselling’ in cases of domestic violence.

² See s 52 PDVA

At Kanengo Police VSU this method was also employed because there were more than four police officers present when I went to observe their counselling sessions. It helped me get different views from the officers present.

2.7.3 Observations

What more a better way of assessing the operation of the said structures and institutions. The courts, victim support units sittings were among those whose sessions I attended. I sat with the officers at the VSU in over 15 sessions and I noticed the transition from the very first days when they were at their best behaviour to the end when, having gotten used to me were free enough to be themselves and I got to see their true nature as they assisted the women.

2.7.4 Court records cases and court registers

I used the daily court records just to identify the cases that were handled by the magistrates as divorce cases on grounds of cruelty and neglect, because the particulars of these claims fit under the various forms of abuse described in the Act as comprising acts of domestic violence.

I also used these documents to take stock of the number of cases registered as domestic violence cases. This is very important because it shows or indicates a transition from handling domestic violence cases just like any other civil matter to recognition of the need to accord special treatment to such cases, due to the nature of the matters reported.

2.7.5 Desk Research

The other tool used to gather information in this study was desk research. A lot of study and research has been done in some areas concerning domestic violence and measures to redress or curb it both in Malawi as well as other countries in the region and internationally. As such this method was useful in that it afforded me the

opportunity to find out views from other jurisdictions for comparative purposes and assessment of best practices so that I was able to make recommendations as to what can be done to improve the situation in Malawi.

In this regard, books and the internet proved to be very useful tools to find out how the issue of domestic violence is viewed and what has already been done about it, especially where provision of counselling is concerned. However, there does not seem to be much written on counselling or provision of counselling services in Malawi save just a mention of where the women resort to in such cases. As such, it was difficult to find out how counselling is viewed by Malawians, thus information about what constitutes professional counselling from other jurisdictions was consulted and this for comparative purposes in order to discover best practices in other jurisdictions and this is where the method was truly useful as recourse was had to the internet. This method helped me assess whether or not the kind of ‘counselling’ that is offered in the institutions in Malawi is really counselling as well as effective or it is a different kind and nevertheless effective.

The method was also useful in determining the extent to which Malawi had created an enabling legal environment for the provision of counselling as a remedy by looking at the various international instruments, national statutes and policy documents from within and other comparative jurisdictions relevant to the promotion of the right to effective remedies in so far as counselling is concerned.

2.8 Limitations of the Study

The most limiting factor was the issue of missing information in court files and records. Initially, the plan was to use the daily court records in order to trace the women whose cases had gone through the courts and were concluded. However, due to poor record keeping, there was not much detail as to the contact addresses of the complainants as well as the respondents and so I could not trace as many women who had gone through the court system as I had planned and neither did I get the chance to interview the men who had perpetrated the violence and had gone through the system.

I feel that the research is not entirely complete without the view of these people, although I managed to interview just three women who had gone through the courts.

In addition, I had intended to check the court files and see how many cases that fell under the rubric of domestic violence from the years just before the passing of the Act in 2006 were handled, and how the cases were handled after the passing of the Act, to see if any orders on counselling had been made. I intended that this analysis should aid me, in case there was any training on the use of the Act and consciousness raising on gender issues as encountered in the courts, to determine if the training had contributed to getting rid of the cultural mindsets that would work against the women's ability to get counselling as an effective remedy from the courts.

At the time I went back to the courts for the research, the files had been packed away, pending a transfer to new court premises. I was therefore unable to access those files. However what could not be obtained from the case files as regards the orders generally made was ably obtained from some of the magistrates who handled those cases, who through our interaction provided more insight than I could have obtained from just looking at the documents.

CHAPTER THREE: THE HUMAN RIGHTS AND LEGAL FRAMEWORK

This chapter is designed to navigate through a few among the various human rights instruments at international and regional level that underscore the obligations undertaken by nation states upon becoming party to them, to promote the right to women to effective remedies in the event of domestic violence. The chapter will also look at the national measures that have been put in place to translate those international obligations into practice.

3.1 The International Human Rights Instruments

The Government of Malawi is a party to various International, Regional as well as Sub Regional Human Rights Instruments, which provide, directly or indirectly for the right of women to enjoy counselling as an effective remedy and equal protection under the law in cases of domestic violence. In the interest of space, the discussion will be limited only to those human rights instruments that provide for counselling as a remedy in cases of domestic violence.

3.1.1 The Universal Declaration on Human Rights

The first of the important documents for the purposes of this discussion is the Universal Declaration on Human Rights (UDHR). The Declaration, although a just a declaration, it has achieved the status of international custom due to its wide recognition and usage by the international community. It does not specifically mention of counselling but provides, under Article 8 that everyone has the right to an effective remedy by the competent national tribunals for Acts violating the fundamental rights granted him by the constitution or law. And the UDHR has been held to be part of the law of Malawi by the higher courts in the case of *Chihana V Republic 1995 1 MLR*.

3.1.2 The Convention on the Elimination of all forms of Discrimination against Women

CEDAW does not explicitly mention ‘domestic violence or gender based violence’. However the international community acknowledges the many forms of violence and has adopted new standards and procedures to address violence against women as well as domestic violence. Of particular importance has been the work of the Committee; the adoption by the UN General Assembly of the Declaration on Elimination of Violence, and the appointment of a Special Rapporteur on Violence Against Women by the UN Commission on Human Rights.

In the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Committee on the Elimination of all forms of Discrimination Against Women takes the view that gender based violence against women, of which domestic violence is a part, is a form of discrimination against women which seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

(General Recommendation 19). The Committee went on to state that Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.

These rights and freedoms ,among others ,include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;

In General Recommendation 12(1989), the Committee recommended that state parties should include, among others, the information on *support services available*

for women who are victims of abuse, in their reports under CEDAW. In my opinion this is a clear indication of the recognition, even at the international level that legislation and other measures to eradicate domestic violence are not enough without the rehabilitative and support component, as well as information on how to access the same. As such a states obligations do not stop at just providing an enabling legal environment in which the woman can access physical protection, but also goes further to include provision of remedial services such as counselling services.

CEDAW also recognises the need for public authorities and institutions to, in practice, ensure that in all their business they do not discriminate against women. These public authorities and institutions include the police service, hospitals and clinics as well as the courts and social welfare services. In my opinion, the provisions of Article 5 of CEDAW which require state parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women, also apply to these public authorities and institutions.

Cultures and traditions take shape in stereotypes, customs and norms, which in turn, give rise to a multitude of legal, political and economic restraints on the development of women. More so in the case of counselling as a remedy, because if these institutions still maintain those social and cultural patterns of conduct that perpetuate and maintain prejudices against women based on the idea of the inferiority or superiority of either sexes, then the counselling that they offer is bound to be biased against the woman in favour of the men and the intended result of behavioural change for the perpetrator as well as well being of the complainant not achieved. In turn this will result in women being repressed further and be discouraged from seeking access to counselling as an effective remedy. Thus the public authorities with such prejudiced mindsets would be a hindrance to the implementation of counselling as a remedy.

By being a party to this convention, Malawi committed to ensuring that acts of domestic violence and its consequences on women are eliminated by providing proper counselling to both the perpetrator and the complainant, through ensuring that the

institutions offering such counselling are not perpetuating the social and cultural patterns of conduct that perpetuate and maintain domestic violence. This to my mind seals the commitment to ensure that all women in Malawi enjoy fully, the rights enshrined in the covenant on an equal footing with men.

As Gallagher notes, the Committee affirmed that violence against women constitutes a violation of her internationally recognised human rights, regardless of whether the perpetrator is a public official or a private person. This means that the responsibility of the states parties extends to eliminating gender based discrimination by any person, organisation or enterprise. State responsibility may therefore be invoked not only when a government official is involved in an act of gender based violence, but also when the state fails to act with due diligence to prevent violations of rights committed by private persons or to investigate and punish such acts, and to provide compensation (Gallagher, 2005).

A State party therefore, Malawi in this instance, by implication, will also be held in violation if it does not act with *due diligence* to provide effective remedies for the rehabilitation of the victims as well as the perpetrator because it will amount to condoning the violence since some behaviour will not change until such interventions take place. And if no such services are available or access to the same for women is hampered by some biased attitudes by the public authorities and institutions then ultimately the violations will continue, and women will continue to be limited in their enjoyment of the other rights, which eventually translates into their being discriminated against if measures to correct such a situation are not effectively instituted.

On the whole, General Recommendation 19 illustrates two principles on which state responsibility is based: *due diligence and equal protection*. States are required, under international law, to provide all citizens with equal protection of the law. If a state fails to provide individuals who are harmed by an intimate partner with the same protection it provides to those harmed by strangers, it has failed to live up to its obligation (Coomaraswamy,2000). Thus if Malawi as a state party fails to make sure that the violence in the home stops by providing counselling to the perpetrator, usually male, it will have failed to offer protection to the woman, because if the same

violence was occasioned by a stranger, the state would make it stop, in one way or another. In this case the argument is that, there is a chance for the violence occasioned to a woman in her home by her intimate partner to stop without the incarceration of the offender, by providing counselling to the perpetrator, and the state has the responsibility of ensuring that such counselling is available.

3.1.3 The UN General Assembly Declaration on Domestic Violence 54/114 (1990)

The concern over domestic violence was reiterated in this resolution. The thrust of this statement was to urge nations to develop multi-disciplinary strategies to combat domestic violence, including assistance to both victims and offenders. The multi disciplinary strategies would therefore include punishment of the offenders, as well as provision of rehabilitative services for the offender such as counselling.

It should be noted that a declaration of the UN General Assembly is a resolution which has no legal force on its own. However, a “declaration” is defined by the United Nations as a “formal and solemn instrument, suitable for rare occasions when principles of great and lasting significance are being enunciated”. Declarations from the United Nations may become part of international customary law by virtue of their wide acceptance.

3.1.4 The UN General Assembly Declaration on the Elimination of Violence against Women 48/104 (1993)

The Declaration also recognises that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

The Declaration also provides that states should work to ensure that women subjected to violence have specialised assistance such as rehabilitation, counselling and that

appropriate measures should be put in place to promote, inter alia, psychological rehabilitation of such women. Malawi is not excluded from such obligations.

3.1.5 The Beijing Declaration and Platform for Action, Fourth Conference on Women, 15 September 1995

This declaration also highlighted acts of gender based violence suffered by women and girls among which were also occurring in the domestic arena. It also takes cognizance of the fact that violence against women is a manifestation of the historically unequal power relations between men and women, which have led to the domination over and discrimination against women by men and to the prevention of women's full advancement and that violence against women throughout the lifecycle derives essentially from cultural patterns.

The Declaration notes that violence against women is exacerbated by, among others, inadequate efforts on the part of public authorities to promote awareness of and to enforce existing laws; and the absence of educational and other means to address the causes and consequences of violence³. In the case of Malawi this would mean that the inadequate efforts on the part of the public authorities to promote awareness of and to enforce the PDVA as far as counselling is concerned is what is contributing to the exacerbation of domestic violence, because the cultural patterns that feed the domestic violence are not challenged.

3.2 The African Regional Human Rights Instruments

3.2.1 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Due to the African Charter's inadequacy in providing for women's rights, the heads of state and governments comprising the AU assembly adopted the Protocol on Women in July 2003, indicating a commitment by African leaders to promoting women's

³ Article 119 of the Beijing Declaration

rights in Africa. The commitment to eliminating gender based violence is a recurring theme throughout this Protocol. The Protocol on women addresses gender based violence comprehensively and includes, among others, provisions on the elimination of discrimination against women, the right to dignity, the right to life, integrity and security of person, the prohibition of harmful practices.

Measures to combat the above violations are also holistic and include: legislative, economic, public education and awareness raising. The latter provision of Article 2, for example notes the need to modify the social and cultural patterns of conduct of men and women. More specific to the issue of provision of effective remedies, there is provision for access to counselling and rehabilitative services as well as other appropriate remedies to women who suffer violence and whose rights and freedoms as provided for in the Protocol have been violated⁴. This is specially important because inclusion of counselling as a remedy signifies the recognition that even in the African context there is need for other measures than the punitive or other traditional measures in order to eliminate domestic violence as well as ensure that a woman who suffers emotional injury from abuse is set on the path of healing and restoration of her sense of worth. Malawi as a state party therefore is obliged to abide by these provisions.

3.2.2 The SADC Protocol on Gender and the Addendum on the Prevention and Eradication of Violence against Women and Children

SADC member states, of which Malawi is a part, reaffirmed their commitment to the prevention and eradication of violence against women and children by adopting an addendum to the Declaration on gender which was called The Prevention and Eradication of Violence against Women and Children. The Addendum contains a number of measures which if implemented would contribute to the prevention and eradication of violence against women and children, and domestic violence is also included.

The Governments are vested with the primary responsibility for the SADC Plan of Action for Gender, and are required to take a leading role in coordinating, monitoring

⁴ Articles 12(1)d and 25 of the Women's Protocol

and advancing the status of women. The measures include enacting or amending laws, and putting in place appropriate mechanisms that, among others, provide effective remedies to victims of violence⁵.

Since most violence against women and children is based on traditional norms, religious beliefs, practices and stereotypes, member states are required to promote the eradication of such elements and embark on public awareness⁶.

Furthermore, member states, Malawi inclusive, acknowledge that having laws in place is not enough to eradicate violence against women, unless certain services are readily available to the public. Such services include; information on services available for various categories of victims; accessibility to effective and responsive law enforcement agencies, as well as health and social welfare services (this includes counselling services provided by such institutions).⁷

Member states, including Malawi, are also required to promote gender sensitisation and training of service providers, including law enforcement officers as well as social welfare and health officials in order to enhance effective delivery of such services.⁸

All the above developments share a common understanding that violence against women, which includes domestic violence, is a human rights issue and not merely a question of criminal justice or family law. Within the human rights discourse, the rights for women to be free from violation of their physical and mental integrity are the starting point for analysis and need for action in addressing violence against women, and more specifically in provision of services to adequately address domestic violence. Therefore in a quest to eliminate domestic violence and promote the rights of women, it has been duly recognized by the human rights instruments discussed above, that there is need for state parties, the government of Malawi inclusive, not only to pass laws that provide for the punishment of perpetrator, but also institute

⁵ Articles 18-20 SADC Declaration on Gender

⁶ Article 13-15 of the Addendum on the prevention and Eradication of Violence Against women and children

⁷ Article 16-19, *ibid*.

⁸ Articles 20-22 of the Addendum

mechanisms for the rehabilitation of the same as well as restoration of the well being of the complainants through provision of counselling services.

3.3 The National Measures

In keeping with the spirit and letter of the international law, the Government of Malawi set out a number of measures to implement the commitments made on the international as well as regional planes. Such measures include, provision within the constitution of various rights and entitlements which are to be enjoyed without discrimination on any basis; the making of policies, followed by the enactment of the Prevention of Domestic Violence Act. Below is a detailed discussion on how the Government of Malawi has provided an enabling legal environment for the promotion of the right to effective remedies, including counselling.

3.3.1 The Constitution of Malawi

Although violence against women is still rampant in Malawi, the country has shown a desire to address gender based violence as effectively as possible. This desire is shown by putting in place measures that ensure that its international obligations are carried through.

One such measure is the inclusion in its principals of national policy, the issue of gender equality. Section 13 of the constitution contains such principles of national policy. And subsection (a) is worded as follows:

“the state shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals:

(a) Gender equality.

To obtain gender equality for women with men through, among others,-

(iii) The implementation of policies to address social issues such as domestic violence, security of the person....

Although the principles are not justiciable⁹, their inclusion in the constitution demonstrates the recognition of the need to achieve gender equality and in particular deal with such a social issue as domestic violence by not just formulating policies but implementing them as well. To cure the issue of non justiciability, the constitution provides, under section 14, that the courts shall be entitled to have regard to the principles in interpreting and applying any of the provisions of this constitution or of any law or in determining the validity of decisions of the executive and in interpretation of the provisions of this constitution. I believe this has provided lee way for the government of Malawi to be assessed and held accountable to the commitments it has made in the constitution.

Even if the principles of national policy were not to be used in holding the government accountable to make its commitment good and fully implement its commitments at international level, there are ample provisions in the constitution under the bill of rights enshrined in part iv of the same constitution.

Enshrined in its constitution within such a bill of rights is the recognition that every person shall have the right to recognition before the law (s 41(1) of the Republic of Malawi constitution). The same section 41 under subsection (3) provides that every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to her by this constitution or any other law.

Although the rights do not necessarily mention women in relation to domestic violence, it has already been recognised internationally and by Malawi that issues of domestic violence go to the core of human rights and that they prevent women from enjoying fully the fundamental rights and freedoms. Therefore women being “persons” are also entitled to the protections afforded by the law in order to uphold their fundamental rights and freedoms.

In addition, section 4 of the constitution provides that the constitution is binding to all executive, legislative and judicial organs of the state at all levels of government and *all peoples of Malawi* are entitled to equal protection of this constitution, and laws

⁹ Section 14 of the constitution provides that the principles are directive in nature.

under it”. It is therefore established that women’s right to effective remedy, of which counselling is a part is a guaranteed fact. The executive, among others, is endowed with the constitutional responsibility of implementing all laws which promote the principles of this constitution. The PDVA is one such law that promotes the principle of equality enshrined in the constitution. This is a clear demonstration of Malawi’s commitment to uphold its obligation at international level which it has in turn translated in to national obligations by entrenching the same principles in the national constitution.

Further, to ensure total protection and promotion of the right enshrined under this constitution, no derogation from the rights contained in the Chapter is permissible save to the extent provided for in the constitution and no such derogation shall be made unless there has been a declaration of a state of emergency within the meaning of this section. There are safeguards for the declaration of the state of emergency underlined therein and the right to effective remedies as represented in counselling is not one of those rights to be derogated from.

Of equal importance is the provision found under s20 of the constitution which reads:

“Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.”

It has already been argued that under international law, domestic violence is a form of discrimination, perpetrated against women on the basis of their sex and Malawi as a state party does recognise that position. This constitutional provision is simply in tandem with international standards in restating its commitment to guarantee ‘*effective protection against discrimination on the grounds of, inter alia, sex or other status*’. This means that if one is denied access to counselling as a remedy, they can have recourse to this provision to enforce their right.

Furthermore s22 (2) states that:

“Each member of the family shall enjoy full and equal respect and shall be protected by law against all forms of neglect, cruelty or exploitation”.

Domestic violence in Malawi encompasses all sorts of cruelty, neglect as well as exploitation. And a woman is guaranteed such protection from those acts even within

a family set up, and she can claim her rights to counselling against the government using this provision if she is not so protected as “promised and guaranteed”.

A more specific provision is found under s24, which provides that:

“(1) women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status ...

(2) any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as-

(a) sexual abuse, harassment and *violence*”

This is especially relevant for those women who are deemed not married by the courts and society but are recognised as married by the constitution¹⁰, because ordinarily when they apply for divorce at any magistrates court, their case is likely to be thrown out for want of jurisdiction as there exists no law, presently on the dissolution of such marriages. Thus they do not get the chance to be heard on whether they really seek divorce or just want the abuse to stop. In so doing they are inadvertently discriminated against and prevented from accessing counselling as a remedy, at law and in practice, on the ground of marital status.

The constitution further provides that; “the judiciary shall have the responsibility of interpreting, protecting and enforcing this constitution and all laws *in accordance with this constitution...*”¹¹, which constitution is for equality and non discrimination, such that no one is left in doubt as to Malawi’s commitment to upholding the women’s rights to effective remedy as provided for by the same constitution.

Further to that, the courts are mandated, in interpreting the provisions of this constitution, to have regard, where applicable, to current norms of public international law and comparable case law. So if anyone was in doubt as to the position of the woman as far as her protection before a court of law is concerned, this ought to put such doubt to rest, because when it comes to providing remedies, of which counselling is one, to survivors of domestic violence it is trite that the major

¹⁰ S 22 (5) of the constitution recognizes such marriages as by repute or cohabitation

¹¹ S 9 of the Constitution.

international human rights instruments and even going by what the CEDAW Committee has said as well as the Declaration on Elimination on Violence against Women, protection of women from acts of gender based violence and providing them with effective remedy so as to protect their liberty and dignity is one such norms now widely recognised as of uttermost importance even for the peace and development of nations.

The constitution of Malawi is founded on a number of principles, one of which is that “the inherent dignity and worth of each human being requires that the state and all persons shall recognise and protect fundamental human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote”. All persons are included under such protection, including women generally as a group. All in all the constitution has set the tone and standard to enable the women who suffer domestic violence to have access to effective remedies, more specifically access to counselling.

3.3.2 The Prevention of Domestic Violence Act (PDVA): An Overview

The commitment of the State to eliminate gender based violence occurring within a domestic relationship, and to provide for effective legal remedies and other social services to persons affected by domestic violence is particularly shown by the passing of the Act. It is said to be ‘an Act to make provision for the prevention of domestic violence, for the protection of persons affected by domestic violence and for matters concerned therewith’.

The Act clearly and widely defines the term “domestic violence as being- any criminal offence arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship”.

This definition is important because it reflects the Malawian women’s perception of what constitutes domestic violence, (Saur, 2005) and therefore constitutes what violates their rights to dignity and point to what needs to be addressed for the women

to enjoy equality with men and the remedies that need to be instituted to address those needs.

3.3.2.1 Defining a domestic relationship

A domestic relationship is defined as “...including a relationship between persons who are family members and who share a household residence or are dependent on each other socially or financially and includes the relationship where-

- (a) the applicant and the respondent are husband and wife;
- (b) a person has a child in common with the respondent and that that person is being subjected to domestic violence by the respondent;
- (d) the applicant and the respondent are or have been in a visiting relationship for a period exceeding twelve months.

This definition is important because it signifies that counselling as a remedy also accrues to those women traditionally regarded as ‘not properly married’, otherwise known as married by repute or permanent cohabitation in the constitution.

3.3.2.2 Powers of the Courts Under The Act: Making Orders For Parties To Undergo Counselling/Therapy

The power to grant orders under the PDVA has been entrusted to any court within the area in which the applicant or respondent ordinarily resides, carries on business or is employed; or where the domestic violence occurs.¹² This can be either a High court or court of magistrate.¹³ For most women in Malawi the most accessible of the two is the court of magistrate. I discovered through the research and experiential data that most of the women who go to the VSUs or the courts are those falling under the low income bracket, mostly unemployed, self employed or lowly paid if employed.

¹² Section 45 Prevention of Domestic Violence Act

¹³ Section 47, *ibid*

In addition section 5 part (b) (x) gives the court the power to direct that *the applicant or both receive professional counselling* from any person or agency or from a programme approved by the Minister in writing.

If the application is made on an *ex parte* basis it is an interim order. Some of the factors the court is to take into account when making such interim protection orders include the perception of the applicant of the nature and seriousness of the behaviour in respect of which the application is made, as well as the effect of the behaviour of the respondent on the applicant. Now this is easily possible where there has been physical injury, but what about where there is no such injury but only emotional or psychological hurt which is not so obvious to the untrained mind? How would the presiding officers be able to make this assessment in the absence of training on how to identify the effects of the behaviour of the respondent on the applicant when the same has not been provided for in the Act?

Besides providing for the powers of the court, s5 (b) (x) also provides for to whom the order of counselling ought to be made: to the *applicant*, who could be male or female, (depending on who has sought the court's indulgence or has experienced the domestic violence) or *both*, meaning both the applicant and the respondent. Thus this remedy is available to the woman as the complainant, to deal with the trauma arising from the violence, but also to the perpetrator in order to break the cycle of violence, so that violence stops and he no longer abuses the woman who wishes to stay on in the marriage.

3.3.2.3 Follow up mechanisms

As a means of following up on the orders, where the court makes an order which directs counselling under section 5 (b) (x) the order must specify

- that the court receive written notification from the counsellor or therapist of sessions missed without reasonable excuse (*a recognition that counselling isn't a one time one day or one hour thing!*), and

- the date by which the counsellor or therapist shall submit a report to the court in respect of the counselling or therapy, such report to include a prognosis of recovery (section 7 (3) (a), (b) of the PDVA)

3.3.2.4 Other Counselling Institutions?

The court may also make an order under this Act *recommending* that either or both parties participate in counselling of such nature as the court may specify, including counselling by *marriage advocates*¹⁴, *religious leaders and chiefs*.¹⁵ In Malawi, these institutions are already traditionally recognised for resolving disputes that arise within families.

Advocates and chiefs (village head persons) are involved at the contracting of the marriage as witnesses to the formalisation of the marriages taking place within their jurisdictions, and also during turbulent times within the marriage, but their role is reconciliatory. The same goes for religious leaders for those affiliated to a particular religion; besides officiating the marriages they are also called in whenever disputes arise in the marriage. The courts only come in where these institutions have failed to reconcile the parties.

3.3.2.5 Dispute Resolution under the Act

There is also a provision in the Act that a court, upon being requested by an applicant or respondent, during the hearing of an application for a protection order and before the same is concluded, may suspend the proceedings on condition that both the applicant and respondent agree to undergo an alternative dispute resolution process with the assistance of a service provider¹⁶. This indicates that the Act does differentiate between dispute resolution and counselling/therapy.

¹⁴ These are the maternal uncles who give permission for the marriage to take place. They are also mediators and the first point of call for the couple whose marriage they witness in cases of disputes.

¹⁵ Section 52, PDVA

¹⁶ Section 8 (1) of the PDVA

In my opinion dispute resolution is what is mostly done at the order of the court, but not counselling. And the people involved are not specified service providers per se, but court clerks in the case of Blantyre Magistrates court. Otherwise the parties are also sent back to their advocates if they have bypassed their services, but it usually at the court's instance and not the applicant's or respondents- maybe because they are not aware of this provision. Sometimes the respondents do state that their wives had just rushed to court without discussing the issues, depending on the presiding magistrate or the issue at hand they are either referred back to advocates or not in which case matter proceeds and divorce is granted.

3.3.2.6 What Happens When A Party Defaults?

Failure to seek counselling as ordered by the court by either the applicant or respondent by unreasonably refusing or neglecting to comply with such a direction attracts a fine of K50,000.00, an equivalent of USD333. This is a lot of money for an average Malawian, and would really serve to motivate whosoever is ordered to attend counselling to do so without defaulting. This provision must have been put in place to ensure that the orders are really taken seriously.

3.3.2.7 Enforcement of the Provisions of the Act

The duty to ensure proper treatment and assistance is accorded to survivors of domestic violence is entrusted to enforcement officers. They also have the responsibility to ensure the proper administration and enforcement of the provisions of this Act and to perform such other duties as are necessary for the effective carrying out of the purposes of this Act. However none of the magistrates are aware of who these people are and how, on a day-to-day basis, they carry out their work, because magistrates work is done with the court clerks who in turn enforce the protection orders in conjunction with the police and the court marshals.

The enforcement officers, apparently have the responsibility to investigate into a matter where they reasonably suspect or receive information that a person has been or is likely to be subjected to domestic violence.¹⁷

Where after investigation the enforcement officer reasonably believes that it is necessary to take steps in order to protect the victim of domestic violence from any other acts of domestic violence, they are required to inform the victim of domestic violence and where possible the perpetrator of the domestic violence about the available alternative dispute resolution mechanisms, including counselling and reconciliation.¹⁸ All this signifies the availability of such institutions as well as professionally trained personnel to conduct the counselling.

In addition, the enforcement officer may solicit the services of any service provider to assist with any action to be taken under this Act. This is a very useful provision, considering that some women may be afraid of taking any action by themselves, but for this to be possible the enforcement officers have to be located right in the communities where they are easily accessible. So far this is only a dream. All the social welfare officers, who are the enforcement officers are currently based in the Central Business Area and only move into the communities as and when required. This presents a problem of accessibility especially for women in the rural areas, and awareness on the part of the communities as to the availability of the counselling services mentioned in the Act.

Another interesting provision in the Act is the one which provides that a police officer can arrest a perpetrator of domestic violence with or without a warrant of arrest issued by a competent court if the police officer believes that the arrest of the person is reasonably necessary for the protection of another person.¹⁹ Where an application for a protection order is made in these circumstances and the offender charged with an offence, and after hearing all the evidence the court is satisfied that;

- the incident was an isolated one;

¹⁷ Section 33(1)a of the PDVA

¹⁸ Section 33 (2)e of the PDV Act

¹⁹ Section 36 of the PDV Act

- there are circumstances which make it desirable to preserve the family unit; and
- the conduct complained of is not sufficiently grave to warrant the imposition of either the order or the penalty, as the case may be, the court may with the consent of the applicant or the complainant as the case may be withhold the grant of a protection order or the imposition of a penalty as prescribed by law and require the respondent or defendant to enter into a bond of good behaviour for a period not exceeding 6 months.
- Where such a bond has been entered, the court may also prescribe such additional conditions as- that the parties receive professional counselling, including family counselling.²⁰

The first inference that one draws from this provision is that even one isolated instance of violence warrants an order of counselling. In addition, this is the one solitary instance when the law provides for factors the court should take into account to make an order of counselling. But the danger is the subjectivity of the determination as to whether “*the conduct complained of is not sufficiently grave to warrant the imposition of either the order or the penalty*”. How does one make this assessment; what are the indicators because in the first place for that arrest to be made the situation was grave enough, such that the police entered without a warrant of arrest in some instances.

Then again, ‘*sufficiently grave a situation to warrant the imposition of an order has not been defined or clarified*. It all depends on the perception and experience of the presiding officers, who in the absence of proper training on gender issues or what cases require counselling and how to determine the same, are most likely to run the risk of undermining the applicants experiences and dismissing them as trivial, and thus denying the women in need of counselling their right to effective remedies.’

Thus even before the Act is implemented, there are already inherent flaws which contribute to limiting its effectiveness, to ensure that the women who fall under its ambit receive effective counselling services.

²⁰ Section 39(1),(2),(3)a of the PDV Act

3.4 The Policies

3.4.1 The National Response to Combat Gender Based Violence (NRCGBV)

This is the government's plan for addressing issues of gender based violence of which domestic violence is a component. Besides formulating a plan of action for the implementation for the period between July 2008 and June 2013, the Ministry of Gender, the machinery responsible for overseeing the overall implementation of the NRCGBV duly provides that it tackles the problem of GBV from a number of perspectives; from multi-sectoral response, prevention, rehabilitation, research and documentation, monitoring and evaluation among others.

The NRCGBV also identifies important *mediators* in the process of combating GBV and they include the personnel of judicial authorities, the police, paralegals, politicians, journalists, religious leaders, traditional authorities, health workers, social workers and school teachers. It further indicates that there is need to sensitise these service providers to become more accountable to the needs of the victims of GBV. More over, the institutions dealing with the perpetrators need to be more gender responsive and accessible.

Another important element also outlined in this policy document is the need for civic and legal education programmes to ensure that all people, especially women are legally empowered and able to assert their rights.

What I find to be of uttermost importance is the recognition by the framers of the document, of the health implications of GBV besides outlining some of the physical problems related to GBV and adds that "mental and psychological forms of violence are less obvious but equally devastating". There is at least knowledge that GBV does not only have physical but also mental and psychological effects that need addressing. But as far as the strategies for dealing with such problems are concerned there is no mention of this aspect. Could this seemingly down play of the psychological harm be responsible for the kind of response that the victims are accorded?

CHAPTER FOUR: COUNSELLING/THERAPY UNCUT: UNDERSTANDING COUNSELLING/ THERAPY

The question that arises at this point is how exactly does domestic violence affect a woman's health to the point that prevents her from enjoying the rights she is entitled to enjoy? What is it about the violence that necessitates the provision of counselling/therapy and other remedial services? The answer lies in the effects of such acts of violence. Dr Chiwoza Bandawe, a clinical psychologist at one of the constituent colleges of the University of Malawi in answering the question, informed me that:

“feelings are living things, if not expressed they will be expressed in several other ways. The most common way is that they would translate to physical pain. So that what would happen is that the woman might be experiencing pain in some part of her body, they would go to the hospital to be checked and rechecked but the doctors would find nothing because it is a psychosomatic symptom. As such counselling helps the woman to deal with the problems from the root.”

Dr King²¹,(2010) writes that the Psychophysiological Illnesses of Domestic Abuse include migraines, irritable bowel syndrome, essential hypertension, insomnia, chronic anxiety are just a few of the ongoing complaints of domestic abuse survivors. Obviously a person with these conditions is not well enough to carry on any activities, unless treated and cured of them.

It has been acknowledged that for the abused, “therapy provides long lasting benefits and support. Learning and addressing underlying causes of mental or emotional problem not only provides symptom relief, but gives tools for identifying and avoiding triggers in the future. Therapy also provides a person with management and coping skills to help them stay grounded, and helps them modify behaviours that they would like to change”(helpguide.org; 2010). On the same note, stressing the importance of therapy, literature also indicates that, while the support of friends and family is important, therapy is different. Therapists are professionally trained as listeners to help a person *get to the root of their problems and guide them to a*

²¹ Dr Jeanne King a seasoned psychologist of 27 years, and the founder of **Partners in Prevention**, a 501(c) 3 public charity dedicated to helping individuals, families and healthcare professionals to recognize and end domestic abuse.

solution [emphasis mine]. The therapist focuses on the unhealthy patterns and symptoms in one's life that they need to change. The therapist is said to be somewhat like a personal trainer in a gym – they can be a guide, but you still have to do the work (King; 2010)

Types of Therapies

Literature also indicates that there are so many types of therapies and therapists. Most therapists don't limit themselves to one specific type of therapy, instead blending different types in order to best fit the situation at hand. This can offer many powerful tools for the therapist to use. However, therapists often have a general orientation that guides them.

Some of the more well-known psychotherapy approaches include:

- **Cognitive Behavioural Therapy.** Cognitive-behavioural therapy (CBT) uses a combination of both cognitive and behavioural therapy. CBT explores both thinking patterns and harmful or self-destructive behaviours that might accompany them. The therapy then combines changing the thinking patterns along with changing the behaviour.
- **Psychodynamic Psychotherapy.** The theory behind psychodynamic psychotherapy is that our past – adverse childhood experiences or other unconscious conflicts – is the basis for problems that persist into adulthood, such as unusually low self-esteem, anxiety, or a feeling of being incomplete. This type of therapy is generally more long term.
- **Interpersonal Psychotherapy.** Interpersonal psychotherapy (IPT) is a short term, structured approach based on the view that our current problems are maladaptive behaviours rooted in our previous interpersonal relationships.
- **Family Therapy.** Family therapy involves treating more than one member of the family at the same time to help the family resolve conflicts and improve interaction. It is often based on the premise that families are a system. If one role in the family changes all are affected and need to change their behaviours as well.
- **Group Therapy.** Group therapy is facilitated by a professional therapist, and involves a group of peers working on the same problem, such as anxiety,

depression or substance abuse. Group therapy can be a valuable place to practice social dynamics in a safe environment and get inspiration and ideas from peers who are struggling with the same issues.

Couples Therapy (Marriage Counselling). Couples therapy involves the two people in a committed relationship. People go to couples therapy to learn how to work through their differences, communicate better and problem-solve challenges in the relationship (helpguide.org, 2010). Marital and couples therapy are said to be improper methods to effect therapeutic change for domestic abuse. Marital and family therapy is suitable for couples and family issues and partner/spousal abuse is not in this category. (King, 2010)

Literature also indicates that it is important to know that couples' counselling is generally not appropriate when violence is present in a relationship, in particular chronic or severe violence, and certainly when the violent partner does not fully understand the unacceptable nature of their behaviour. The safety of the therapy session encourages open communication, but such communication can be dangerous in a violent relationship and subject the recipient to more violence. Also, couples' work is based on the agreement of shared respect for another and shared responsibility for the relationship outcome and process. When violence is present, one person has more power than the other, and is taking less responsibility for his or her actions. Until the violent partner gets help to stop their abusive behaviour, and until the recipient is able to discover why he or she tolerates such abuse, couples work is likely to harm more than it helps (goodtherapy.org, 2010).

Studies indicate that therapy is different, but there are usually some similarities to how therapy is structured. Normally, sessions will last about an hour, and often be about once a week, although for more intensive therapy they maybe more often. The first session or two of psychotherapy is normally a time for the therapist to gather information about your mental and physical health history, evaluate your situation and work with you to develop a treatment plan. In some clinics, some of this initial intake information may be done by a person different than a therapist (King, 2010).

Literature also suggests that the first disclosure of violence is extremely important as the initial point of intervention. Lloyd (1998) suggests that the way a woman is

treated at this time can assist in her long term recovery from the effects of violence. Hellendorf and Tollenrud (1991; cited in Seely, 2002) stated that victim blaming is a significant factor in determining how the victim will remember and be able to recover from the incident, as this memory becomes incorporated into traumatic experiences. Now, the way a service provider will respond and the effectiveness of the response will depend on the type of knowledge and beliefs about domestic violence they possess. In addition, elements of effective psychotherapy have been held to be:

- 1) Therapy is not about blame; it's about discovery, ownership and responsibility.
- 2) Therapy is not about judgment; it's about being as is...acceptance of what is.
- 3) Therapy is not about external expectations; it's about process that evolves from within.

Common beliefs about domestic violence include the following: if a woman is subjected to domestic violence, she must have done something to deserve it.; victims or survivors don't know how to manage their men; and anyone who lets a man beat her deserves it (Saur, 2005). It is therefore considered crucial in counselling victims/survivors of domestic violence, particularly during disclosure that counsellors do not in any way infer that the victim is responsible for the violence (Lloyd, 1998, cited in Seely, 2002). In addition to the potential further harm such inferences may cause for the victims/survivors, extensive research has found no support for the contention that the victims/survivors personality or behaviour is responsible for the violence they experience. All this information is important in analysing and understanding whether what the service providers in Malawi do really offer counselling/therapy as discussed above and whether the therapy or counselling is achieving its intended goals and thus promoting the women's right to effective remedy as well as to enjoy the highest attainable state of mental health and other rights. If the service providers are not aware of the different types of counselling and that domestic violence counselling is rather different and a specialised form, then they are unlikely to handle cases differently, all would be handled the same and in so doing endanger those physically assaulted, worsening the situation for them and re-traumatising the women. In such a case counselling offered would have been wasted and their rights to health and dignity as well as integrity infringed upon.

CHAPTER FIVE: RESEARCH FINDINGS AND DISCUSSION: THE PRACTICE ON THE GROUND

This section of the paper discusses in detail the actual practice on the ground when it comes to the implementation of counselling as a remedy to sufferers of domestic violence as provided for in the various international human rights instruments and national statutory laws of Malawi, especially, the Prevention of Domestic Violence Act ('the PDVA'). It analyses the efficacy of such practices in order to determine the extent to which Malawi as a state party is effectively discharging its commitments to uphold the promotion of the women's rights to accessing effective remedies in so far as counselling as a remedy is concerned especially in cases where the woman has suffered domestic violence.

5.1 Implementation of Counselling as a Remedy: The Actual Measures and Structures put in Place

The PDV Act is the beginning point in trying to understand how counselling as remedy has been provided for, and by whom it is to be conducted. The Act provides under s 5 (b) (x) that the courts can direct that *the applicant or both the applicant and the perpetrator of the violence* receive professional counselling from any person or agency or from a programme approved by the Minister in writing. In addition, it also provides under s7 (3) for mechanisms of following up on the progress by requiring that the counsellor or therapist should furnish the court with written notification of sessions missed without reasonable excuse, as well as the prognosis of recovery.

Reading the foregoing, one is meant to believe that there are certain institutions, with proper structures, tasked to collaborate with the courts in providing the professional counselling or therapy services to either perpetrators or victims or both. The further implication of that the courts are well aware of this arrangement as are the counselling/therapy service providing institutions, and that both are well aware of their part in ensuring effective implementation of the provision. By further implication, one would expect the judicial officers making the order to be aware of the circumstances that would necessitate them to make an order requiring the parties to

undergo counselling or therapy sessions. But as it turns out, that is all in so far as the Act provides on the remedy. There are no regulations, as provided for under s56 of the PDVA, as to which services, programmes persons or organisations have been approved to provide counselling services, as well as the prescribed qualifications and experiences for persons who may provide the services. The Act presupposes that everyone involved would automatically know these professional counsellors and where to find them.

5.1.1 The Availability of Professional Counsellors?

I also found that on the ground there are five professional psychologists in the whole country who would qualify as professional counsellors, three of whom are in Blantyre. Be that as it may, they do not provide counselling/therapy to women who suffer domestic violence nor their partners at the instance of the courts. No particular public institution as having professional psychologists exists for purposes of providing such counselling/therapy services.

In fact the psychologist I interviewed indicated he had plans to open a private practice to offer counselling at the main Government hospital in Blantyre and another in Lilongwe, because there are none at the moment. Upon interviewing the women who had gone to the hospital for medical attention after being assaulted by their intimate partners, they indicated that they were only given medications after consulting with the medical personnel and nothing else, after which they returned to the police station with a medical report. No counselling of any sort was provided to them by the medical personnel.

5.1.2 Other Counselling Service Providers

5.1.2.1 The Ministry Of Gender: Department Of Social Welfare Services

In order to find out what institutions and structures are in place to provide counselling/therapy as a remedy to the domestic violence survivors, I went to the Ministry of Gender because it is the one tasked with the responsibility of overseeing

the implementation of the Act. Upon interviewing the Gender officer at the Ministry headquarters, she informed me that her Ministry has put in place measures, such as coming up with the National Response to Gender Based Violence. That, within the plan there is enunciated a plan of action to eliminate gender based violence of which domestic violence was a part. She went on to state that the ministry works hand in hand with other stakeholders to implement the PDVA. The implementing partners include some NGOs, the Police, the Courts, and the Ministry of Health.

These public institutions, it must be noted pre-existed the passing of the PDVA. They were not set up specifically for the implementation of the Act; they had already been handling domestic violence cases although at the time they were not specifically identified as such.

The Gender officer also stated that the Ministry of Gender also has established a counselling centre in Lilongwe which also provides psychosocial support to women who have suffered domestic violence. She also informed me of the existence, within her ministry, of the Social Welfare Department which has enforcement officers who are community development officers and social welfare officers. Under the Act the enforcement officers, apparently, have the responsibility to investigate into a matter where they reasonably suspect or receive information that a person has been or is likely to be subjected to domestic violence.²²

The Act also provides that, where after investigation the enforcement officer *reasonably believes* that it is necessary to take steps in order to protect the victim of domestic violence from any other acts of domestic violence, they shall inform the victim of domestic violence and where possible the perpetrator of the domestic violence about the available alternative dispute resolution mechanisms, including counselling and reconciliation.²³ Furthermore, the enforcement officer may solicit the services of any service provider to assist with any action to be taken under this Act. This is a very useful provision, especially if these enforcement officers are right within the communities, considering that some women may not be aware of the services in question or may be afraid of taking any action by themselves. As a matter

²² Section 33(1) a of the PDVA

²³ Section 33(2) e of the PDVA

of fact, in other jurisdictions these very functions would be performed by the professionals providing therapy or those encountered by the woman as she seeks remedy.

In the case of Malawi, according to the officer at the Ministry of Gender, these social welfare officers are the enforcement officers and the ones that conduct the counselling. In Lilongwe, I found that there exists a District Social Welfare Office, and for purposes of counselling, an establishment called the Social Rehabilitation Centre. It has three officers, two of which at the time of the research were pursuing further education in other districts, leaving the establishment to be manned by one person. When I followed up the issue further with a social welfare assistant at the Social Rehabilitation Centre, she informed me that the Centre was established in March of 2006, and that the cases that are handled there include wife battery, desertion, citing that most prevalent cases are those involving extra marital affairs, desertion. In most cases the complainants are women who are usually 'housewives'. However, the centre has never received any women referred to it by the courts for counselling as a remedy for those women.

I learnt from the social welfare officer that the centre has actually provided only two week long sessions of the said "psychosocial support" training to women who reported the abuse at the centre. The first session was in 2008 and another in 2009 and ran from 0800hrs to 1600hrs. During these trainings some of the women had to be sent back due to over registration, meaning that the needs of some women were not met. This did not include women who had reported their cases at the VSU within the same district and none came from the courts within the jurisdiction. And looking at the times the sessions were held, those with jobs or businesses were excluded as they could not afford to be away from their businesses for that long. A follow up session is yet to be done, funds permitting, to assess the effectiveness of the training. The

establishment is located in the capital city of Malawi, Lilongwe, in the central region



and is the only one in the country.

Source: <http://www.mapsoftheworld.com/malawi-political-map.html>

I also learnt that when a woman reports an abuse, they invite the perpetrator for a session where both parties state their sides of the story. She said this session is called counselling. She further went on to say if they fail to reconcile the parties we refer them to court. She said “we have about 3 or 4 sessions, but if we notice that nothing can be done we refer the parties to court for divorce”.

It is sad to note that this is the only public institution in the country, with a population of close to 13.1 million(NSO,2008) that attempts to offer some semblance of counselling to women who have suffered domestic violence, and already some women are excluded due to lack of capacity to handle them as well as inappropriate time allocation. This exclusion amounts to denying them a chance to access counselling as a remedy. In addition, the programme was not an on going one those who are lucky to get into the programme have to wait for a specific time for them to undergo the therapy. And when the session is conducted it is a once off thing, no follow up as yet. Already this is a shortfall. No way of determining whether it was successful or not.

At this time no therapy had been offered to the perpetrators. I was informed that the centre had just written a proposal to have the same. The question then remains, what

happens to the women between the time they have reported and the time of the counselling(which is unknown)? Obviously for those still in abusive relationships the abuse would continue even though they have been given coping mechanisms. This is an unproductive way of executing the therapy.

The social welfare offices are also ill equipped. In the welfare office in Lilongwe that is the closest to the court and therefore the most convenient and accessible and therefore the most ideal for women ordered by the court to undergo counselling, there is not enough room to conduct such counselling sessions. The room is already too small and congested with documents as well as office furniture positioned very close together. At the time I went to interview the officers, there were the two of them in the office. There would be no room for privacy even if they chose to do the counselling. It is like the offices were not meant to cater for counselling.

Like earlier stated, the Act was passed long after these institutions were already established. They have not yet been renovated to accommodate the additional mandate of counselling. For the Lilongwe office, the offices might not be renovated because there is no room for further extension.

A similar situation of lack of space obtains at the social welfare offices in Blantyre, the main area of study. This office houses eight social welfare officers. Yet there are only three rooms. One, the most spacious is taken up by the director, and the rest are left to be shared among the remaining officers and the rest of the staff, including the messenger and secretary. There also is no privacy here. These two rooms are separated by a wall which has an opening so huge that one is able to see and hear clearly the proceedings in the other room. If there were counselling sessions in either if the room the people in the next room would hear everything. There is no door to keep off the people, people were just walking in and out anyhow and intercepting on the interview, on both personal as well official issues. I imagine this is how it is when client reports in. No question of privacy or confidentiality here.

By the look of things, counselling was not in mind when a decision to occupy these offices was made and nothing has been done even after the passing of the Act to ensure that there is privacy when conducting counselling sessions. However, at the Social Rehabilitation Centre, in Lilongwe, there are offices and other rooms which are

quite spacious. There are more prospects of privacy there than in the other two centres but there are no proper logistics and inadequate funding to ensure effective ongoing counselling to the clients.

Besides the issue of shortage of space, the social welfare officers in Blantyre also lamented of shortage of staff which results in them multitasking as well. They operate as child protection officers, primary justice community forum members, probation officers for juvenile justice, child care, looking at issues of early child development as well as orphans and vulnerable children. The current staff of 8 people for a population of about 661444 is not feasible (NSO, 2008). To make matters worse, there has not been any more training and recruiting of social welfare officers since 2006. The training institute stopped offering the course as “the ones trained could not be absorbed by the government. No vacancies”. This is so unbelievable in the face of such shortage.

5.1.2.2 The Police Victim Support Units

According to one Deputy Commissioner of Police:

*“the Victim Support Unit was established as one of the components of Community Policing Services Branch to offer special services to victims of crime and abuse in particular, women and children after it was noted that they needed some special attention and confidentiality. Community Policing was officially launched in 1997 as a government deliberate policy within the Malawi Police Reform Programme which started in 1995, after the wheels of change from single political party to multi party politics in Malawi. The VSU are structured in such a manner that *at each police station there is a purpose built structure in which VS services such advice giving, counselling, referrals, conflict management, interviews and investigation of GBVs and violence against women and children are done. At each unit you have well trained and qualified officers who offer these services of course at times with support from cooperating partners.*”*

In the area of study, Blantyre, the VSU structure at Blantyre Police Station is most definitely unsuitable for counselling if the aspect of privacy is to be considered. Donated by one well wisher, the unit is housed in a small one roomed structure made of block board. It is about 5 meters by 3 meters with just one small window. It was

uncomfortably hot during summer (when I conducted the research). As a result the door had to be left open, while other client waited outside, within hearing range. It has three desks and 6 chairs and little room to manoeuvre. See picture below.

Picture 1: An Officer Attending To A Woman Complainant At Blantyre VSU



The situation is almost the same at Chilomoni police station.

Picture 2 & 3: Showing Different Views Of Same VSU Room At Chilomoni Police Sub Station.



All in all these structures were not purposely built with counselling in mind. Yes there are designated rooms serving as VSUs but they are unsuitable for counselling purposes in that they do not afford the privacy required. However, comparatively, the Lilongwe, Kanengo and Limbe Police VSUs have separate spacious rooms for

counselling because they were purposefully built for the activities of the VSU. In this regard the structures are fit for conducting counselling sessions. However, I also observed that at some VSUs any counselling session sitting, comprises not less than four police officers in their attire! Sometimes a third party is welcomed, usually relations of the parties to listen in. Talk of creating an atmosphere of trust for optimum results!

Picture 4: A section of the Limbe Police Station housing the VSU.



5.1.2.2.1 The VSU personnel

The VSUs also have police officers assigned to it. However, there is one set back: multitasking. The officers assigned to the VSUs are the same, but they are not only involved in the VSU but in other police general duties as well. In fact on the days I went to interview the officers, it happened that the president was in the district and police officers, including those at the VSU were deployed to the venue of the function, and only one or two would remain with a multitude of complainants to attend to. This goes to the root of effective counselling, because in a bid to attend to all the clients available the officers are bound to just rush through and not give proper attention or conversely in a bid to carefully attend to each client, others are bound to go unattended because there would be too many to be attended to by just one officer. At one of the police stations, the Officer in Charge wanted all the officers in the VSU to go to the field. To avoid closing the office, the officers at the VSU employed delay tactics until the others went and only one remained. One officer lamented as follows:

“that is the problem with our superiors, they do not understand that what we do is very important. How can he order that all of us go? We close the offices and who attends to the people when they come?”

This provoked a question in my mind which brings us to the next part of the discussion, that of training and skills of these officers.

5.2 Training, Knowledge and Skills of the Implementers

For the effective use of the PDVA and the implementation of the provisions on counselling it is necessary that the implementing partners be aware of the relevant provisions and their modus operandi. At this point the pertinent question was whether the courts, VSU officers, the social welfare officers, village heads, professional counsellors were aware of their roles in so far as the Act is concerned and if they were properly educated on domestic violence, its causes and effects and counselling as a remedy.

5.2.1 The Courts

It is interesting to note that the social welfare offices in Blantyre and Lilongwe are located just a few meters from the court premises and yet the magistrates I interviewed in Lilongwe do not know that they can send the victims there for counselling, and the centres have never received any women referred to them by the courts.



Picture 5: Part of Blantyre Magistrates Court, taken from the Social Welfare Office's veranda

In an interview with the magistrates, no one had sent the parties for professional counselling because none knew of these counsellors. In fact one magistrate said on being asked if she knew of the provision for counselling under the Act;

“I know of the provision that we can send the parties for counselling but I do not know where to send them...if it is the VSU the women would have come from there so there would be no need for me to refer them back to where they have been to already, it does not make sense’.

On the other hand, one male senior resident magistrate said it in this manner:

“the other reason [why I have not ordered counselling] is because we do not have qualified counsellors where you can specifically make the order and say I am ordering to go for counselling at such and such a company or place. If there are then their presence is not felt. Maybe in a religious context, but a professional counsellor- no. in that regard I would have loved if the Act went further to gazette which class of people it had in mind to give the counselling, .at least have a schedule and say these are the people to go and see for counselling”.

This magistrate went on to state that he only sent a woman for counselling once, and in this case she was the violent one. He then advised her that she should choose a counsellor of her own and she was not presented with any options owing to the fact that he had no idea where to send her for the counselling. Yet she informed her that he

would be waiting for the feedback. But the parties never reported back on whether the counselling took place and if it did where and the prognosis of recovery.

“I know that the social welfare is the one that offers counselling but I have not sent anyone there for counselling. I have also not been provided with a list of where else to send the parties for professional counselling,” said another male senior resident magistrate.”

And another reiterated as follows:

I know that the Department of Social Welfare under the Ministry of Gender is supposed to offer counselling, but they are too busy.”

The lack of knowledge of where to send the complainants for counselling in cases of domestic violence is attributed to the lack of proper training on the use of the Act on the part of some magistrates. Out of the 17 magistrates, about 5 had not been trained at all in the use of the Act. One of them stated that,

“maybe it is because it is not possible to get every magistrate at one go. As such only a few magistrates and when these came back they did not share to the colleagues the things they had learnt. Actually this has been the practice in the judiciary that when one goes for some training workshop, they do not even share the knowledge they acquire”.

Of those that went for a training workshop, they stated that they were not informed of counselling as a remedy. In fact one of them had this to say:

“I learnt about the Act at a workshop on human rights, and issues of domestic violence were mentioned, but just in passing. They focused on the need to punish violators of women’s rights.”

Another principal resident magistrate said:

“no one mentioned counselling as a remedy. They just focused on the punishment of the perpetrators. Am sure they did not think it was that necessary, because if it was, they would have told us.”

Even the Third Grade Magistrates who had just finished their 18 months training for lay magistrates at Mpemba Development Training Institute, court stated that they had learnt of the PDVA as part of statutory law course but the emphasis was on other protection orders, but not counselling.

5.2.2 The Counsellors

Selecting the right professional has been held to be a contributing factor to successful therapy and eventual healing of the abused. In the hands of an incompetent service

provider, one may end up feeling abused all over again (Dr Sam Vaknin; 2010). The therapist or social worker should provide the victim with lists of contacts – help organisations, law enforcement agencies, other women in her condition, domestic violence shelters. Such knowledge empowers and reduces the victim's sense of isolation and worthlessness. *Helping the survivor regain control of her life is the overriding goal of the entire therapeutic process* (Vaknin, 2010).

Section 43 of the PDVA has allocated such responsibility to enforcement officers. Gordon (1998 cited in Seely, 2006) reported that victims/survivors found counsellors who provided support, encouragement and specific information about domestic violence most helpful.

In another study, victims emphasised the importance, throughout counselling, of having a counsellor who listens in a non judgemental way without pressuring them to make decisions that they are not ready to make (Dobash & Dobash, 1992). Further, it is recommended that counsellors acknowledge the difficulties in leaving, explore a range of options, including remaining in the relationship, and letting the victims know of the fact that ongoing support is not dependent on them leaving the abuser. Bagshaw et al, (2000 cited in *ibid*) stress that counselling should be clear that violence is unacceptable.

An important phenomenon attached to domestic violence and counselling is one termed secondary victimisation. This term was used to describe the injustices that occur to victims after experiencing a trauma. This secondary victimisation can occur if a counsellor does not support or validate the victim/survivor but appears to blame her for the violence. It is therefore critical for counsellors to listen, believe and respond in a supportive way to victims/survivor. The question that arises then is do the current service providers take cognizant of these important elements in their sessions?

5.2.2.1 The Observed Trends of Procedure Followed during ‘Counselling’ Sessions

It must be noted that most of the domestic violence cases are reported to the police, than to the social welfare offices, going by the confession of the social welfare officers themselves. During the research, it was observed that the issue of allocating blame to the complainant was recurrent in all the victim support units. Yes both parties were given a chance to state their side of the story. After which the officers would follow up with questions in trying to find who contributed to the violence. In most instances they would always go back to the complainant and say, “although we do not say that what the man did was right, you too are to blame”.

In one particular case a woman had complained at a VSU that her husband beat her up along the road. It was not the first time he beat her up. But on this particular day they had met when the man was in the company of a girl friend. The man alleged the wife was stalking him. In giving his counsel the officer deplored the man’s conduct and also added, addressing the woman:

“Nanunso mumatani kumamulondora mamuna? Munalakwatu pamenepo”

Literally translated, “what were you doing following your husband’s movements? You made a mistake there.”

In another instance, in a counselling session observed at one of Police Victim Support Unit, the woman had waited for husband on the veranda up to 12 midnight. She wanted to see where he would emerge from because she had been suspecting him of having an extra marital affair. When she confronted him that same night, he beat her up. When the officers heard both sides, one of them asked he woman “what were you doing on the veranda at 12 midnight?”

Woman: “I was waiting to see where he would come from”;

Officer: “then what?”

Woman: “I would have evidence with which to confront him because I know where the other woman’s house was.”

Officer : “so what would you achieve. Why not wait inside. What did you want the people in the neighbourhood to think, taking your problems out to the open like that?”

In this instance instead of just understanding the woman’s pain behind her actions and affirming the pain, they went forth in the presence of the husbands to allocate part of the blame to the women who had gone to complain. Both women tried to defend their positions but the officers maintained they too were to blame. While the officers maintain that this is counselling, I beg to differ. Not only did they not affirm the women’s pain, they also blamed them for the violence. In the end they prescribed a solution. In each instance, the couple were instructed to reunite for the sake of their children. The woman in the first instance refused saying she fears for her life, and she simply wants some peace, upon which she was advised to go to court for divorce. It was not the first time she had reported the matter at the police. The couple in Lilongwe went home together to see if the counsel would work. It was the first time to report the matter at the police.

The trend I observed was the same in all the victim support units. Their idea of counselling is to hear both sides of the story, then try to establish who was to blame and then prescribe a solution. This took a maximum of one hour and the parties were expected to reconcile after the session. Where the man accepts the blame and apologises they were sent on their way. But in cases where the man does not accept the blame, if he was arrested by the police he would be kept in custody, or the woman is advised to go to court for divorce or allow the state to prosecute the man.

The other institutions identified in the Act as where parties could be sent for counselling include religious institutions, village heads, and advocates. Social welfare officers are also involved in ‘counselling’. The manner in which the counselling is done is the same in all these institutions as the one adopted by the VSUs where the complainant and the perpetrator give their sides of the story and the final verdict is rendered by the person presiding, after advising the parties on the roles of a man and woman in a family and their responsibility to their children.

5.2.2.2 The Aim of Counselling

The emphasis is on reconciliation. As a matter of fact all the officers in the institutions currently offering ‘counselling’ were quick to point out that when adults are fighting it is the children that suffer. That their rights are infringed on when the parents separate, since they have a right to be raised by both parents. One lady officer passionately pleaded with a perpetrator at one of the VSU’s as follows:

“It is not nice growing up with feuding parents or in a broken home. I grew up in such a home and it was hell. That is why I ask you sir, to please reconsider your position and go back to your home for the sake of the children.”

Another officer said:

“The major thing we intend to achieve in counselling is reconciliation so that they lead a peaceful life in their families and communities”

It does not matter the kind of violence reported, they all have similar solutions and are handled in the same manner. This is what I observed and when I asked the police officers, they asserted the same, but added,

“Except where there is serious injury. Then we arrest the perpetrator and ask the woman if she wants to press charges or not. If she says no then we just counsel them. With the additional warning that if he continues with the violent acts he will be incarcerated and taken to court and the courts show no mercy.”

5.2.2.3 Who Trained Who?

Apparently the police officers indicated that some of them had been trained to provide counselling by UNICEF during a workshop. When I followed up the matter with one UNICEF official he did indicate that they only trained them in play therapy, for children who had been sexually abused and not for domestic violence cases. The MHRRC had trained some officers in Lilongwe. The MHRRC official stated that they did train the VSU on counselling and their focus was on HIV and domestic violence. But she also added that;

“most of the officers use their intuition and knowledge because they are told they are there not to break marriages and they use the constitution to back up their view. If the woman persistently comes back she is told to go to court”

As such it can confidently be surmised that the VSU officers have not been adequately trained to handle domestic violence issues. Or if they were then, they are not adequately utilizing their training. However I consider a once off training on counselling not adequate in the absence of ongoing supervision and monitoring to determine whether or not the modes adopted are successful. Compared to what counselling comprises from the discussion above, what the institutions offer is advice giving but not counselling that deals with the core issues, otherwise two days is too little a time to conduct effective counselling.

5.2.2.4 How Long Was the Training?

In any case for the 16 VSU officers in Lilongwe, I was informed that only 3 were specially trained and had attended two week training in counselling.

I also found out that the maximum number of days they offered the counselling was two days. No follow ups are usually made. In explaining this point the officers said:

“By the standards in the books we are supposed to make follow ups, but we do not. The challenge is lack of resources. We do tell the clients to come back and report on progress but most do not because most of them do not drive”.

It is important to note at this point that the police officers’ training at the Police Training School does not include counselling as a subject.

5.2.2.5 How About the Other Service Providers?

On the way matters are handled procedurally by the village heads, all the village heads I interviewed indicated that when they receive a complaint, they send for the perpetrator and when he comes on a given day, they listen to the woman’s side as well as the perpetrator’s. Then they give their opinion on the matter. It is a form of primary justice and they even have books in which they record the details of the proceeding. It is an informal trial and customs and traditions are the basis for opinions and occasionally reference to the police and courts are made as threats to induce compliance to judgements. Such hearings are heard in the open; surely they cannot count for counselling! Actually one of the chiefs stated that sometimes, due to fear of embarrassment the perpetrator would ask to be heard in private but they refuse saying;

“timakana cholinga achite manyazi kumene kuti mwina angasiye zomwe amachitazo.” Meaning
“we refuse to give a private hearing so that he should be embarrassed and probably stop the abuse”

Only two religious institutions out of the five that I interviewed showed that they do not expect change in a day. They continue to meet with a complainant or perpetrator for a long time. In their case too, the goal is reconciliation. But in addition they seek to change the mindset of the perpetrator as well as the woman complainant to prevent the abuse from recurring. This I believe is a more helpful approach.

All the religious leaders as well as village heads, social welfare officers and the VSU officers insisted that it is not their duty to facilitate divorce or to end marriages. As for the social welfare, the VSU, village Heads, the expectation is that things should change as soon as possible when they have been addressed, if they do not change at least after two sessions, then there is nothing else one can do as one of the parties is stubborn and the woman is finally advised to go to court for divorce.

One woman, narrating her experience of counselling at the hand of a church minister stated that she had been facing abuse for over 5 years. When the pastor went to her house to address the issue, he heard both sides. Then without addressing her concerns, the pastor asked how the sexual relations part was between the two of them, whereupon the man stated that they had problems in that area. Then the pastor went on to address that part, saying it is the root of many marital problems and breakdown of even the strongest of Christians’ marriages when women don’t fulfil their roles. Thereupon he admonished the woman to submit to her husband, without addressing her problems even one bit. She said she felt hurt more by not being believed than by anything else. She expressed her reactions after the “counselling” as such:

“I could not believe what I was hearing. He thought I was the problem, that I was not submissive enough. He did not even hear my pain. He had taken his side and I thought ‘he does not want to offend him’. I wondered ‘is he biased because he does not want to lose his member because by doing so he would lose his monetary contribution?’ So when he said we should kneel down to pray, I felt like telling him off, but I could not. I had to respect him as a man of God. But whatever happens, I will never go to him again.”

I visited that pastor and asked if he had any training in counselling. His answer was:

“I received training at a Bible college. It was one of the modules and I learnt it over a period of three months. But I have not been trained in domestic violence and I am not aware of the provisions of the domestic violence Act”

He also indicated that he had not received any gender sensitisation training. That explains the way he treated the woman’s case. He was biased and had already, in one session determined that the problem lied in the woman’s lack of submission. Is it any wonder then that the woman said she felt she was not assisted and would not go back to him again if she had problems. As a matter of fact, none of the religious leaders interviewed had gone through any training on gender or domestic violence.

Unfortunately I could not follow up to find out what exactly was taught in that module. The college is in another country. In this case it can hardly be called counselling/therapy, rather advice giving, and if it is psychotherapy then it was unsuccessful because, psychotherapy, it has been held, is effective to the extent that the therapist brings unbiased, undivided attention to the interaction and not "loaded" with bias, judgments and preconceptions (King, 2010).

In the case of counselling at the police VSUs, it was observed that during the ‘counselling’ it was never an issue of progressively trying to establish the root cause of the problems between the couples and neither was it aimed at addressing the complainant’s emotional pain. It was all about reconciliation in order to promote the constitutional provision to protect the family as the most fundamental unit of society.²⁴ This approach I believe ended up in retraumatising the woman. It cannot be said that it set the woman on the course to healing and neither did it result in behavioural change of the perpetrator.

While there are no records to show whether the counselling was successful or not, there are indications that most of the cases coming to court come from the VSU. In most cases the women complainants would have gone through the marriage advocates as well as the village heads. If these are anything to go by, then I would surmise that this kind of counselling is not successful in either reconciling the parties nor is it

²⁴ Section 24 of the Constitution of the Republic of Malawi

effective in addressing the women's emotional needs as well as changing the behaviour of the perpetrator.

From the foregoing discussion, it is clear that a range of skills in supportive counselling, crisis intervention and more clinical skills for managing symptoms such as depression, anxiety, PTSD is required. Then the question at this point is: are the counsellors providing the counselling so equipped? The answer is in the negative, as demonstrated by the focus of the "counsellors"- reconciliation rather than the woman's mental well being or the change in the behaviour of the abuser. According to my observation the 'counsellors' lack the prerequisite knowledge and skills to enable them to carry out proper counselling so as to afford the women seeking their services effective remedy, thus make the abuser stop the abuse and facilitate relief for the emotional symptoms of abuse experienced by the women complainants.

Section 43 of the Act is to the effect that any service provider who becomes aware of an incident of domestic violence ought, among others, to ensure that the victim of domestic violence has access to information about the range of service providers and the kind of support that may be provided by any service provider. The most obvious implication is that of the availability of counselling or therapy service providers who are able to competently assist the complainants.

This further implies that such services providers have the requisite know how and skills to execute their duties; that they have been trained in their areas of expertise to understand the issues that they are dealing with and how best to handle them, in this case of domestic violence. At a minimum, if they are to offer counselling then they are to understand the dynamics of power relations in a domestic relationship, and how they work to oppress women and their eventual limiting nature to the woman's ability to enjoy her fundamental rights and freedoms, and also recognise what counselling is all about and how to go about it. In my opinion without an adequate understanding of the human rights implications as well as the gendered nature of domestic violence, one cannot get to the root cause of the problems in order to eliminate the violence altogether. This knowledge to my mind is acutely missing from the service providers.

In the PDVA, the professional counsellors are among the ones to which the parties can be sent. About these, there is no doubt that they have the requisite training to equip them to carry out their responsibilities. Talking to one of the professional psychologists, a Doctor and senior lecturer at one of the constituent colleges of the University of Malawi, he indicated that;

“Counselling is an ongoing and not just a once off process that can achieve the intended results in just one hour or two. It involves delving into a person’s life to discover the underlying causes of the violence, some of which are not even obvious or known to the perpetrator himself. Thus getting to the root of the problem is the first step in dealing with the issues. For the victim/survivor counselling would be important because she would be traumatised by the violence.”

He went on to state that:

“Feelings are living things. If not expressed they will be expressed in several other ways. One of the most common ways is to translate into physical pain. Thus you will find that the woman would be going to the hospital to be checked and rechecked but each time would be told that there is nothing wrong. At that point she has psychosomatic symptoms.”

He also stated that

“at the minimum, this would require three to four session, spaced at one session a week in order to give the client time to reflect on the issues discussed on a particular day. The after the four initial sessions you can determine whether there are other underlying issues. He also said that people do what they think is best, counselling begins to say there are other ways.”

Now without such knowledge of the dynamics of change, I do not see the possibility of offering effective counselling. In any case the services provided would not, in my opinion amount to counselling.

On the other hand, literature also suggests that domestic violence cannot just be handled by just anyone even not just any psychologists and psychiatrists, saying they are not trained in domestic violence interventions as prescribed by domestic violence experts as they can be, and often are, manipulated in the therapeutic process by the perpetrator to carry out his/her agenda. There are far too many nuances specific to domestic abuse intervention to expect proper management by untrained people from other professions (as discussed) [Dr King, 2010]. This emphasises the need for specific domestic violence counselling training.

On talking to the Social welfare officers at the Lilongwe District Social Welfare Office, one officer stated that they do not offer counselling in domestic violence issues, only in matrimonial issues. He stated that the matrimonial issues that called for their intervention include cases of desertion, neglect of spouse or children, marital infidelity and mild quarrels where there has been no injury- “you know the usual marital squabbles”, he said.

This to me is a clear indication of lack of knowledge of what constitutes domestic violence under the Prevention of Domestic Violence Act, let alone its grave consequences, such that if a client came complaining of acts that constituted domestic violence but did not fall under what he believes to be domestic violence, he would not recognise it as such and he would not treat the matter with the seriousness it deserves, and so would not prescribe the requisite remedy because they only handle the mild matters, cases of domestic violence are handled by the police.

5.3 The Problem of Legal Pluralism: The Role /Challenge of Social Beliefs and Practices

The assertion here is that most people in Malawi have been socialised to believe that a husband or male partner is the head of the household and his word is not to be disputed with. To go along such beliefs upon getting married and even when seeking counsel women are often told “*banja ndi kupilira*” meaning marriage is about perseverance. In addition the religious sector would preach that a ‘foolish woman tears her marriage apart with her own hands, but a wise one builds her home’²⁵, often out of context. Such that when a matter is reported to any body, including the advocates, VSU, or the religious bodies, the inclination is to first find out what the woman did wrong instead of affirming her pain or accepting her story. The first question is ‘what did you do to provoke the man?’

I observed that it was the same when a woman reported a matter to the police. The officer would often ask;

²⁵ Proverb 14: 1 in the Holy Bible

“inuyo mayi munatani kuti akumenyeni?”

Meaning, what did you do madam to provoke him to hit you?

While this is a display of lack of understanding of the dynamics of domestic violence, it is also indicative of the deeply entrenched beliefs that a man is entitled to discipline his wife when in the wrong and a woman should not complain. Even one of the abused women confessed in a focus group discussion that her advocate while counselling her husband had said:

“Achimwene, inde mkazi akalakwa timalanga koma kulanga kwake sikumeneko. Mwaonjeza”.

Meaning,

‘my brother, yes when a woman is wrong we chastise her, but you went too far.’

Apparently the advocate was condemning the frequency of the beating, that the woman had complained of his beating too many a time and so had exceeded the acceptable amount of beatings.

There is even one woman who suffered severe beatings and emotional abuse from her husband for seven years, was even stabbed on her hip and inflicted with a wound with a coat hanger. But whenever she went to report her husband to her relations and her husband’s relations they would always send her back to him and told not to try to provoke him. In her words she said:

“Sindimachoka chifukwa ndimaona ngati banja ndi choncho, kuti banja ndi kupilira”.

Meaning,

“I did not leave because I thought that those are the usual downs of marriage, because marriage is perseverance”.

Even when it comes to issues of extra marital affairs, society has a saying that *“mwamuna amanyenga”*, meaning that a man has to have many women, meaning it is natural and not surprising for a man not to stick to one woman. Yet so many women are devastated upon learning that their husbands are engaging in extra marital affairs in spite of society’s acceptance of it. Extra marital affairs are a serious problem because the women indicated that once a man engages in it, he forgets about his family. Usually because the man does not have a huge income, he prefers spending the little he has with the new girlfriend, leaving the woman and children to go without

the basic necessities of life including food. In addition, with the prevalence of HIV/AIDS, women live in fear for their lives because in spite of their husbands' infidelity, they cannot demand that they use protection in marriage. To make matters worse there is no law against marital rape in Malawi.

In two instances, two women shared their fears as follows:

"My husband was diagnosed HIV positive, while I tested negative. But one day he just came and inserted his member into me and had sex. He did this twice. He did not use protection and I could not stop him. I could not complain to anyone and I am afraid of going for another test. Sometimes I want to leave, I have no peace. I think he hates me or how else could he do that?"

In another case a woman who went to her in-law to complain of her husband's infidelity recounted her disappointment at the way her mother in law responded upon being told of her son's infidelity. She said the mother said to her:

"Eetu mamuna amuna ndi choncho amanyenga"

Meaning,

"men are like that, they like sex outside marriage".

Another woman, talking of how her religious leader handled her case she said she was told that:

"Aaah! Mukudandaula chani, ndizazingono izi. Palibepo nkhani apa. Zimachitika izi and what's so special with you?"

Meaning,

"aaah! what are you complaining about? This is nothing. There is no big issue here. It happens. In any case what is so special with you?"

The women in both cases expressed discontentment in the manner their cases were handled. They were just advised to go back to their husbands and submit, that things would eventually change, as the husbands outgrow the habits.

Seeing as it is that the service providers would have grown up in Malawi and socialised to think in like manner, it becomes imperative that they receive some kind of gender training to sensitise them of these beliefs and practices that would influence their own thinking and decisions and even counsel that they give to the women who seek their services. In the absence of such conscientisation, even in the presence of a law meant to address the needs of women, they are likely to inadvertently contribute to the ineffectiveness of counselling as a remedy and so infringe on the women's rights to health and dignity among other rights.

None of the professional magistrates, village heads interviewed had been trained in gender issues, except one. Only 5 VSU officers were trained, but it is not showing. The magistrate who had knowledge on gender got the training during his first degree when training to be a teacher not from the law school. All the magistrates were trained in Malawi and none learnt gender as a subject. As far as the lay magistrates are concerned, they indicated that:

“Gender was taught for just two days. It was not a core subject and not subject to examination. So we did not take it seriously. We had to focus on those subjects that we would be graded on.’

The effect of such lack of proper training on the part of these service providers is, I believe, not to treat women’s issues with due diligence, as they remain unaware of the subtleties in the way the law affects the women even though it appears gender neutral. This is demonstrated in the way domestic violence matters are handled. With lack of awareness of counselling as a remedy, as well as lack of training on gender, all but one magistrate handle domestic violence cases just like any other civil matrimonial case. So when the issue comes to court, it is hardly about the injustices experienced by the woman, it is about fair distribution of property.

Most importantly is the effect of a domestic violence claim proceeding as a divorce matter. The idea is to have the party complaining satisfy the court on her claims of cruelty or neglect. The danger arises because of the stance that the courts have adopted when hearing such claims. Most courts are under the impression that they only have jurisdiction to hear matters for parties whose marriages were contracted at custom.²⁶ Thus, if the parties are married by cohabitation or permanent repute, their case is thrown out for want of jurisdiction. Before the complainant can state their case, the magistrates ask what formalities were followed in contracting the marriage. This is to determine whether the courts have jurisdiction over the matter or not. The effect of this is to deny the women adjudged to be married under cohabitation of this remedy. Usually what the magistrates say is as follows:

“this court can only hear matters for parties married under custom. Much as you are recognised as married under the constitution, there is no law that provides as to how to proceed in such marriages. However since you

married by agreement, by the same agreement you can separate. The case is dismissed for want of jurisdiction.”

This is coming from the religious and cultural belief that properly married women do not just start living with a man without proper formalities. Those magistrates with strong religious convictions usually adhere to this practice strictly because they believe in chastity before marriage. I was one of these magistrates.

Others do not need to have strong religious conviction, the mere absence of a statute on how to handle such cases is enough to compel them to throw out the case. If the case is thrown out then the woman is deprived right from the start of a chance to be heard and get an order to address her situation, which order might be for counselling. Her right to access justice and an effective remedy is therefore curtailed, especially that the woman would have no marriage advocates and she would have been to the VSU or some other NGO before coming to the court.

However this does not apply to women considered married properly. These women would have their case heard such that in the course of the hearing, if there is proof of domestic violence, a magistrate makes interim orders to address her particular situation, and as provided for in the PDVA, this could include making an order for counselling.

The exception would arise where a magistrates is compassionate and considers the number of years that the people would have stayed together. If more than one year, they would hear the divorce application because they would consider that there would be property accumulated together and so the need to share the property. In such a case the women whose cases are heard by such magistrates, would have the chance to air out the forms of abuse that they would have faced, unlike their counterparts whose cases would have been thrown out. I found that the lay magistrates (first grade, second grade and third grade magistrates) were inclined to follow this route to assist the women unlike the professional magistrates.

5.3.1 The Counsellors

Greenspan (1983) writes that many traditional approaches aim to overcome the woman's resistance to her gender role, while feminist counselling challenges traditional gender roles. So a feminist approach is advocated for as traditional approaches do not seek to empower women. Feminist counsellors seek to affirm women's sense of entitlement to their own thoughts, feelings, needs and assertive actions.

A classic example is the case narrated above of the woman who waited for her husband on the veranda. The officers said women are gentle people and a man if not approached properly cannot answer properly, so it was her approach that was wrong. Thus trying to force the woman to conform to her role and image as a wife.

At marriage the woman is counselled to always submit to the husband and never forget that he is the head of the house no matter how bad he behaves. That, if one does her role as a wife properly, she will be able to manage the husband and eliminate some of these problems. Such that it is believed that if a man has an extra marital affair, there is something that the woman does wrong or does not do right.

In the absence of proper training in counselling and gender issues, the institutions offering 'counselling' use their own knowledge, traditions and experiences. This is the answer I got when interviewing the VSU officers as well as the community volunteers working with the VSU's. They often would be heard saying, 'according to our culture the man is recognised as the head of the family'. So whatever advice was given to the woman it never fell short of encouraging her to keep peace in the family by being submissive and listening to her husband.

In one instance the husband, besides taking away some of their matrimonial property also repeatedly abused the woman by calling her uneducated, dirty. He denied her access to the family business. Instead he got his girlfriend to do it. When she reported the issue to the advocates, the man refused to go; she took the matter to the police. The man alleged that she was dirty and did not clean the house. The police went on to ask why she did not take care of her house, why she was so unclean. She tried to

explain that it was only one incident when the man came home and found that a child had spilt water while she was attending to a younger child. That at the time the man arrived she had not finished attending to the baby.

She lamented:

“does he think that I spend my day doing nothing? Does he not know that I have to clean the house, wash clothes, and get the children ready for school? and you should know a house full of children cannot fail to have some unclean spots. I had already cleaned the house its just that the children had just spilt some stuff as they ate lunch, and because I was still feeding the young one, I could not get up to clean up immediately; that is when he showed up.”

The police officer, not appreciating what the woman said went on to deplore her for not taking good care of her own house, saying:

“it is like you do not appreciate the efforts of the man (who provided the shelter and furniture.”

In so doing he was appreciating the man’s economic activities more than what she does. In the end making her feel like the abuse was her own fault and so not affirming her pain as counselling is supposed to be done.

As demonstrated above there is a huge knowledge gap on gender issue on the part of judicial officers, their clerks, traditional leaders and the VSU officers handling complaints by women who have suffered abuse at the hand of their intimate partners, yet these institutions are critical in ensuring effective remedies for these women.

CHAPTER SIX: CONCLUDING REMARKS AND RECOMMENDATIONS

The discussion above has shown that counselling as a remedy as provided for by the PDVA is available to a complainant in two situations. Firstly, it may be ordered by a court against the perpetrator of the DV in order to stop the abuse and help him to engage in behavioural change for the better. Second, it may be when ordered that the complainant herself submits to counselling for her emotional as well as her physical well being.

The discussion has also shown that presently the courts do not order this remedy. Firstly they are unaware of its existence as a remedy under the Act. Secondly the courts have the mistaken impression that, before approaching the courts, the complainants have already undergone counselling in the primary justice system.

However, the discussion has also shown that even if the courts were to order counselling, those institutions that allegedly offer ‘counselling’ at present, do not necessarily offer effective counselling. Ineffective counselling arises from the fact that it is not conducted properly and its focus is incorrect. This is because counselling skills are lacking because there has been a lack of resources for proper counselling training, facilities and finances. As a result, four years after the passing of the PDVA, there is no implementation of counselling as an effective remedy as provided for under the Act. This means that in spite of the commitments made by Malawi at the international as well as the African Regional levels, the government is failing to fulfil its obligations to provide an effective remedy, by way of counselling, to women complainants of domestic violence. Therefore, the government is in violation of the rights of the complainants to seek and receive counselling as an effective remedy to the DV from which they suffer.

So while there might be a group of women who are able to heal and cope with an abusive partner by talking informally to friends, or other people, the paper has shown that there is a group of women for whom those avenues do not supply the relief they

need. Having resorted to the formal primary justice system, they still come to court, not for a divorce, but in the hope that the court can order an end to the abuse. It is for that group of women that the paper argues that there is a need for the implementation of the formal remedy of counselling, an effective remedy which, as such, is guaranteed by the Constitution of the Republic of Malawi.

In view of the preceding discussion, this paper therefore makes the following recommendations:

- The Government of Malawi should initiate and promote gender sensitisation and training of service providers, including legal officers, law enforcement officers as well as social welfare and health officials, village heads and religious institutions and not leave too much responsibility with NGOs. In this regard, the Government should come up with a standard manual on gender that will be used across the board in order to ensure uniformity of knowledge.
- There should be proper training/awareness for the judicial officers and their support staff and counselling service providers on: domestic violence, its causes and consequences, gender dimensions and implications in the context of access to justice; the prevention of Domestic Violence Act and how to handle domestic violence cases.
- The Government should in collaboration with the Ministry of Health develop proper guidelines of how the courts should determine which cases to refer for professional counselling, rather than leaving it to the discretion of the courts to determine which cases are meant for counselling.
- The Minister of Gender should include regulations under the PDVA, as provided for in section 56 of the PDVA, to provide for a list of approved services or programmes and service providers to which the courts could refer the survivors and perpetrators of domestic violence. The regulations should also prescribe the qualifications and experience for persons who may provide the services;

- There should be a general sensitization of the public on domestic violence, counselling as a remedy in cases of domestic violence and the provisions of the PDVA, including where to go to get particular counselling services;
- Nurses and clinical officers should also be allowed to offer counselling as a remedy and their work should be governed by proper guidelines.
- Provision should be made for specialised training in the counselling of domestic violence complainants at the Training Institute where social welfare officers and police officers are trained.
- The Government should also develop on-going monitoring and evaluation strategies of the counselling service providers for effectiveness so that the services reach the intended beneficiaries and achieve the intended outcomes.

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APPENDICES

Appendix 1: A Structures and Actors List of Interviewees from different Institutions

CATEGORY	TOTAL NUMBER	NO. OF MALES	NO. OF FEMALES	NUMBER TRAINED ON PDVA	TRAINED ON GENDER	TRAINED IN COUNSELLING	TRAINED ON DOMESTIC VIOLENCE
Magistrates	17	10	7	12	8	0	12
VSU officers	17	9	8	5	5	5	5
Police prosecutors	3	0	3	3	0	0	3
Social welfare officers	6	2	4	6	6	6	6
Village Heads	4	3	1	0	0	0	0
Court Clerks	10	6	4	0	0	0	0
Religious Leaders	5	5	0	0	0	0	0
VSU Community Volunteers	3	2	1	0	0	0	0

Appendix 2: The Women Observed At VSUs After Falling Victim To Domestic Violence At The Hands Of Their Intimate Partners

<i>NAME OF THE RESPONDENT</i>	<i>MARITAL STATUS</i>	<i>NATURE OF VIOLENCE COMPLAINED OF</i>	<i>PREVIOUS FORA BEFORE VSU</i>	<i>NUMBER OF TIMES REPORTED AT VSU</i>	<i>SOLUTION OFFERED AT VSU</i>
Naphiri*	Married at custom	Extra marital affair, neglect, wife beating[she was later hospitalised for a week]	None	2	Because the respondent was denying having beat the woman he was sent back into custody for further investigation
Andile*	A visiting relationship	Impregnated and neglected, left to sleep outside without food.	None	0	Sent back to discuss with parents on way forward
Nabetha*	Married at custom	Husband threw a pot of hot porridge at her, threw away her business stock	Advocate	0	Matter adjourned due to absence of respondent
Nasimango*	Married at custom	Beaten and bruised on the eye cos she asked why he	Chairman	2	Waiting for police vehicle to arrest the

		came home at 3am			man
Malita*	Married at custom	Heavily beaten	Father in law	0	Given another summons to give to the man asking him to come for a discussion
Mai Bengo*	Married at custom	Assaulted for complaining that the money he gave her was not enough	0	0	Issued with a medical report to be attended to at the nearest hospital
Mai Ngozo*	Married by cohabitation	Man threatened to kill her-to chop off his head, threw a stone at her, stabbed in the head, beat unconscious when pregnant,	A number of times at the landlords, relations	0	
Melifa*	Married by cohabitation	Beaten up by husband, head butted, neglect	A number of times to sister[her guardian]	0	Referred to court for divorce & child maintenance

Zanga*	Married for 9 years at custom	Neglect, adultery, demeans her over housekeeping issues	Uncle/marriage advocates	2	Advised to learn her husband's likes and dislikes
Enifa*	Married at custom for 12 years	Insults, beatings, clothes torn	brother	2	Man apprehended
Malita*	Married at custom for 9 years	Repeated beatings and lost teeth	Marriage advocates	0	Husband arrested, woman sent to hospital for medical attention
Patricia*	Married at custom for 12 years	Adultery, beatings	Marriage advocates, chief	0	Man advised to go back to his wife
Rebecca*	Married by cohabitation		Religious leader[pastor]	2	Advised to go to court for divorce
Malumbo*	Married for 9 years	beatings	Sister, sister in law, advocates, court	0	divorced
Patuma*	Married for 13 years by cohabitation	Beatings, adultery	Sister, brother in law	6	Advised that it was a family matter

* not their real names

Appendix 3: Interview Question Guides

DATA COLLECTION TOOLS

INTERVIEWS GUIDING QUESTIONS

Resident Magistrates

Name:

Position:

Sex:

Date:

Time:

Place:

Language:

1. Do you handle domestic violence cases?
2. If yes, what's the procedure like [how do you handle them]’?
3. What orders have you made under the PDV Act?
4. Have you made any orders to require the parties to go for counselling?
5. Do you remember under what circumstances [i.e. what were the facts]’?
6. Where did you send them for counselling?
7. How often have you sent parties for counselling?
8. If not so often why not?
9. If yes why- what were you hoping to achieve by sending them for counselling?
10. How successful was the counselling- did I achieve what you were hoping for?
11. How did you assess the success?ie why did you say it was successful
12. Where did you send them for counselling?
13. Why did you send them there- what influenced your choice of where to send the parties for counselling?
14. are there any means by which the parties report back to you on their progress/
15. Is there any means by which the counsellors get back to you on the progress/lack of it being made by the parties?
16. Any records of the same?
17. Are you aware of any other institutions that you can send the parties to for counselling? if yes what are they?
18. Have you sent the parties to any of those institutions? If no why not? If yes where, and why?

MINISTRY OF GENDER

Name:

Position:

Sex:

Date:

Time:

Place:

Language:

1. What international instruments relating to the rights of women to effective remedies is Malawi a party to?
2. How has the government through your ministry translated these into domestic reality on the ground?[is there a policy? If yes how is it implemented?]
3. What is the role does the ministry play in the prevention of Domestic violence?
4. What has the ministry done so far to promote counselling as a remedy for women survivor of domestic violence in its oversight role?
 - What structures/measures has the ministry put in place to effect the implementation of counselling as a remedy?
 - Has the ministry facilitated any training of the counselling service providers to enable them to carry out their duties effectively?
 - If yes who has the ministry trained and over how long?
5. How does the ministry assess the viability and effectiveness of using counselling as a remedy?
6. What are the challenges that the ministry faces in implementing counselling as a remedy?
7. What does the ministry propose to do to improve the provision of counselling as a remedy?

VICTIM SUPPORT UNIT

Name:

Position:

Sex:

Date:

Time:

Place:

Language:

1. When did this establishment come into existence
2. What services are offered here?
 - is counselling part of the services?
3. Who provides the counselling services here?
4. If the officers also provide some counselling, were they ever trained on how to counsel survivors of domestic violence?
5. If yes, by who and for how long?
6. When somebody reports a case of domestic violence, how is it handled [procedure?
7. How does one determine whether or not to engage counselling as a remedy?
8. Since the establishment of the VSU how many cases have been handled by the officers?
9. of these how many were referred for counselling
10. Who were they referred to?
11. Why were they referred to that service provider?
12. What was hoped to be achieved?
13. How successful was the counselling?
14. How did you determine that the counselling was a success?
15. Any challenges faced by the unit when implementing counselling as a remedy?
16. Any opportunities arising?

DOCTORS/PSYCHOLOGISTS

Name:

Position:

Sex:

Date:

Time:

Place:

Language:

1. When a case of domestic violence is reported, how do you handle it?
2. Is there any counselling provided to the survivors?
3. If yes at what point?
4. What kind of counselling or advice is given to the survivors? And why.
5. How do you determine whether or not to refer a patient for counselling?
6. Do you provide counselling to [women] survivors of domestic violence?
 - What is their qualification- have they received any training on provision of counselling or gender awareness?
 - If yes, who trained them and for how long was the training?
7. Is it provided for free or at a cost?
8. If it is at a cost, how much is the fee?
9. How long is the counselling for?
10. What is the aim of the counselling?
11. Are you aware of any other persons/institutions that provide the counselling?
12. Are you aware that under the prevention of domestic violence you are part of institutions tasked to provide counselling as a remedy for domestic violence cases?
13. If yes how do you handle such cases that are referred to you from the courts?
14. Is the counselling different from the one provided above?
15. How long is the counselling for if it is different from the counselling offered above?
16. Is there any way provided that enables you to provide feedback to the courts on the progress/ truancy of the clients? If yes how is the feedback done?

17. Any formal training on provision of counselling to victims of domestic violence?

CHIEFS/VILLAGE HEAD PERSONS

Name:

Position:

Sex:

Date:

Time:

Place:

Language:

1. What procedures do people follow when lodging complaints of domestic violence cases?
2. Who are the complainants mostly?
3. How do you handle such cases once reported?
4. Do you provide any counselling to the complainants/parties?
5. What kind of counselling is usually provided to the parties?
6. How do you assess the success of your counselling?
7. Have you received any formal training on how to counsel the parties in cases of domestic violence?
8. Have you received any training on gender sensitivity?
9. Have you heard about the PDV Act? [If yes what about it?]
10. Are you aware that you are part of the institutions prescribed by the PDV Act to offer counselling to survivors of domestic violence?
11. Who handles such cases when you are unable to?
12. Have these been trained in how to provide the counselling?

SOCIAL WELFARE OFFICERS

Name:

Position:

Sex:

Date:

Time:

Place:

Language:

1. At what point do you get involved in mediating between parties in cases of domestic violence?
2. Who usually reports the matters to you and why?
3. How do you handle the cases when reported to you and why do you handle them that way?
4. Do you provide any kind of counselling?
5. If yes what kind of counsel, to whom and why?
6. Did you receive any kind of formal training in provision of counselling as a remedy in cases of domestic violence?
7. If yes from who and how long was it for?
8. How do you measure the success of the counsel that you give?
9. Did you receive any formal training or education on gender issues?
10. If yes who provided the training and for how long?

WOMEN SURVIVORS

Name:

Position:

Sex:

Date:

Time:

Place:

Language:

1. To who did you first report the violence and why?
2. How were you assisted there
 - What procedures did you go through for you to get the help you required?
 - What sort of assistance were you given?
 - Did it include counselling?
3. What sort of advice were you given and why?
4. How did you feel about the kind of advise that you were given?
 - Were you satisfied with the way your issue was handled there?
5. Did you get the kind of assistance that you were expecting?
6. Where would you rather go to be counselled? Why?
7. Where did the court refer you for counsel?
8. How were you handled where you were referred to?
9. What kind of counsel were you given there?
10. How long was the counselling?
11. Did the counselling help to change matters that took you to court?