
**AN ASSESSMENT OF THE COMPLIANCE OF THE CONDITIONS FOR FEMALE
SUSPECTS HELD IN CUSTODY IN POLICE STATIONS IN HARARE WITH THE
2013 ZIMBABWE CONSTITUTION**

BY

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Abstract

Conducted by a public prosecutor, this ground-breaking research critically analyses the extent to which the Zimbabwe Public Police (ZRP) meets the local and international standards governing the treatment of the small population of unconvicted women suspects detained in the holding cells of several police stations situated in Harare, Zimbabwe's capital city. Originally built for men, the exclusively female holding cells are controversially managed by male police officers within the strongly patriarchal ZRP. Used in combination with other methodologies, she deploys the unique grounded women's law approach to collect, analyse and present the research evidence in relation to her main respondents, i.e., women detainees of police holding cells, whom she places at the centre of the research. The entire research journey is dedicated to uncovering the hitherto unknown lived realities of these women inmates in order to reveal how they as women relate to their confinement in the fullest and widest sense (i.e., legally, culturally, socially, economically, etc.). The research data includes relevant legislation and literature, local judicial precedent, observations, interviews and group discussions with female and male inmates, police officers, government officials and judicial officers. The researcher discovers that while the relevant provisions of Zimbabwe's new 2013 Constitution laudably conform to international human rights standards, their implementation by the state falls far short of the ideal. Sadly, in apparently on-going and flagrant contempt of a strongly-worded landmark 2004 Supreme Court judgment, the police apparently perversely keep their holding cells in a permanently unhygienic, filthy state, hardly fit for animals, let alone human beings. They seem to use the cells (which they admit reduce every woman to a suicide risk) like a weapon of torture because they inflict the most egregious human rights abuses against its innocent inmates whom they maliciously degrade by stripping them of all their clothing (excepting one outer garment) and dignity (by forcing them to conduct their ablutions on toilets overflowing with excrement in the full view of their fellow inmates) and whose rights to basic and gender specific sanitary needs (especially women who are menstruating, pregnant and breast feeding) they target for persistent and outrageous violation. This is due to a combination of several factors, not the least of which includes the state's apparent use of state security as a pretext to deny access to the ZRP to any kind of outside scrutiny. This propagates a culture of secrecy and impunity which creates a vicious cycle of provocation and cover-up of the police's systematic abuses. Apart from holding culpable officials and officers accountable for their misconduct, other factors whose rectification form part of this study's recommendations include the lack of funding for: necessary structural holding cell renovations, management reforms to cater for the sex and gender specific needs of women inmates and improving the conditions of service and gender sensitive and human rights training of its overseers who are themselves tragically brutalised by the very system they enforce.

Table of contents

Table of contents.....	3
Declaration.....	6
Dedication.....	7
Acknowledgements.....	8
Abbreviations and acronyms.....	9
List of international human rights instruments.....	10
List of local legislation.....	10
List of cases.....	10
List of appendices.....	11
Executive summary.....	12
CHAPTER 1.....	14
1.0 INTRODUCTION AND BACKGROUND TO THE STUDY.....	14
1.1 Why the study?.....	14
1.2 Statement of the problem.....	16
1.3 Objectives of the research.....	17
1.4 Research assumptions.....	17
1.5 Research questions.....	18
1.6 Demarcation of the research and target population.....	18
1.7 Study limitations.....	19
CHAPTER 2.....	21
2.0 LITERATURE AND LAW REVIEW.....	21
2.1 Relevant literature.....	21
2.1.1 <i>Prisons not police!</i>	22
2.2 International instruments.....	22
2.2.1 <i>Questioning their adequacy</i>	23
2.3 National legislation.....	24
2.3.1 <i>Zimbabwe Constitution</i>	24
2.3.2 <i>Police Standing Orders</i>	24
2.3.3 <i>Kachingwe and Others v The Minister of Home Affairs and Others</i>	26
2.3.4 <i>S v Beatrice Tele Mtetwa</i>	27
CHAPTER 3.....	28

3.0	RESEARCH METHODOLOGIES AND METHODS	28
3.1	Methodological framework	28
3.1.1	<i>Is there a gap?</i>	28
3.1.2	<i>Interrogating empirical data</i>	29
3.1.3	<i>Is equal treatment fair treatment?</i>	30
3.1.4	<i>Actors and structures perspectives</i>	31
3.2	Data collection methods	31
3.2.1	<i>Interviews with key informants</i>	31
3.2.2	<i>Focus group discussions</i>	32
3.2.3	<i>Observations</i>	32
3.2.4	<i>One-on-one interviews</i>	33
3.2.5	<i>Questionnaires</i>	33
3.3	Assessment of methodologies and data collection methods.....	33
CHAPTER 4		35
4.0	RESEARCH FINDINGS, DISCUSSIONS AND ANALYSIS.....	35
4.1	Introduction	35
4.2	Their attitude, their reaction	35
4.3	Double trouble!.....	37
4.3.1	<i>Women committing serious offences</i>	37
4.3.2	<i>Commercial sex workers</i>	38
4.3.3	<i>Gays and lesbians</i>	39
4.4	Analysis	40
4.5	Causes.....	44
4.5.1	<i>Lack of adequate resources</i>	45
4.5.2	<i>Restricted access</i>	45
4.5.3	<i>Corruption</i>	46
4.5.4	<i>Orders from superiors</i>	48
CHAPTER 5		49
5.0	THE LAW EXISTS ON PAPER BUT IS NOT PUT INTO PRACTICE ON THE GROUND	49
5.1	Introduction	49
5.2	Strip off or else!.....	50
5.3	Do or die	51

5.4	Thou shalt honour thy obligations	54
5.5	One size fits all	56
5.5.1	<i>Repercussions</i>	57
5.6	Cover at your risk!.....	57
5.7	Forced fasting!	58
5.8	‘Medical officers’	59
5.9	Law enforcers or law breakers?.....	60
5.10	Women in a man’s land.....	61
5.11	A special group with special needs!	65
5.12	Conclusion.....	66
CHAPTER 6		68
6.0	CONCLUSION AND RECOMMENDATIONS	68
6.1	Conclusion.....	68
6.2	Recommendations	69
Bibliography		71
Appendix 1: Letter from the police dated 24.10.2013		74

Declaration

I, Miriam Chiba, do hereby declare that this dissertation is my original work presented towards the Masters in Women's Law, University of Zimbabwe and has not previously been presented for any other degree or other award in any academic institution.

Signed.....

Date.....

This work is approved for submission towards fulfilment of the degree of Masters in Women's Law by the supervisor

Prof Julie Stewart

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Dedication

This research is dedicated in loving memory of my late mother, Margret Musongo. Wish you had lived this far to see where God is taking me. To my husband, Admire, you are one in a million, you always see the best in me and to Tinashe and Tinevimbo, you are all I have, will always love you!

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My greatest debt, however, is to NORAD for generously funding the whole program. Many people do not achieve their dreams because of financial constraints but you have made it possible for me.

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Finally, I would like to express my appreciation to my family for their encouragement and support. Mr D J Chiba, I am who I am because of you. You worked so hard and gave up so much to mould me.

Abbreviations and acronyms

African Charter	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MWGCD	Ministry of Women Gender and Community Development
NGO	Non governmental organisation
SEARCWL	Southern, Eastern African Regional Centre for Women's Law
SMR	Standard Minimum Rules for the Treatment of Prisoners
UDHR	Universal Declaration of Human Rights
Women's Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
ZHLR	Zimbabwe Lawyers for Human Rights
ZRP	Zimbabwe Republic Police

List of international human rights instruments

International Covenant on Civil and Political Rights

The African Charter on Human and Peoples' Rights, 1979

The Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)

The Standard Minimum Rules for Treatment of Prisoners (1957) Rules of General Application Part 1

The UN Code of Conduct for Law Enforcement Officials

The Universal Declaration of Human Rights, 1948

List of local legislation

Criminal Law Codification and Reform Act (Chapter 9:23)

Criminal Procedure and Evidence Act (Chapter 9:07)

Police Standing Orders Volumes 1 and 2

Zimbabwe Constitution (2013)

Zimbabwe's Lancaster House Constitution (1980)

List of cases

Blanchard & Others v Minister of Justice 1999 (2) ZLR 24 (S)

Kachingwe and Others v The Minister of Home Affairs and Others SC 145/04

The State v Beatrice Tele Mtetwa Case Number CRB 2589/13 Harare Magistrates Court

Woods & Others v Minister of Justice & Others 1994 (2) ZLR 195 (SC)

List of appendices

Appendix 1: Letter from the police dated 24.10.201374

Executive summary

For many years there has been an oversight in the academic discourse on the detention conditions for female suspects in police cells and how they are treated by police officers. It is important to note that these female suspects in police cells retain certain rights despite the deprivation of their liberty. Following the inception of Zimbabwe's new 2013 Constitution, this study seeks to assess the compliance of the conditions for female offenders held in police custody in police stations in Harare. The million dollar question to be answered throughout the research is whether Zimbabwe Republic Police (ZRP) officers as the enforcers and upholders of the law¹ are complying with the provisions of the law particularly section 50(5)(d) which provides for conditions of detention that are consistent with human dignity.

Various methodological approaches that informed this study are women's law approach, grounded theory, human rights approach and actors and structures. These assisted in interrogating and analysing the law as it relates to women's lived realities. With the methodological framework in mind, I then employed various methods of data collection to solicit and gather relevant information about conditions of detention in police cells. These include key informant interviews, focus group discussion, observation, one-on-one interviews and questionnaires. The methodological framework and methods used were very useful in achieving the desired aim.

Generally women suspects constitute a small percentage of those who are detained in police cells. Because of their invisibility they are completely neglected by the criminal justice system particularly in police cells not only by the officials but by the law itself. Women detained in police cells are denied their basic needs of life which include adequate accommodation, ablution facilities, personal hygiene, nutrition and medical treatment as provided in section 50(5)(d) of the Constitution. The sordid conditions they are forced to endure are dangerous, degrading and very distressing.

The law has neglected women in police custody as it does not specifically address their needs separately. Section 50(5)(d) of Zimbabwe Constitution is gender blind as it has general provisions which relate to both men and women notwithstanding their differences in sex and

¹ Section 219 of the 2013 Constitution.

gender. Women suspects in police cells are accommodated as an afterthought as such they are confined in a 'no-woman's land'. Men and women in police cells are exposed to similar sordid conditions but because of their sex differences they are affected differently by these conditions and hence there is a need for women to receive special treatment. There is lack of facilities to accommodate and provide for menstruating women and pregnant and breast feeding mothers. To make matters worse, many police officers do not respond to the needs of female suspects whilst in their custody.

Due to the stereotypical conceptions about who a 'good woman' is those who do not conform to these stereotypes are viewed as 'bad women' and are badly treated by the law enforcement agencies and these typically comprise sex workers, women who commit serious offences and gays and lesbians. These people are viewed and treated as second class citizens and they suffer multiple forms of discrimination perpetrated by police officers whilst in police custody. This is exacerbated by the state's criminalisation of sex work and homosexuality.

The study found that despite Zimbabwe's strong legislative framework that protects women detainee's rights, gaps continue to exist when it comes to the implementation of the relevant law. There is an astonishing gap that exists between what our national law provides and the lived realities of women detainees in police cells. The full and proper implementation of the law is being hindered by different factors which include the police's lack of adequate resources, corruption, restricted access to the organisation, and instructions given by its superiors. The progressive realisation of section 50(5)(d) is a good sleeping provision in the Constitution since it is not being fully implemented and is therefore failing to achieve its intended purpose. Zimbabwe is also a party to various international instruments that prohibit inhuman or degrading treatment or punishment. However, the findings have shown that Zimbabwe falls short of the human rights standards enshrined in the regional and international instruments to which Zimbabwe is a party and it is duty bound to ensure that detainees' rights are respected. The government is the primary duty bearer and it should ensure that it fulfils its obligation to fulfil, promote and protect detainees' rights as guaranteed by section 50(5)(d) of the Constitution and other relevant international instruments. Zimbabwe has very progressive laws on paper but the problem lies in their lack of implementation. Full implementation is possible however if the ZRP is adequately funded and the other recommendations put forward by this study are followed.

CHAPTER 1

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Why the study?

Being a public prosecutor for six years it had never crossed my mind and I had never asked female offenders about the conditions they encountered in the police cells before they were brought to court. I have seen women coming to court straight from the police cells, their clothes soiled with blood, others looking scruffy and smelling but I had never bothered to ask them what could have been the cause. As court officials all we do is make sure that we prioritise their matters so that we can get rid of them as soon as possible because of their smell. Some suspects do complain in court about the bad treatment they have received from police officers but usually nothing is done other than putting it on the record of proceedings. For instance, they complain in court about being over detained, being beaten up by police officers and not being given food. Rarely are these complaints investigated even though the state counsels undertake to investigate and have officers prosecuted by the state. Who knows, possibly no one wants to police the police!

The turn of the century has seen an explosion of research studies whose interest is steeped in the inequalities of sexes. What has awakened the interest in gender based studies is the realisation that the patriarchal nature of most societies has created a lopsided sexual sociometry where the female half of society has invariably been treated as second class citizenry and an appendage to its male counterpart, with a largely marginalised existence. Women have been portrayed in a negative light as voiceless grown-up adolescents, prostitutes, objects and merchandise with commercial and not human value, among other things. However, since De Beauvoir (1949) first broke the cloak of silence with her attack on male hegemony and its subjugation of the 'other', there has been an unprecedented global interest in women studies in an attempt to create an understanding of the various spheres through which this disequilibrium between sexes and the attendant maltreatment of women can be observed and understood. Of interest are research studies in criminology on women as offenders that have been done to create awareness of the special problems and needs of women in the criminal justice system. This current study seeks to carve its own niche within this body of literature through an exploration of the experiences of Zimbabwean female

offenders in police cells in order to discover the extent to which the conditions in which they are incarcerated conform to the standards laid down in the 2013 Zimbabwean Constitution.

I developed a particular interest in researching about the detention conditions when we looked at how female offenders are treated by the criminal justice system (from the police, courts and prisons) during the Women and the Criminal Justice System course. It was thanks to the Women's Law Course that made me reflect on my work experience in court as a public prosecutor. During the lectures I started linking the matters under discussion with the women suspects I usually see in court. I then visited the library hoping to advance my knowledge in this new area of interest. Ooops! That is when I realised that many people have researched on women in prisons but not in police cells. Could it be that people are not interested or willing to write about women's experiences in police cells? It occurred to me that there was a gap which I thought needed to be addressed. The fact that this is an area that has been grossly overlooked, the course Women and the Criminal Justice System coupled with my work experience were among the main factors that influenced the choice of my topic.

Zimbabwe changed its old Constitution which was a continuation of the one under the former colonial regime. The old Constitution was not as specific as the new Constitution when it came to the rights of arrested and detained persons. It stated these rights in camouflage tone in Chapter 111 under The Declaration of Rights and it was open to various interpretations and abuse by law enforcers. Given this change in position between the old to the new Constitution I wanted to know if the Zimbabwe Republic Police (ZRP) had also made a similar shift or whether they still behaved as they had done under the previous regime. Have the conditions changed to match the new Constitution? To what extent are they complying with the UN Standard Minimum Rules for the Treatment of Offenders (SMR) which provides for the acceptable minimum conditions suitable for detained prisoners? This is the reason why this study endeavoured to assess the extent of compliance of the conditions for female offenders held in police custody in police stations in Harare with the 2013 Zimbabwe Constitution. This was achieved by examining the relevant legislation and investigating how it relates to women's lived realities. I believe the research is very important as this area has been overlooked for years since there has never been any research conducted to assess the compliance with detention conditions as provided in the law. Through this research I intend to unearth the conditions to which these female suspects are exposed at police stations and

determine whether there is compliance with the law or not and to make relevant recommendations to ensure Zimbabwe honours its human rights obligations.

1.2 Statement of the problem

This research is based on Zimbabwe's very progressive legislative framework which includes the Constitution that provides for the rights of arrested and detained persons that are consistent with human dignity, the *Kachingwe* case which lays down the standard treatment of people in police custody and police standing orders that govern police officers' daily conduct. While Zimbabwe has a progressive legislative framework, its implementation remains a major obstacle. Detainee suspects who have not been convicted of any offence are treated badly with their rights being violated despite section 50(5)(d) of the Constitution which provides that detainees have the right to conditions of detention that are consistent with human dignity. It is therefore important to investigate and see whether there is a gap between the law and its practice. Also there is a need to interrogate the provisions of our Constitution as well as the behaviour of police officers as they are not sex or gender sensitive. The aim is to find out how female detainees are treated in police custody and whether it is in accordance with national and international human rights instruments.

Also a review of literature in Zimbabwe shows that there is a paucity of information available on women offenders in police custody. A lot of the research done concentrated on women in prisons but not police cells. For example, research by Musengezi and Staunton (2003) focused on women's experiences in Zimbabwean prison. Thus there is a need to investigate and explore the life experiences of female suspects in police custody and assess whether the conditions to which they are exposed comply with the provisions of the Constitution. Female suspects in Zimbabwe are accommodated as an afterthought as there are no police cells that are specifically built for female suspects despite the notable increase in the female inmate population.² This research is important as it will expose the inherent male bias of these police cells which were built for male detainees with no provision for female suspects.

The other problem that also necessitated the need for this research is that there are violations of detainees' rights by police officers. Police officers have been entrusted with the vital duty of upholding the Constitution and protecting human rights by maintaining law and order in

² It emerged during the interviews with the ZRP officials that the female inmate population is increasing.

Zimbabwean society through section 219(1) of the Constitution, which, according to Mudzonga (2003), is a precondition to the enjoyment of human rights. Police officers have a responsibility to protect human dignity, uphold and respect human rights of all persons.³ Citizens should feel safe, confident and protected when they see a police officer or when they are in police custody. However, it is sad to note that these law enforcers, defenders of the Constitution, have themselves become law breakers. Gone are the days when these police officers used to operate strictly in accordance with the laws of the country. Women have encountered varying, unpleasant experiences of human rights violations whilst in the custody of the police. They enforce compliance with the law but the question is, ‘Are they themselves complying with the demands of the Constitution? And, if not, who will police the police?’

1.3 Objectives of the research

This study seeks to achieve the following objectives:

1. To investigate whether there is compliance with the provisions of the Constitution in relation to the conditions of detention.
2. To examine the conditions in Zimbabwean police cells so as to ascertain whether they are responsive to the sex specific needs of female suspects.
3. To ascertain the attitudes of police officers towards female suspects.
4. To investigate whether police officers are sensitive to the sex and gender needs of female suspects.

1.4 Research assumptions

The research is informed by the following key assumptions:

1. There is no compliance with the provisions of the Constitution by police officers as regards conditions of detention. (For example, in relation to accommodation, ablution facilities, personal hygiene, nutrition and medical treatment).
2. The conditions in Zimbabwean police cells are not responsive to the sex specific needs of their inmates.
3. Police officers are insensitive to the sex and gender needs of female offenders.

³ Article 2 of the UN Code of Conduct for Law Enforcement Officials.

4. The attitudes of police officers towards female offenders influence their treatment of such offenders.

1.5 Research questions

Given the above underlying assumptions, this study into the compliance of the conditions of female police cells with the Zimbabwean Constitution is guided by the following research questions:

1. Is there compliance with the provisions of the Constitution by police officers as regards conditions of detention?
2. Are the conditions of Zimbabwean police cells responsive to the sex specific needs of female inmates?
3. Are police officers sensitive to the sex and gender needs of female suspects?
4. Do the attitudes of police officers towards female suspects influence their treatment of such inmates?

1.6 Demarcation of the research and target population

The research was conducted in Harare the capital city of Zimbabwe which has the highest population. I selected Harare because it has many police stations (as compared with other provinces) and that is where the ZRP General Headquarters are based.

To achieve the objectives of the research, it was imperative to obtain testimonies from the women detainees themselves. The research concentrated on these female suspects who were detained at various police stations. Although men were not the focal point of the research, I interviewed them for comparative analysis purposes.

Since I work as a public prosecutor in the Ministry of Justice and Legal Affairs in Harare at Mbare Court, it was also easy for me to access information from police officers, various organisations and female suspects in Harare. This bottom up approach is located within the women's law approach and it analyses women's lived realities and values and reveals issues and dynamics that are seldom evident in the male dominated legal culture (Bentzon, 1998: 93).

1.7 Study limitations

I kept asking myself why this area is under-researched. It was not too long before I got the answer to my question. Now I believe that there are many people who are interested and willing to write about women's experiences in police cells but they have a good reason for not doing so. Getting information and access to ZRP is very difficult (if not impossible) and this I think also explains the absence of literature on the topic. How then did I go about it?

I could not visit and inspect all police cells in Harare due to great amount of rigid bureaucratic resistance from the ZRP. I applied for authority to carry out my research from the relevant offices but I was denied authority to research the ZRP institution (See Appendix 1). However, I manoeuvred my way and managed to visit and inspect the following police cells in my capacity as a public prosecutor: Harare Central, Machipisa and Mbare police stations. Despite their resistance I managed to interview several police officers wearing my prosecutor's hat.

ZRP falls under the Ministry of Home Affairs. Interviewing officials from this office proved to be impossible after they cited the Official Secrets Act (Chapter 11:09) which prohibits the disclosure of information related to the preservation of the security of Zimbabwe or the maintenance of law and order by the police force or any other organisation appointed or established by the Government for the purpose of assisting in the preservation of the security of Zimbabwe, to any person which is in any manner or for any purpose prejudicial to the safety or interests of Zimbabwe.⁴ They declined to be interviewed even though my research was not in any way prejudicial to the safety or interests of Zimbabwe. However, the person I talked to off the record mentioned that there are inadequate resources to address these issues. It is the extreme secrecy of these organisations that has resulted in little (if any) independent research being done on police cells conditions. As a result little or nothing is known about these detention conditions by the general populace who have not been detained in the police cells. One has this to say, 'Because human rights abuses are common in prison institutions, there is understandably a desire to keep these malpractices out of the public domain' (Sarkin, 2008). This possibly explains the limited amount of access that can be granted.

⁴ Section 2(a) and (b).

I was not able to have access to the police records to obtain the actual statistics of women who are detained every day, week, month or annually. I however, gathered from the interviews that the number of women in detention is increasing but it is still relatively small as compared to that of men. I also witnessed this when I visited the three police stations. There were more men than women. I could also not officially establish when exactly the police cells were constructed. I only learnt that in the case of old police stations it was long before Independence in 1980.

The permission to conduct research in the prisons arrived in the final week of the research despite my several follow-ups to my application. This permission was granted when I had already collected enough information. As a result I only visited Chikurubi female prison once where I had two fruitful group discussions.

All these challenges affected the quality of my research as I could not visit all the police cells in Harare, get statistics from their records, interview the responsible ministry (duty bearer) and interview all police officers of different ranks. However, my findings are still concrete as they show what women detainees are exposed to when in police custody and that collected data is a representation of what is on the ground.

CHAPTER 2

2.0 LITERATURE AND LAW REVIEW

2.1 Relevant literature

I cannot pretend to be the first one to trace the realities of the woman criminal as research shelves are replete with related studies whose focal point is criminology and criminal justice as they apply to women. For instance, Flowers (1987) has written 'Women and Criminality: The Woman as Victim, Offender, and Practitioner' where he presented women as victims, offenders and criminal justice practitioners. However, as offenders he focused on the experiences of women in prisons. In particular he explored the history of correctional institutions for women, offences committed by women, their diet and experiences of imprisoned mothers and pregnant women.

Morris (1987) has added her voice through the penning of 'Women, Crime and Criminal Justice'. Morris wrote a chapter about the experiences of women in English Prisons. Making reference to the research conducted in England, she discussed the increase in the number of female prisoners, offences they had been convicted of and the experience of women imprisoned with their babies. She also discussed various theories of women's crime to show how an understanding of women's crime is of fundamental significance for criminology.

Sarkin (2008) was the first to contribute to the research on African Prisons by writing a book, 'Human Rights in African Prisons'. The book raised awareness about issues in African prisons in particular treatment of women and children, overcrowding, healthcare and examines how regional and international instruments have addressed these human rights issues. Similarly Stewart and Samakayi-Makarati (2003) added to the literature by explaining, through their voices, women's experiences in Zimbabwean prison. The discussion shows how female prisoners occupy spaces designed for male inmates for example by interrogating challenges faced by women inmates in trying to manage their menstruation without sanitary wear.

Lastly, a different departure in scholarly legal writing is seen in a report compiled and documented by Amnesty International (2002) entitled 'Policing to protect human rights, A

survey of police practice in countries of the Southern African Development Community, 1997-2000'. The report is part of Amnesty International's activities of promoting international human rights standards for policing in Africa. The report does not focus on the treatment of offenders whilst in police custody nor on detention conditions. Its aim is to show the persistence of major human rights problems in the SADC region and to encourage the further development of national and regional policies that will enhance the effectiveness of democratic policing (Amnesty International, 2002, page 2). It concentrates on making policing more effective and responsive to the needs of communities.

2.1.1 Prisons not police!

The author argues that the vast body of international and national literature is on women's experiences in prisons not police custody. Very little (if any) has been written on the experiences of women in police custody and its structural detention conditions. However, the point of departure of this new study is its wish to devote attention to an important omission that most studies have made, and this is the interrogation of the privation of the female inmate within the police cell, soon after arrest, in order to discover whether there is any evidence of (in)justice as measured against the precepts and precincts of the 2013 Zimbabwe Constitution. The focus is on the conditions or structural design of the police cells and the attitude of police officers towards female suspects. The critical questions to be answered remain:

- Is there compliance with the Constitution?
- Are the conditions responsive to the sex-specific needs of female inmates?
- Are police officers sensitive to the sex and gender needs of female suspects?
- What is the nature of the attitudes of police officers towards female suspects?

2.2 International instruments

There are various international instruments that provide guidance on the conditions of prisons and treatment of offenders in detention. The most prominent is the UN Standard Minimum Rules for the Treatment of Offenders (SMR) (1957) which provides for the acceptable minimum conditions which have been considered suitable for detained prisoners. This comprehensive document was adopted in Geneva in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and it applies to all

prisoners untried or convicted. The Rules cover issues of food, accommodation, personal hygiene, separation categories, clothing and bedding, exercise and sport and medical services. However, the application of these rules largely depends on the commitment of each country as they are just guidelines which are not binding on states. This possibly explains why Zimbabwe falls short of these provisions.

There is also The Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (The Body of Principles) which was adopted in 1988 by the UN's General Assembly which provides that all persons under any form of detention shall be treated in a humane manner and with respect for the inherent dignity of the human person.⁵ This is similarly reflected in the provisions of various international instruments to which Zimbabwe is a party. These instruments include The African Charter on Human and Peoples' Rights (article 5), the Universal Declaration of Human Rights (UDHR) (article 5), The International Covenant on Civil and Political Rights (ICCPR) (article 10), and the Kampala Declaration (article 3).⁶ The Body of Principles also acknowledges that laws meant to protect women's rights and special status are not discriminatory.⁷ Unlike the above mentioned conventions, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol) is very progressive as it specifically recognises the need for pregnant and nursing mothers to be detained in an environment that is suitable to their special conditions and to be treated with dignity.⁸ However, in Zimbabwe, female suspects are still being detained in conditions that are inhumane and degrading despite the proscription of such conditions.

2.2.1 Questioning their adequacy

All the above mentioned human rights instruments aim to protect the rights of detainees whilst in police custody. However, many of them are still lacking when it comes to issues affecting women as a separate group since they have general provisions applicable to both sexes. There is no gender differentiation yet men and women are affected differently by these similar conditions. They clearly need to be updated for them to be detailed and effective. Those that mention it do not adequately address women issues. The Kampala Declaration for

⁵ Principle 1.

⁶ It is crucial to note that the Kampala Declaration does not specifically state that its principles apply to both tried and untried prisoners although I will make reference to it.

⁷ Principle 5.

⁸ Article 24(b).

example simply acknowledges that women because of their ‘special’ needs require ‘particular’ attention. Similarly the MSR simply recognises that women prisoners should be attended and supervised only by women officers except for doctors and teachers during their professional duties (article 3). Article 2 also provides that male staff can only enter female prisoners’ institution if accompanied by a woman officer. The needs of pregnant, breast feeding and menstruating women are absent from these progressive rhetoric instruments. The reason for this silence may be that, of late, imprisonment in Africa, as elsewhere, was generally a male dominated ‘enterprise’ (Sarkin, 2008). I have also noted that there is no specific international treaty on the treatment of detainees.

2.3 National legislation

2.3.1 *Zimbabwe Constitution*

The 2013 Zimbabwean Constitution provides for the dignified and humane treatment of all,⁹ despite race, age, class, sex, gender, pregnancy, (dis)ability or any other potential point of discrimination.¹⁰ This entrenches the view that, at law, the ground is even for all human beings as legal ‘statutes do not differentiate between men and women’ (Morris, 1987: 79). However, this new research seeks to traverse the Zimbabwean criminal justice system so as to unpack whether the reality on the ground complies with these constitutional stipulations for women offenders or whether women offenders have continued to experience a debased quality of life despite the protection provided by the long arm of the law. The women held in police holding cells are not yet proven guilty but the million dollar question this study seeks to answer is whether the conditions in the cells accord these suspects their human rights as enshrined in the Constitution or whether there is a blatant disregard of the country’s supreme law.

2.3.2 *Police Standing Orders*

In order to ensure that the police officers comply with the stipulations of the Zimbabwean Constitution, the police force has crafted its own standing orders tailored to govern the behaviour of the police (wo)men in carrying out their day to day duties. There are the Police Standing Orders Volume 1 and 2 and these were compiled before the new Constitution. The standing orders are not in conflict with the new Constitution, they are actually consistent with it. For instance the standing orders provide for the provision of food, water, clean blankets,

⁹ Section 50(5)(d).

¹⁰ Section 56 of the Constitution.

exercise for prisoners and cleanliness of cells and surroundings. This reflects section 50(5)(d) of the new Constitution which provide for detention conditions that are consistent with human dignity. Thus an examination of compliance with 2013 Constitution (to a certain extent) can be reduced to be an exploration of whether the conditions in the cells comply with the ZRP's own standing orders. Even before the new Constitution came into existence, police standing orders covered these issues more than adequately. It reflects the ZRP's desire to publicly conform to international standards, but on the ground they continue to fall short of the desired aims.

The Constitution and police standing orders do not adequately address women's issues since their general provisions apply to both sexes in detention. The Constitution is completely silent as though it were written in the belief that men and women have the same needs whilst in police custody. Police Standing Orders Volume 1 provides in section 12.1 that 'female prisoners shall be kept in cells apart from male prisoners.' This section is vague as it does not clearly state how far apart they should be considering that the SMR calls for the entire separation of each sex's confinement.

Section 12.2 discusses the visits to female cells by male officers. It allows a male member to enter into female cell in exceptional circumstances and only 'when accompanied by at least another member.' This section constitutes a contradiction in and of itself. Having two or more male members in a female cell makes no difference other than that of exacerbating the problem of risk and fear by female suspects. It makes better sense to have the male officer accompanied by a female officer as provided in the SMR. Reference here is made to the case of *Beatrice Mtetwa* when two male officers entered into their cell at night.

Section 12.4 provides that if a woman is pregnant it should be communicated to the Officer in Charge who in turn will notify the Magistrate before sentence is pronounced. There is no specific mention of how they should be treated whilst in police custody given their special condition. Much emphasis is put on the issue of sentence ignoring the conditions under which the pregnant woman is detained.

Lastly breast feeding mothers should only be detained if there is authority from the Officer Commanding Province, who has a discretion to detain or to release the person. If he decides that she should be detained adequate facilities for washing and drying of clothes and napkin

should be provided.¹¹ This section is alert to the women's sex and gender needs. However, the issue is whether this is reflected in practice.

2.3.3 Kachingwe and Others v The Minister of Home Affairs and Others

This landmark case (Supreme Court Judgment No 145/04) was brought before the Supreme Court in terms of section 24(1) of Zimbabwe's old Constitution by Kachingwe and Chibebe who were alleging a violation of their constitutional rights. Kachingwe was detained overnight at Highlands police station and Chibebe was detained at Matapi police station for two days both under the conditions which were 'degrading and inhumane and unfit for holding criminal suspects'. The conditions of these two police cells were similar as they had no flushing toilet, light, ventilation, adequate bedding, running water, soap, wash basin, shower, seating or toilet paper. The toilet inside the cell was overflowing with human excrement, very offensive smelling, could only be flushed by police officers from outside and it was not partitioned off from the rest of the cell and could only be used in the full view of other detainees. They stated that they were denied food, access to medical treatment and despite the cold weather they were ordered to remove their shoes and other clothes so that they were left with only one layer of clothing.

Members of the court visited the police cells and noted that the applicants' descriptions were consistent with their (court's) observations. The court then ruled that the conditions of detention of these two police cells were inhuman and degrading and directed the respondents to take immediate measures to ensure the conditions are improved in line with the provisions of the law. The court laid out the standard conditions to which police cells should conform for example have toilets screened off from the living area, provision of food, running water, sanitary wear, soap, ventilation, sufficient light, clean flushing toilets, a chair or bench to sit on and toilet paper. The ZRP however, has failed to observe this ruling by the Supreme Court. People are still being detained in the same conditions which resulted in the application by Kachingwe and Chibebe. This means that there is a continuous violation of detainees' human rights despite the Supreme Court's progressive ruling.

¹¹ Section 12.5 of Police Standing Orders, Volume 1.

2.3.4 *S v Beatrice Tele Mtetwa*

In this case (Case Number CRB 2589/13 (Harare Magistrates Court)), a prominent human rights lawyer, Beatrice Mtetwa, complained in court about how she was badly treated by police officers whilst in police cells at Rhodesville police station. She was denied a bath although the police officers proffered her no credible explanation. Defence counsels, relatives and friends were denied access to see her. On the second day of her detention, two male officers visited their cell at night, got inside and grabbed the blankets indicating that there were other people who wanted to use them in the charge office. This happened despite her having requested to have female officers rather than male officers present. She screamed as she was scared of being raped. There were two females in that cell.¹²

This clearly shows the attitude of police officers and how they treat women in their custody. Her experience is not an exception to what other women experience when they are held in police cells. Police denied her her basic rights. The question is, ‘If they did this to a prominent human rights lawyer who knows her rights, how much worse is it for lay women who may not know their rights?’

¹² See also her interview with the Legal Monitor, 1 April 2013.

CHAPTER 3

3.0 RESEARCH METHODOLOGIES AND METHODS

3.1 Methodological framework

3.1.1 *Is there a gap?*

In order to assess the compliance of the detention conditions for female offenders held in police custody with the 2013 Zimbabwe Constitution, I interrogated the relationship between the law and practice from the women's perspectives. As a women's law researcher, by the nature of my topic, it was imperative to collect empirical data about women's lived realities as a starting point for the critical analysis of women's position in law and society (Dahl, 1987). Women who had been in police custody were the focal point of my research; as a result they were the first voices I sought out and heard on the topic before I approached the few men I also interviewed. This bottom up approach described above is located within the women's law approach.

Since I had no police authority I could not interview these women in the police cells where they were confined except for those I interviewed when I visited Machipisa and Mbare police stations during the course of my duties as a public prosecutor. However, I made various appointments and met with former detainees at different appropriate locations for interviews. The women I interviewed also referred me to other women who had been in similar conditions. I also visited Chikurubi female Prison and had two group discussions with female inmates who had been in police custody. These women bemoaned how police exposed them to appalling conditions in police cells in violation of their rights. Many of them however, were not aware of the provisions of the new Constitution particularly section 50(5)(d) which protects their right to conditions of detention that are consistent with human dignity. It was only after I made reference to it when some asked and I had to explain. Surely there is need to create awareness of this new Constitution if citizens are to utilise it, in case their rights are violated.

The women's law approach also revealed that these detention conditions are not responsive to the gender and sex needs of female detainees. Women described the police cells and explained how the cells fall short of their needs as women who fall pregnant, breast feed and

menstruate. It will be noted in the discussion of my findings that these police cells were built for male not female detainees. They also narrated their unpleasant stories of how they were badly treated by police officers who have negative attitudes towards female offenders. Bearing in mind that this methodological approach is an interactive process, I explored and probed this issue and realised that among this marginalised and discriminated group of women there were other groups of women who were facing multiple discrimination. These are sex workers, gays and lesbians and women who commit serious crimes.

Consequent to the testimonies of these women I started to examine and critique our national legislative framework and noted the extent to which they are in line with international standards. The mere fact of having the new Constitution, police standing orders and Supreme Court judgment of *Nancy Kachingwe* does not always translate into real rights for women or men. Awareness and full implementation of them is required to ensure protection of female detainees' rights. Having noted the gap it was instrumental to map out how best to address the real challenges faced by women. These women became engaged with the research, became empowered and provided solutions (Stewart, 2001: 57) as they suggested various important recommendations that could be implemented to improve the way female suspects are treated in police cells. Also when I interviewed the officials from the Ministry of Women, Gender and Community Development they indicated that they had never thought about it but since I had raised it they were going to consider it in their forthcoming programmes. This is true of what Stewart noted, 'Having collected the women's voices.....we make practical and implementable suggestions for reform, thereby making the women's view and opinions an important component of national decision-making processes' (2001: 57). I also have my own recommendations. All these recommendations are of critical importance as they aim to ensure compliance and strict observance by police with the Zimbabwean Constitution and other international human rights instruments.

3.1.2 Interrogating empirical data

In order for me to assess the compliance with detention conditions and propose appropriate interventions, I gathered empirical data based on my research assumptions and questions. Constant interrogation of this empirical data assisted me in theorising about the treatment of female offenders in police custody and in the criminal justice system as a whole. I continuously kept on reflecting on how female offenders particularly sex workers, gays and lesbians, menstruating women and women who commit serious offences are treated by the

courts. The negative treatment and violation of their rights by ZRP shows a gap between the law and women's lived realities that needs to be bridged if Zimbabwe is to honour its human rights obligations.

This grounded approach method also assisted me in deciding which data to collect and how to interpret it thereby continuing with the analysis cycle (Stewart *et al.*, 2001). It emerged whilst in the field that some police stations have no female cells and in some circumstances female suspects are detained in the charge office. This called for an exploration of which police stations and what categories of women are detained in the charge office and an analysis of the consequences of being detained under such conditions. Through constant interrogation, sifting and analysis of the collected data I ended up identifying and interviewing other respondents I had not thought of when I originally planned the research. All my assumptions were confirmed and as a result no adjustments were made during the research process. It also emerged during the research that there is no organisation which directly and consistently works with the police although Zimbabwe Association for Crime Prevention and Rehabilitation of Offender (ZACRO) was at some point allowed to renovate the cells. The various organisations I engaged do work with prisons.

3.1.3 Is equal treatment fair treatment?

Men and women are exposed to the same conditions at police stations. The cells are similar if there is any difference, it is in size. Challenges faced by women in police custody are often similar to those faced by male suspects but there are differences in how these difficulties are faced by each sex (Sarkin, 2008). Men and women are different hence need for differential treatment. Equal treatment will not address their biological needs.

Although in the eyes of the law men and women are equal, this sense of equality should not make us blind to the undeniable anatomical and biological differences between the two sexes. For instance, while women menstruate, men do not; thus requiring the provision of special facilities to ensure that women may remain clean, especially during menstruation. In the same vein, women fall pregnant and breast feed, a condition men can never physically experience. There is a need for sex-specific conditions even in police cells to cater for these biological differences. One of the questions that I will, therefore, attempt to answer in this study is whether the police holding cells are cognisant of and contingent on the sex of the offender. Morris (1987:80) in her book, 'Women, Crime and Criminal Justice', has observed that, 'The

most common assumption is that women are dealt with more leniently than men.’ This view seems to suggest that the law is not sex blind but deliberately enshrines provisions for the preferential treatment of women. However, given that this is just an ‘assumption’ as Morris calls it, this investigation will attempt to test this sweeping and blanket supposition through an examination of the Zimbabwean justice system by examining the compliance of women police cell conditions with the 2013 Constitution.

3.1.4 Actors and structures perspectives

Having listened to women’s lived realities it was significant to understand how the actors’ attitudes and behaviours contribute to the challenges faced by female suspects in police custody. The ZRP is an institution which is key to the implementation of the law. Police officers and police cells impact on the lives of these female detainees’ daily lives when they are at police stations. I interviewed various police officers, observed their attitudes and treatment of female detainees and inspected some police cells.

There are various organisations which have an influence in relation to detention conditions and treatment of female offenders. ZACRO, the only organisation which has assisted the police with renovations, has helped to improve detention conditions for female suspects by putting a demarcation of the toilet and flushing tanks in Mbare District. Zimbabwe Lawyers for Human Rights (ZLHR) continue to fight for the protection of human rights of detained persons. When I interviewed officials from Ministry of Women Gender and Community Development (MWGCD) they indicated that they had never thought about it. In fact, they said it was an idea to consider for inclusion in their forthcoming programmes.

3.2 Data collection methods

Whilst in the field I used various methods to collect data. The various techniques I employed in collecting the desired information are key informant interviews, focus group discussions, observations, one-on-one interviews and questionnaires.

3.2.1 Interviews with key informants

According to Chirawu *et al.* (2007) this method entails data collection from the perceived ‘knowers’ or those experienced in the topic or those people with influence in the community. To get the official position from these strategic sources I interviewed police officers, various

organisations, including ZLHR, ZACRO, Prison Fellowship Zimbabwe and relevant Ministries (MWAGCD and Ministry of Home Affairs). Key informant interviews helped me to triangulate the data I collected from women detainees. Police officers and the two ministries referred to above are directly responsible for the implementation of the national provisions. Organisations like ZACRO work indirectly with the police and other organisations like ZLHR to ensure that human rights are respected, protected and promoted by government.

3.2.2 Focus group discussions

Vibrant focus group discussions were held to collect divergent views on detention conditions from women with a common interest in a short space of time. I conducted a total of six group discussions which were held at Machipisa police station, Mbare police station, SEARCWL, UCPF Building in town and two at Chikurubi Female Prison. Women were very keen to discuss their personal experiences of police cells with me. At Machipisa and Mbare police stations, I felt that the inmates' plights were genuine since they raised them in the presence of police officers who also confirmed them but gave their justifications. The method was very effective. After the discussions some women even gave their recommendations.

3.2.3 Observations

This method was very useful as I managed to gather information which I could not get if I had revealed that I was a student conducting research. Wearing the hat of a public prosecutor I visited three police stations and observed the detention conditions and how these female detainees were being treated by police officers. Through observations, I managed to assess whether there was conformity with human rights standards, specifically section 50 of Zimbabwe Constitution which provides for the rights of arrested and detained persons to be consistent with human dignity.

I also observed during the mixed group discussion I had at Machipisa police station that women unlike men did not feel free to discuss their horrible experiences in the presence of police officers. I had to ask several questions before they confirmed what had been said by male detainees. I concluded that women are confident and comfortable discussing issues when they are among their own.

3.2.4 One-on-one interviews

I used purposive sampling method to identify and select the respondents. Using this method and based on the purpose of this study I targeted those women and men who were detained at police stations at some point. The interviews were helpful as I established relationships with the respondents and could relate the data to specific individuals. Having decided the kind of information I wanted to solicit from them, I used open-ended questions to obtain information that I could not get from a group discussion. It enabled me to conduct deeper probes into issues of interest, for example, I vigorously pursued the menstruation experience of these women and they revealed all the horrific experiences they had suffered and how they managed their period while in police cell confinement. I could understand their stories and had a vivid picture of their experiences as they described their memories in great detail. Their responses to my open-ended questions were spontaneous and clear. This method also gave me the freedom to follow up on some of the issues that were raised during the discussions.

3.2.5 Questionnaires

I formulated some questions which were closed and open ended questions upon request by some respondents who could not have time for interview and also those who were reluctant to discuss with me since I had no authority from the police. However, these pre-set questions did not curtail the discussion as some of the respondents allowed me to seek clarification and probe further on the issues they would have raised in their responses.

It was however, a disadvantage to me in respect of those that I did not manage to discuss with and seek clarification of certain issues. They simply responded to my structured questions and no additional information beyond my questions was given.

3.3 Assessment of methodologies and data collection methods

The various methodologies and data collection methods discussed above were very effective. They helped me to know which data to solicit from my respondents and how to elicit it without difficulties. They gave me an insight into women's lived experiences in police custody. I also felt that the respondents were telling the truth because what they said is what I observed when I visited and inspected the three police stations. After interviewing the various respondents I also triangulated the collected information with my work experience as a public prosecutor. The continuous triangulation helped me to check the validity of data. Through

them I managed to collect enough information which I can use to assess the compliance of the conditions for female suspects held in police custody with the 2013 Zimbabwe Constitution. All the various methodologies and methods revealed that there is little (if any) compliance with the stipulations of the 2013 Zimbabwe Constitution by the ZRP.

CHAPTER 4

4.0 RESEARCH FINDINGS, DISCUSSIONS AND ANALYSIS

4.1 Introduction

In this chapter and in chapter 5 I will discuss and analyse the main findings for each assumption. For fear of exposing police officers and the respondents whom I interviewed to victimisation, I shall not name them given that this dissertation will be accessible by the general public including those from the security sector. This is also in light of the fact that I did not get official authority to interview police officers and getting into police cells.

4.2 Their attitude, their reaction

‘There is a general ill-treatment of offenders by police officers. The way they talk down to alleged offenders even before conviction is usually derogatory to offenders. Offenders are forced to plead guilty even before they go to court especially during daily roll calls. Although all offenders are ill-treated, the situation is sometimes worse for women who are sometimes sexually harassed either verbally or physically. In my own opinion this attitude arises as a result of the historical and prevalent negative attitudes towards women as second class citizens and vulnerability’ (A woman who was detained at Rhodesville Police Station).

Some of my assumptions were on the need to investigate the attitude of officers themselves and whether they are sensitive to the sex and gender needs of female suspects. Criminal women have always been presented as being ‘other’: other than real women, other than real criminals and other than real prisoners (Carlen, 1985). It came out during the research that police officers generally have negative attitudes towards female offenders and are insensitive to their needs. Officers have a bad perception of women who commit or allegedly offences. However, many women revealed that the treatment depends on the individual officer. Some are nice, friendly and understanding but they are in the minority. Rarely do these officers respond when pregnant women request food, extra pads, blankets, breast feeding or special treatment because of their pregnant condition. If pregnant or breast feeding women ask for anything, the police officers respond by asking them why they committed the offence if they are pregnant or breast feeding. This question is posed despite the fact that they have not yet been convicted. At Chikurubi one woman who was detained at Avondale police station said:

‘Besides being pregnant I am asthmatic. I was told that there is no special treatment for pregnant women. If I made any request they would ask why I committed the offence if I knew I was pregnant.’

She asked to go outside to get fresh air but they refused. At one point she woke up whilst she was outside and police officers were surrounding her. She got an attack but was never taken to the hospital.

It was also found that many female officers are worse in their treatment of pregnant female detainees than male officers although women detainees expect them to understand issues they share in common, for example, menstruation, pregnancy and breast feeding. One woman said:

‘Female police officers have negative attitude especially towards female offenders. They treat us like animals not human beings. Male police officers were friendly and sympathetic to other female offenders including myself. Male police officers are better than female officers.’

Women thought that there is natural hatred that exists between women since it is not only found at police stations but everywhere. Others gave examples of how they were badly treated by female traffic officers on the road and also some women who are not police officers but who hold positions of power. However, police officers justified their actions stating that women suspects look down on them since they are ‘women’ so they would want to prove a point.

Police officers’ negative attitudes towards female offenders lead them to mistreat them. I discovered during the research that many police officers want and make the women’s experience painful. Some officers argued denying women detainees access to facilities and subjecting them to a bad experience have a deterrent effect on their future conduct. Women are mistreated to ensure that they will not in future ‘act like a man’ by committing offences. Women are beaten usually on the soles of their feet and forced to admit to their offences. Some are sexually, verbally and physically abused by police officers. One woman revealed how she was made to eat without washing her hands at Ruwa police station despite the availability of water. Another woman said:

‘I had no relatives to bring me food. I had money but officers refused to buy me food. There are bathrooms but we were not allowed to bath. We made the request to each and every police officer who would be on duty but they kept on saying they were busy and had no time for that. They did not give inmates water to drink despite its availability.’

These inmates also complained that usually officers severely assault detainees using batons under their feet. One woman said her arm broke after she was beaten by a female police officer and she mentioned that in court.

4.3 Double trouble!

Through this study I came to know how women experience different degrees of discrimination based on each and everyone’s circumstances. Women’s experiences indicate their interlocking oppression. It emerged during the research that within the group of women discussed above, there are other groups that suffer prejudices not only because they are women but also because of other various factors. These women suffer multiple forms of discrimination based on their sexual orientation, their line of work or the type of offence they have allegedly committed. The groups are those who commit serious offences, sex workers, gays and lesbians.

4.3.1 Women committing serious offences

Mary Carpenter wrote, ‘When a woman has thrown aside the virtuous restraints of society, and is enlisted on the side of evil, she is far more dangerous to society than the other sex.’ (1864: 32).¹³ This observation suggests that women who commit crimes are perceived as being far worse than their male counterparts.

Many of Zimbabwe police officers seem to adopt and apply this theory particularly in relation to women who commit serious offences like murder, robbery, fraud and theft. Making reference to these women during the research revealed that they are more badly treated than other women. Unfortunately I only managed to interview those who had committed fraud and theft but there were other women who confirmed the ill-treatment since they had been incarcerated with women who had committed or were alleged to have committed these serious offences. Some police officers indicated that women who commit serious offences had proved themselves to be men and as a result such should receive the same treatment as

¹³ As quoted by Morris A in *Women and Criminal Law Justice* (1987).

men. Their thinking is connected to one of Lombroso and Ferrero's arguments that, 'Psychologically and anthropologically she belongs more to the male than the female sex' (1895: 153). These two also used this stark imagery: '...the criminal woman is consequently a monster'. I wonder why female's criminality is measured against men's. Possibly it is because crime is perceived as an exclusively male activity. One of the inmates I interviewed at Chikurubi complained about the ill-treatment which she received at CID Serious Frauds in January 2014 when she got arrested. She said the male officers present were very cruel and kept on questioning her why as a woman could she commit fraud. She was beaten and told to admit to the charges.

I have also seen the poor treatment of this group at court where I work. These people are viewed and treated differently and it is assumed that they have no morals. They are the topic of gossip in offices and their morality is questioned. I am even inclined to believe that this attitude and treatment of them also influences magistrates who pass sentence on them. The problem lies in that there are stereotypical conceptions about crimes attributed to women. Generally women are expected to (and they normally do) commit offences like shoplifting, assault and prostitution. These stereotypical conceptions should be erased as they influence the treatment of female suspects by the police and in the criminal justice system as a whole.

Section 56(1) of the Constitution provides for equality before the law. The above discussion shows that although Zimbabwean law does not differentiate between women and men, in practice the police do. Generally women who commit offences are regarded as 'bad' women with no morality. Officers are a product of that same society that does not accept or appreciate that women do commit offences. To them it is natural and acceptable that men commit offences but not women. Women are expected to be at home looking after the children, so those who are detained are considered to be deviants. These misconceptions lead women offenders to be treated badly by police officers.

4.3.2 Commercial sex workers

'We do not go for more than two weeks without police visiting and harassing us. They come to our flat every time and arrest us even if we are asleep and have not done anything because they know we are prostitutes and where we reside. When they had their operations they just forcibly took us from our flat. They would beat us if we do not pay any form of bribe. Most of the time they demand bribe (usually US\$10 each depending with the police officer) and if one does not have they beat or take the person to police station. We are always

told that the charge is that of “Loitering”. Both police officers (male and female) are rude to us. However, female police officers are worse. They hate us because they accuse us of being husband snatchers. At police station we feel that we are ill-treated more than other women offenders because society condemns our profession. We have no one to protect us. They even broke the doors of those who resisted.’

This anonymous sex workers’ story reflects many (if not all) sex workers’ lived realities. They felt that they are the only group that is in most cases approached, harassed and detained by police officers more than others. They are usually detained at Harare Central police station where they are exposed to appalling conditions which will be discussed in the next chapter. The continual disruption of their means of earning a living by police affects them greatly. Whilst in police custody they are sexually abused by male officers who have access to their cells. However, according to them, male police officers are better than female officers as male officers usually ask for sexual favours or demand bribes in exchange of release. One commercial sex worker said:

‘Some of them come for a short time. However, when they come as clients, usually they do not pay; they take advantage of them being police officers. The problem is that even those who will be off duty also come to demand (in the form of bribe) the little we would have earned by the day.’

One of the sex workers mentioned that she was to meet with a police officer client who had come for a short time sex. I observed the police officer in civilian clothes waiting for her.

4.3.3 Gays and lesbians

Through the discussion I had with them they revealed to me how they are considered and treated as second class citizens in Zimbabwean community which does not want to acknowledge or approve of their existence. They know that President Robert Mugabe has referred to them as ‘being worse than pigs and dogs’ and that this also influence the way they are treated by police officers whilst in police custody. This marginalised group is always discriminated against. Sometimes they are arrested and their offices raided by the police. They have been to Harare Central and Avondale police station on several occasions. According to them there is no privacy whilst they are in police custody as police officers tell everybody that they have arrested gay people. They surround and mock them. They are verbally, physically and sexually abused.

I noticed during the discussion that this group knew many of their rights. However, they said those who try to show officers that they know their rights usually suffer more than others so they profess ignorance of them. Male officers are usually friendly to female offenders and the opposite is equally true. However, with them it is different given that as a group they are discriminated against. Male and female officers hate and badly treat them because they are homosexuals. They are exposed to the worst conditions as a way of punishing them and correcting their sexual orientation. Like sex workers they are also arrested even if they have done nothing wrong. Once officers suspects that they are homosexuals they detain them and release them the following day without a charge.

One said:

‘I was indecently assaulted by a male officer who touched my buttocks saying that is what gay people want.’

After arresting them some officers tell their families about their identities. This they said is unfair as many of them have not yet disclosed their sexual identity to their families. They are still waiting for the right time and place to do that.

4.4 Analysis

There is a need to highlight that although I am referring to both gays and lesbians, their extent of suffering is different. Unlike gays, lesbians suffer great prejudices because they are women before they are lesbians. Sex work and homosexuality are considered as immoral acts in Zimbabwe and as a result these people are viewed and treated as outcasts and deviants by the greater part of the community including law enforcement agencies. The two groups are found at the lowest level of anthropologist Gayle Rubin’s ‘erotic pyramid’ which describes sexual hierarchies (1984) and as such are stripped of their sexual citizenship. These ‘second class’ citizens are subjected to disreputability, criminality and economic sanctions (Rubin, 1984). The state helps in maintaining these hierarchies through the criminalisation of both sex work¹⁴ and homosexuality.¹⁵ Criminalisation denies them the privileges of full citizenship enjoyed by other citizens. The perception of the state and society at large influences police officers in their treatment of such suspects and on many occasions they have used the law as

¹⁴ Section 81(2) of the Criminal Law Codification and Reform Act (9:23) which criminalises solicitation for the purpose of prostitution.

¹⁵ Section 73 which criminalises sodomy.

an instrument to victimise these two groups. This is reflected in their experiences narrated above. These groups no longer trust the ZRP and as a consequence do not report their criminal complaints to them as they enjoy less protection from unscrupulous or criminal behaviour, less access to police protection and less recourse to the courts than ordinary citizens (Rubin, 1984). One man said:

‘One day I accompanied my boyfriend who wanted to report a case at a police station. Police officers detained him because he was using a female voice. They ignored his report but rather arrested and detained him saying he was gay.’

Rights have become privileges in Zimbabwe for those who conform to the expected moral standards of the society and these two groups are not included. However, these people do have rights that protect them from their treatment by police officers. Of course they do!

Prostitution per se is not a criminal offence in Zimbabwe. It is however, criminalised through section 81 of the Criminal Law (Codification and Reform) Act (Chapter 9:23) which criminalises public solicitation for the purposes of prostitution. There is no such offence as ‘loitering’ as believed by police officers. It used to be an offence under section 4(2) of the Miscellaneous Offences Act (Chapter 9:15) which was repealed consequent to the advent of the Criminal Law (Codification and Reform) Act. The crime was never carried over into the Criminal Code. Sex workers are therefore being arrested on the basis of a non-existent crime.

Gays and lesbians also suffer the same fate given that they are arrested and detained on the basis of their sexual orientation regardless of what the law provides. Sections 73 and 67 of the Criminal Code criminalise sodomy and indecent assault, respectively. Section 73 criminalises consensual anal sexual intercourse between men or any act which involves physical contact that would be regarded by a reasonable person to be an indecent act. This section does not apply to female homosexuals and as a result they cannot be charged with penetration of any part of their bodies. Section 67 makes it an offence if a female person ‘commits upon a female person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than any act involving the penetration of any part of the other female person’s body or her own body.’ However, it only applies if the person knows or realises the possibility that the other female person has not consented to it.

Criminalising the world's oldest profession and homosexuality exposes these two groups to violence and discrimination by law enforcement agencies. Police officers are only allowed in terms of the Criminal Procedure and Evidence Act (Chapter 9:07) (CP&E Act) to arrest and detain people where there is a reasonable suspicion that a criminal offence has been or is about to be committed. Detention is necessary to secure attendance at court and as such is only permitted if the accused is likely to abscond, interfere with witnesses or jeopardise the administration of justice. Anything done outside this is unlawful. Continual indiscriminate arrests and detention of these groups when they have not done anything is unlawful. Seriously, how could a reasonable, well trained officer arrest someone simply because he has a female voice?

Also through their unlawful anti-prostitution operations like '*Chipo Chiroorwa*' ('Chipo get married') officers have maliciously and unlawfully deprived women of their right to liberty which is their Constitutional right. They arbitrarily arrest women who walk in the streets at night without a male person. A good example is a woman who was arrested around 8.30 p.m. whilst buying airtime by the gate of a flat where she resides. She is a victim of Operation '*Chipo Chiroorwa*'. She spent three days in the police cells at Harare Central Police Station. She was taken to Rotten Row Court on the fourth day and was acquitted. Her husband who lives in the United Kingdom has since filed for divorce following the publication of the story in the H-Metro newspaper which circulates in Harare. She consequently suffered a minor stroke. If only the police knew the serious implications that can arise from their unlawful actions. Article 9 of the ICCPR to which Zimbabwe is a party outlaws the subjecting of people to arbitrary arrests and detention. Arresting, detaining and releasing women without charge should stop as this violates their right to liberty.

It is of paramount importance to note that Zimbabwe's new progressive Constitution provides in section 50(9) for compensation from the person responsible for an unlawful arrest or detention, but makes an exception for officers who have acted reasonably and in good faith and without culpable ignorance or negligence. Its applicability to a real life situation is being witnessed through the on-going test case of the victim of '*Chipo Chiroorwa*' ('Chipo get married') that is being pursued by Zimbabwe Women Lawyers Association (ZWLA). When I interviewed one of ZWLA members she indicated to me that they have since drafted the papers which they have referred to constitutional experts for their input before filing the papers. I kept wondering if this compensation will adequately remedy the pain of this woman

whose image was publicly tarnished, her constitutional rights violated, her health severely affected and her marriage pushed to breaking point. However, although money may not completely compensate for all her suffering, this provision is most welcome as it will hold liable and punish the responsible officers for their violation of her human rights. It will also act as a deterrent to other would-be offenders and provide society with security.

Whilst in police custody suspects are not supposed to be badly treated or exposed to sordid conditions considering that they are still only suspects who have not yet been convicted of any offence. The presumption of innocence still operates in their favour and as such they should not be punished by law enforcement agencies through beating and abusing them or exposing them to appalling conditions. National and international legislation reflects their innocence before the law, including the UDHR (article 11), the ICCPR (article 14(2)), the SMR (Rule 84), the Body of Principles (principle 36) and the Constitution (section 70(1)(a)). The Supreme Court in the case of *Blanchard & Others v Minister of Justice* 1999 (2) ZLR 24 (S) held:

‘Insofar as awaiting trial prisoners are concerned, it must never be overlooked that they are unconvicted and, accordingly, presumed to be innocent of any wrongdoing the purpose of their detention is merely to bring them to trial ... Punishment, deterrence or retribution in such a context is out of harmony with the presumption of innocence.’

Despite all this women are viewed and treated as criminals by the police. Some are physically, verbally and sexually abused. Women are beaten in order to force them to admit to charges for crimes they have not committed.

These women suspects can also assert their rights to equality and non-discrimination as provided in section 56 of the Constitution and article 7 of the UDHR, article 3 of the African Charter and articles 2 and 15 of CEDAW. Through the criminalisation of sex work and homosexuality, the state has created a permissive environment for the discrimination, harassment, and intimidation of these groups by their family members, people in the community and law enforcement agencies (Amnesty International, 2013). They have the right to enjoy equal protection of the law but it is on that very ground that they are discriminated

against. The wording in section 81¹⁶ of the Criminal Law Codification and Reform Act (Chapter 9:23) is sex and gender neutral but the police improperly enforce it by targeting women only through their operations like '*Chipo Chiroorwa*' leaving their male clients to escape punishment. The police has never launched a similar operation like '*John Chiroorwa*' against the male clients of commercial sex workers. Zimbabwe should ensure that it acts in accordance with the spirit of the above mentioned instruments to which it is a party.

There is a violation of their right to equal protection and benefit of the law as enshrined in section 56(1) of the Constitution. Many indicated during the interviews that they have lost confidence in the police and they now fear reporting complaints if their rights have been violated by other members of the public as they rarely succeed in obtaining an effective remedy through the police. A good example is the one that has been referred to above where a gay man went to the police to report a case and instead of their taking up his complaint on his behalf the police arrested and detained him simply because on the basis that he had a 'female voice' which led them to believe that he was gay and somehow breaking the law. In other words, when this vulnerable group of people report third parties to the police this normally leads to their own victimisation by state officials who always question their innocence the moment they are approached. In such cases the police never open a docket or investigate the complaint they are presented with but instead take offence themselves at the complainant, jump to the conclusion that he or she is guilty of, say, homosexuality (obviously do not open a docket to that effect in which they make themselves the complainant or genuinely investigate their own suspicions) and immediately victimise the genuine complainant whom they now abuse perhaps even worse than they do a convicted criminal.

4.5 Causes

During the research, respondents referred to various factors which they said causes the attitude of and treatment by officers as well as the state of detention conditions. However, I am only going to discuss those that were mentioned by the people I interviewed, which I also considered to have an effect on these conditions. These are lack of adequate resources, corruption, restricted access and instructions from superiors.

¹⁶ Section 81 provides that 'any person' who publicly solicits for the purpose of prostitution shall be guilty of an offence.

4.5.1 *Lack of adequate resources*

‘Generally there is partial compliance with the provisions of the standing orders. The main reason is lack of human and material resources.’

This was said by a police officer reflecting the views of many I had interviewed. It emerged that ZRP is not adequately equipped to accommodate women suspected of having committed offences. Zimbabwe’s failure to meet its international and national human rights obligations is also attributed to the unavailability of resources. Many of these police stations are archaic and dilapidated giving rise to a need to renovate and expand them to bring them into line with acceptable minimum standards for detention. In January this year the media reported that Members of Parliament through chairpersons of various Portfolio Committees complained of the gross underfunding of various Ministries, including the Ministry of Home Affairs.¹⁷ If Zimbabwe is to alleviate the plight of these men and women in police cells then adequate funding is the main solution.

4.5.2 *Restricted access*

Having access to and getting information from the ZRP is extremely difficult. I myself was denied authority to conduct this research in their institutions. This possibly explains why there is not much information about police detention conditions. Many people are not aware of the grim conditions these suspects are exposed to and this exacerbates their problems as many critical issues remain hidden. Various organisations revealed to me that because of the limited access to the police, its personnel and institutions, they had decided to work with the prisons. Many women agreed that conditions are now better in the prisons than in the police because of donations they have received from various organisations. I saw evidence of some of these donations when I visited Chikurubi Female Prisons. I saw pads, mazoe orange juice and bed sheets which arrived when I was interviewing the inmates. However, civil society and NGOs can only assist if the ZRP is prepared to allow them access.

After conducting the research I concluded that access is possibly restricted because of the prevalence of human rights violations in the ZRP and by members of the ZRP. Giving unlimited access to, for example, media or civil society would lead to its scrutiny and exposure. Violation of rights by the police is a clear sign that many of them are not aware of

¹⁷ Newsday, 22 January 2014.

the provisions of national or international human rights instruments in relation to detention conditions.

There is no transparency because of the high level of secrecy in the ZRP. During the presentation on prisons and detention conditions in Africa, Commissioner Med S.K Kagwa had this to say:

‘... One of the best safeguards against torture and ill-treatment is for places of detention to be as transparent as possible. What better way to do it than to allow Prison visits? Regular and periodic visits by independent monitoring groups are central to protecting the rights of detainees. In the absence of outside pressure, human rights abuses in prisons are allowed to go unchecked.’¹⁸

In Zimbabwe there seem to be no ‘regular and periodic’ visits to police cells as mentioned above. This is so despite section 243(k) of the Constitution which tasks the Human Rights Commission to visit and inspect all places of detention, ascertain their conditions and make recommendations to the responsible Minister. When I interviewed one of the members of the Commission it was mentioned to me that they had not visited any police cells. In fact they were having meetings and arranging to visit the prisons. Also when I visited Parliament I was told that there had been visits to the prisons but not to the police.

4.5.3 Corruption

‘Due to economic hardships police officers demand bribe which many women cannot afford, so they end up having bad attitude towards them. Most men however, have money to pay bribe.’

Women respondents said corruption is rampant at police stations possibly because officers, just like other civil servants, are lowly paid. Their challenge was that police officers demanded a bribe if anyone was to send them to buy things like pads, cotton wool, food, airtime and pain killers. The amount of money one pays determines her treatment by officers during her stay in police custody. If the suspect does not have money, her relatives can pay the bribe on her behalf. A selected few inmates who bribe police officers do not surrender

¹⁸ Report on the Special Rapporteur on Prisons and Conditions of Detention in Africa, presented by Commissioner Med S K Kagwa at the 52nd Ordinary Session of the African Commission, 9-22 October 2012.

their money upon detention. They would use the money to continue bribing officers whilst in the cells for example if one needs to send officer to buy something.

‘A certain lady bribed the officer to get some socks when she was feeling cold...I was advised by some officers upon detention to hide my money and I put it under my armpits. My money was never booked into the detention book. That is the money I was using to bribe officers each time I wanted something.’

One woman said whilst demonstrating how she successfully hid the money.

Sex workers and gays and lesbians also complained about how they are expected to bribe officers in exchange for their freedom. For them each encounter with the police means they lose at least US\$10 otherwise one would risk being taken to the police station. One sex worker said:

‘Most of the time they demand bribe (usually \$10 each depending with the police officer) and if one does not have they beat or take the person to police station.’

Corruption is a problem in the ZRP despite its criminalisation in section 174 of the Criminal Law Codification and Reform Act.¹⁹ It is very rampant despite the fact that since last year the President of Zimbabwe has been denouncing corruption in the media and promising that the corrupt would be prosecuted. The degree of corruption however differs and depends on the officer involved. Many women suffer because they lack the financial means or muscle to bribe an officer to ensure special treatment. The ZRP should protect the rights of women most of whom are economically challenged and cannot afford private lawyers. The UN Code of Conduct for Law Enforcement Officials (article 7) not only prohibits law enforcement officials from committing any act of corruption but also tasks them to rigorously oppose and combat all such acts. Corruption is also defined in the same article.

Corruption has serious human rights implications in Zimbabwe as reflected in the experiences of women suspects explained above. It seems the Zimbabwe Anti-Corruption Commission established in terms of section 255 of the Constitution is failing to investigate and expose these cases of corruption in the ZRP. It has also failed to combat corruption yet these are some of its mandates.

¹⁹ Section 174 criminalises the abuse of duty by public officers.

4.5.4 Orders from superiors

Lastly, some police officers revealed to me that sometimes they operate on the orders of their superiors. Instructions from their superiors have an effect on how one is to be treated whilst in their custody. Instructions are likely to be given for example if the suspect is related to one of the superiors or if she is a member of a certain political party. One woman who was detained at Harare Central Police Station with someone who was closely linked to an official in the ZRP stated that they received better treatment. She said:

‘The two of us would eat our food in the kitchen while others were eating from a very smelling place.’

Officers also gave an example of operations that are done against sex workers. They said that usually they act in accordance with the instructions of their superiors although some officers will also take personal advantage of the process. I enquired and was told that these operations are initiated for example by heads of province (Propol – provincial police) or heads of districts (Dispol – district police) depending upon the nature of the operation. For example, Dispol or Propol may instruct that all sex workers be arrested. However, the instruction will only apply to his/her district or province. Those who instigate these operations are the ones who give names to the operations, like ‘*Operation Chipo Chiroorwa*’ (‘Chipo get married’). However, since I had no authority I could not interview either Propol or Dispol to find out the basis on which they initiate these operations.

CHAPTER 5

5.0 THE LAW EXISTS ON PAPER BUT IS NOT PUT INTO PRACTICE ON THE GROUND

5.1 Introduction

‘Pre-trial detention, in theory, does not constitute a human rights violation in the appropriate circumstances, under the right conditions of detention, and as a last resort with minimal periods of incarceration’
(Sarkin, 2008).

Nelson Mandela wrote, ‘No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones’ (1994, 187). This powerful statement by Mandela denotes that a society’s human rights record is mirrored in the state of human rights protection in its prisons (Sarkin, 2008).

Section 50 of the Zimbabwe Constitution clearly provides for the protection of the human rights of arrested and detained persons. Section 50(5)(d) lays down the suitable detention conditions that are consistent with human dignity. However, there is no gender differentiation in the wording as the provisions relate to both sexes. Section 56 provides for equality and non-discrimination of all persons before the law. The right to privacy is enshrined in section 57(b) as read with section 86(2) and (3). The right to health care services is also provided for in section 29 and 76. These provisions reflect the government’s desire to conform to international standards. The question however, is to what extent is Zimbabwe honouring its human rights obligations? The law exists on paper but is not put into practice on the ground as suspects are still being detained in conditions that are inhuman and degrading in violation of section 50(5)(d). As will be discussed in the findings, there is no provision for food, no privacy, toilets are situated inside the cells and detainees are not given access to medical facilities as and when required. Thus in reality current police cell conditions continue to fall short of the desired standards. These inhumane and sordid conditions adversely affect both men and women suspects, although differently. The challenges are worse for female suspects because of their biological make-up and therefore my discussion will focus largely on women suspects.

5.2 Strip off or else!

The Criminal Procedure and Evidence Act (CP&E Act) endows law enforcement agencies with powers to arrest and detain during their criminal investigations. Upon detention women are forced to remove their shoes, jackets, brassieres and any extra clothes as they are only allowed to remain with one layer of clothing. This is the order of the day regardless of weather conditions. Those who are detained during the winter are chilled to the bone. One woman who had been detained at Rhodesville and Braeside police stations stated that she was not used to going without a bra and, as a result, found the experience very discomfoting and humiliating.

‘It is very unusual of me. I only do that when I am at home during bed-time. I felt naked. It was dehumanising’, she said.

I appreciated her concern as I also feel naked and exposed if I try to remove such an intimate piece of clothing and move about in public.

As indicated earlier, despite having no police clearance I managed to visit and inspect Harare Central, Machipisa and Mbare police stations. After observing women who were not wearing brassieres at Machipisa police station I asked the police officer who said it was a necessary or peremptory order intended to protect female suspects from committing suicide. However, when I asked they failed to give me reference of those who had committed suicide using brassieres. Instead, they said inmates try to use any possible means available to them.

‘There was a lady who attempted to commit suicide using her skirt; fortunately we caught her before she took her life’, one officer revealed.

I immediately thought, ‘So, are they now going to make women remove their skirts in case they act likewise?’

Without their shoes female suspects walk barefoot on the dirty floors of the police cells. Women revealed that these cells are rarely cleaned. A woman who was detained at Harare Central for two days in a cell which was overflowing with human excreta narrated how she struggled to survive under such circumstances.

‘After eating the food that my relatives had brought I used the two plastic bags to cover my feet to avoid directly stepping on the overflowing human excreta. When officers noticed that they almost beat me up saying I would use them to commit suicide. They took the plastic bags accusing me of wanting comfort as if I was at home.’

Making women strip off their clothes particularly their bras diminishes their dignity and violates their rights. Section 41(2) of the Criminal Procedure and Evidence Act (Chapter 9:07) provides that:

‘A Peace Officer or other person arresting any person under this Part may search that person, and shall place in safe custody all articles, *other than necessary wearing apparel, found on him.*’

In terms of this provision, shoes and bras are ‘necessary wearing apparel’. It can also be argued, following the use of the pronoun ‘him’ that laws are made by and for men (Heidensohn, 1985). Detention is facilitated to ensure the attendance of a suspect at court. This far-fetched assumption of committing suicide is outweighed by section 51 of the Constitution which provides for the right to human dignity.

5.3 Do or die

All the respondents I interviewed would quickly make reference to the built-in toilets found inside all Zimbabwean police cells when describing their conditions. I knew that there was ‘something special’ about these toilets. Some people considered them the worst thing that they had ever experienced in their lives. What exactly did they mean? This is a question which needed an answer especially for people like me who have never been incarcerated. It was only after I visited Harare Central, Machipisa and Mbare police stations that I got some idea of what they were talking about. Mandela said, ‘No one truly knows a nation until one has been inside its jails’ (1994:187). He knew it because he had had a taste of it. That is exactly the same thought I had when I visited these three police stations and made several horrifying observations. Everything I observed was just a confirmation of what had been told to me by the various women and men I had interviewed.

It is important to note that when we visited Mbare Police Station some of my colleagues could not enter the cell because of the shocking smell that came from it. Being a woman on a mission, I had no option but to see it for myself. I observed that the toilets are inside the cells

and can only be flushed from outside at specific times and at the pleasure of the officer on duty. I quickly reflected back on what one of the ZACRO members had said when illustrating the deprivation in police cells. He pointed out the absence and the deplorable state of bathing and ablution facilities respectively. He made a special point of painting a very graphic picture of the sordid conditions of these toilets which are flushed using a bucket of water at specific intervals since there is usually no running water. This, he claims:

‘...transforms the whole cell into an inhabitable (*sic.*) stench toilet with ever rising piles of human waste.’

The respondents said that most of the time there is no water and even when there is these toilets are rarely flushed by police officers. One said:

‘...officers are human beings they are different. It would depend with the attitude and kindness of the officer present. Others do not mind they will leave it until it is full and overflowing with human excreta.’

They all wish these toilets could flush from inside.

At Machipisa police station they were using a bucket system to flush the toilet. The inmates complained that they were only receiving one bucket of water per day which was inadequate. When I enquired from the police officers they said that they could not flush their toilets regularly because they had water shortages and there was no borehole for the station. Another officer said they have communicated with the City Council to fix the pipes to enable them to get water but they have not yet responded. He however, said even when there is water the toilets do not flush because they have an old flushing system which cannot be repaired. At Mbare Police Station inmates were also complaining that there had been no water ever since they had been detained and the toilet had never been flushed. Officers said it was a problem because sometimes they go for a week without water. However, water came as we were interviewing the suspects and the magistrate I was with instructed the officers to flush the toilet using whatever available means. However, we did not wait to see if indeed they flushed the toilet.

To compound the problem of the sorry state of the cells, the inmates are not provided with tissue paper to wipe themselves clean and this dehumanising act reduces them to disgusting

images of human beings. One woman I interviewed during the group discussion I had at Chikurubi Female Prison said:

‘...maybe they expect us to use our hands or our clothes after relieving ourselves as they do not provide toilet paper or anything. How could I do so given that there is neither hand basin nor soap in that cell? Where and how could I wash my hands?’

I tried to imagine myself being in a similar situation and I felt sick and humiliated. How much worse must those women, who actually experienced it, have felt?

Interviews revealed that most of these toilets are not partitioned off from the rest of the cell and thus there is no privacy. Menstruating women are forced to change their sanitary wear while everybody is watching them. Like animals, everything is done in the full view of everyone present. Tracy jokingly said:

‘Imagine when one has diarrhoea, has to make all the sounds, groaning and having all the facial expression you make when you are relieving yourself. It seriously affects not only the person relieving herself but all those who are watching.’

The respondents revealed that to avoid suffering the experience of relieving themselves in the stinking toilet (especially at night) they sometimes try their best to suppress the call of nature. However, this only works if there are two or three people in the cell. It was mentioned that those who are drunk not only refuse to co-operate but sometimes urinate on the floor right next to where others sleeping.

Most police stations in Harare have no functional bathrooms, showers or bathtubs to allow inmates to freshen up each day. Some stations (for example, Glen View, Machipisa and Ruwa police stations) do not even have any such facilities at all. At Mbare police station I saw a metal cabin which they said was no longer in use because of the shortage of water. One officer who was referring to Glen View police station said:

‘There are no bathrooms and detainees do not bath no matter how many days one spent in police custody. They do not brush their teeth. This is bad especially for women who are quick to have a bad smell because of their biological make up. It is sad to note that women are denied some of the things that make them feel more female like bathing and brushing of teeth.’

At ZACRO they explained that it was against this backdrop of the appalling state of affairs of police cells that their organisation had embarked on a facelift crusade to assist in renovating some of the cells in Harare and that they had already done something to spruce up them in some police stations in the Mbare District. The man I interviewed referred me to his subordinates who indicated that their organisation had managed to screen the toilet from the rest of the cell in Mbare, Stordart and Braeside Police Stations.

‘It is now better because other cellmates would just hear the sounds and get affected by the bad smell without seeing the person. We wish we could do this to all police stations in Harare’, she said.

They also at one point provided tissue papers to these police stations. They had also repaired the toilet flushing systems of the three stations.

The few women who have been to these police stations commented that the screen was good but not good enough to ensure privacy. I observed this when I went to Machipisa and Mbare police stations. The screen which separates the toilet from the rest of the cell is not constructed right up to the roof and there is no door to it. Therefore, one is bound to be seen if there are many people in the cell. To ensure privacy, personal hygiene and provision of ablution facilities, as required by section 50(5)(d) of the 2013 Constitution, the ZRP should, according to the *Kachingwe* case, totally screen off clean and decent flushing toilets from the living area and provide detainees washing facilities like soap and water. Failure to provide adequate bathing and shower installations is a failure to honour its human rights obligations, particularly those contained in Rule 13 of the SMR, which requires installations of adequate bathing and shower provisions to enable every prisoner to bath or shower as frequently as necessary for general hygiene according to the season and geographical location.

5.4 Thou shalt honour thy obligations

Rule 10 of SMR states that ‘All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climate conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.’ Women complained about the absence of sufficient light in various police stations. Others to my surprise indicated that some police cells have no

provision for electric lights. I witnessed this when I visited Mbare police station. I was shocked. When I questioned the absence of light the officer simply said:

‘That is how the cells were built. It reflects the intention of those who constructed it.’

Absence of light possibly explains the urine and faeces surrounding the toilet hole. How can one possibly find the hole for the toilet in a floor which is unlit? Punishment by placing people in a dark cell even for disciplinary offences is prohibited under rule 31 of the SMR.

The respondents mentioned that female and male suspects are housed in separate rooms which are next to each other, separated by a wall. Police officers and women confirmed that women are safe from male suspects as they have no access to these cells. They only mix during the time the register of their presence is taken. The only time they are unsafe is when police have round-ups and put them into one big room (at Harare Central police station) only to separate them the following day. At police stations with no female cells, like Glen View and Ruwa, they try and find anywhere separate to house the female suspects. During the Chikurubi interviews some respondents revealed that they slept in the corridor, others in the charge office and others just a room. Due to the shortage of accommodation, the only ground for separation is conducted on the grounds of sex. This is the case despite the fact that Police Orders Volume 1 at 9.2 provides for the separation of prisoners suffering from infections or contagious diseases. Zimbabwean practice still falls short of the provisions of Rule 8(a) and (b) which provides for the entire separation of the whole premises for women and also requires different categories of prisoners to be kept in separate institutions considering their sex, age, criminal record, legal reason for their detention and the necessities of their treatment.

Women however, raised their concerns about the fact that these cells are also manned by male officers who take advantage and sexually abuse female suspects. Another respondent said:

‘Police officers sexually abuse female offenders especially those who would have been arrested for soliciting for the purpose of prostitution. Male officers are usually the ones manning these cells during the night. One day I asked why they do not have female officers and they said most female officers do not prefer taking night duties.’

This was confirmed by many respondents including gays and lesbians who said male officers sexually abuse them as a way of ‘correcting’ their sexual orientation. Rule 53 of the SMR does not allow male staff to enter into female institutions unless accompanied by a female officer. It clearly stipulates that women shall be attended and supervised only by female officers except for doctors and teachers during the conducting of their professional duties.

Contrary to Rule 10 stated above, police cells have poor ventilation. There are no windows which one can open to allow in fresh air. There is only the imitation of a window, a small screened/barricaded gaping hole situated high up the wall plate. This means that no light and very little fresh air can come into the cell and no one can see what is outside. This is worse at Harare Central police station because of the nature of the buildings. One wonders how these suspects survive without the inflow of any fresh air to help overcome the stench of human excrement. The situation is aggravated by poor ventilation but, yes, they survive.

5.5 One size fits all

I discovered during the study that ZRP has done nothing to accommodate the significantly increased number of both male and female suspects. These archaic and dilapidated police cells have not been renovated or expanded to safely accommodate all the alleged offenders.

‘The cells are big but because of the operation they were fully packed. We were overcrowded. During that period police rounded up about 200 people’, one woman said.

I found out that fewer women than men are arrested and detained at police stations. It was not the focus of this study but it emerged during its course that generally women are more law-abiding citizens than men and the few exceptions who do commit crime commit less serious offences which do not warrant incarceration. As a result it is only male cells that are usually overcrowded. Female cells only get full if the police carry out their usual round-ups or operations against sex workers or demonstrators such as Women of Zimbabwe Arise (WOZA) members. It is during this time that female suspects face the challenges of sleeping or sitting in the cells as there is no space for doing such things. This causes physical discomfort to inmates and it also limits their privacy.

5.5.1 Repercussions

Overcrowding perpetuates the spread of communicable diseases. However, I did not see any person during the research who had contracted a disease because of overcrowding. It is possibly because I did not enquire about it. I also agree with a police officer, who said:

‘Overcrowding in cells breeds high risk of security uncertainty to fully comply with these provisions.’

Overcrowding leads to the inadequate supervision of inmates by officers. This is probably the reason why a suspect recently escaped from Harare Central police station without being noticed. It is also difficult to maintain levels of hygiene and sanitation in an overcrowded area. All this shows that much needs to be done to avoid overcrowding.

As discussed above, overcrowding is a problem which denies inmates some of their fundamental human rights like privacy and human dignity. Overcrowding in police cells is mainly caused by unnecessary arrests and unlawful detentions done by police officers especially against demonstrators (like WOZA), sex workers and gays and lesbians. As noted in chapter 4, on several occasions police have unnecessarily arrested and detained these groups when they had not committed any offence. Homosexuality and prostitution are victimless minor crimes which do not have serious consequences for society which means that the police should reserve their small cells for those other suspects who commit serious offences.

5.6 Cover at your risk!

Through interviews and observations I came to conclude that there are inadequate blankets for female suspects. Women related how they slept on the floor with no blankets to cover themselves. At Harare Central police station, in place of conventional beds, there are raised, hardened concrete slabs. These I was told they are very cold in winter. Those who were given blankets to share could not cover themselves because the blankets were dirty, soiled with urine, blood and human excrement. One respondent said:

‘The blankets are inadequate, dirty and have lice. A group of ten people may receive two blankets.’

Women also mentioned that Harare Central police station have bed bugs as well as lice. In summer those who were detained at Southerton police station also complained of swarms of mosquitoes. Women stated that their request for extra blankets fell on deaf ears. When I visited Mbare police station and found that between them 17 male inmates had only 5 small, dirty, red blankets. Usually suspects agree to lay these few blankets on the floor to avoid sleeping directly on the floor. These blankets are rarely washed. During winter women suffer a great deal.

These are the lived realities of women despite the provisions of the Standing Orders²⁰ that require detainees to be issued with three clean blankets each which should be returned upon release. If one is detained for a longer period it is stated that the blankets should be washed and dried after seven days. What was described to me does not meet any of the health requirements provided by Rule 10 of the SMR, nor does it accord women their right to human dignity. Failure by the ZRP to provide suspects inmates with beds, clean and adequate bedding amounts to a violation of Rule 20(1) of the SMR. Since the ZRP cannot provide such necessities women suggested that they be allowed to bring their own from home.

5.7 Forced fasting!

Respondents bemoaned the absence of food at police stations. Officers also confirmed that there is shortage of food for the suspects. Inmates depend on the kindness of their friends and relatives. The ZRP used to feed inmates but now there is nothing. I cannot even comment on the nutritious value or adequacy of food because there is just no food at all to speak of. At Harare Central police station, I was told that there was a time when Bakers Inn would bring some rejects of bread to the inmates and they would take it without water or anything to drink. However, it was not enough for everyone so was given to the privileged few. I made a follow-up on this issue with Bakers Inn but they professed ignorance about it so I could not get any official confirmation about it. When I visited Machipisa and Mbare police stations I discovered that no food was being provided to the inmates and they were complaining. They were told that their relatives should bring them food. However, this was a challenge to those whose relatives were not aware of their detention and those who could not bring them food. Usually inmates agree to share whatever their relatives bring, so everyone at least gets to eat something. At Machipisa police station one officer said:

²⁰ Section 13.1 Police Standing Orders, Volume 1.

‘We do not even request food because it is not there at the quarter master. The last time we had food was in November...We allow visitors to bring them food...’

He could not disclose to me which November. He said they have a kitchen and that if food were provided they would cook it. Food from visitors is allowed in between 7 and 8 a.m., from 12 to 2 p.m. and from 5 to 6 p.m. The food is tested by the person who brings it to avoid poisoning. Water is only provided if it is available. Since there is no water most of the time, relatives bring it for the inmates.

By detaining inmates the ZRP assumes a duty or responsibility to provide them with the necessities of life, like food and water. Women’s experiences are an indication of a clear violation of their Constitutional rights to water and food as provided in section 77(a) and (b) of the Constitution. It is stated in the case of *Kachingwe* that detained suspects should be given ‘wholesome food at appropriate times’ and good ‘drinking water’. This is similarly provided in Rule 20(1) and (2) of the SMR. The violation of these rights is perpetrated by the state through its agencies who are supposed to protect them. One of the national objectives in the Constitution is for the state to take practical measures to ensure the protection and promotion of these fundamental rights.

5.8 ‘Medical officers’

Some women reported that the police ignore you if you feel sick whilst in custody. Only those who ‘according to them’ are serious will be taken to the hospital depending on the availability of transport or they phone their relatives to bring medication. I enquired about the medical kits which I heard were found at police stations. One officer from Harare Central police station said:

‘Medical kits at police stations are not for detainees but for demonstrations since every police officer was trained to provide first aid. A sick detainee will be taken to government hospital at his/her own expense.’

Officers confirmed that these medical kits no longer serve their original purpose as they contain no medication. However, it was for the officers not suspects. One woman said:

‘No medication is provided when in police cells. I asked for pain killers and was never given. I also failed to send an officer because I had no money for bribe. If a detainee gets worse (according to them), I assume he or she will be taken to hospital. If upon arrest one wants to collect medication for example from home it would depend with the arresting officer.’

If the person is in serious need of medical attention, the officer present will inform the officer in charge who will then decide and refer the person to a government hospital. The suspect incurs the cost of the bill.

Health is very important not only for the suspects detained in police cells but for every person and that is why it is provided for in section 29 as read with section 76 of the Zimbabwe Constitution. The problem occurs once one is incarcerated; suspects cannot cater for their own health. The ZRP should ensure full protection of their health by ensuring that these inmates receive medical treatment as and when required as provided by article 6 of the UN Code of Conduct for Law Enforcement Officials. Section 50(5)(d) of the Zimbabwe Constitution provides that provision of medical treatment is consistent with human dignity. Being given reasonable access to medical treatment was also upheld in the *Kachingwe* case. Our national legislative framework is in line with Rule 22 of the SMR which provides for the same as well as the need to have suitable or readily available trained officers at such institutions. I do not think it is appropriate for these women’s requests to be medically treated to be made to or to be assessed by someone with no medical qualifications. There is a danger in allowing lay persons to diagnose an inmate’s physical condition. Health is life. When I enquired about this of officers they justified their position by saying that the screening was necessary to avoid those with trivial or non-existent diseases making unwarranted visits to the hospital. This medical treatment should be provided free of charge as provided in Principle 24 of the UN Body of Principles (1989).²¹

5.9 Law enforcers or law breakers?

My research reveals that there is no or very poor compliance with the standards laid down in the Constitution, the police standing orders and in the *Kachingwe* case in relation to detention conditions. Police officers have a professional and legal obligation to respect and protect the

²¹ Principle 24 provides that, ‘A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.’

human dignity and human rights of those they place in their cells but the experiences of the women I interviewed tell a quite different story. I found that police officers are responsible for some of the human rights violations in Zimbabwe. Instead of protecting the public they have become perpetrators of human rights violations. The breaking of the law by law enforcers constitutes an assault on human dignity, the law itself and on all institutions of public authority (IDASA and RAU, 2011). As Zimbabwean citizens, women are protected by the law in accordance with section 50 of the Constitution. However, this section is ineffective if it is not fully implemented.

It is high time for the police to realise that suspects are entitled to their human rights. The Supreme Court in the case of *Woods & Others v Minister of Justice & Others*²² stated:

‘The view no longer holds firm in this jurisdiction and in many others, that by reason of his crime a prisoner sheds all basic rights at the prison gate. Rather, he retains all the rights of a free citizen save those withdrawn from him by law, expressly or by implication, or those inconsistent with the legitimate penological objectives of the corrections system.’

These detained suspects have not been tried and convicted of any offence. The presumption of innocence still operates in their favour. As a result the conduct of police should be humane and in accordance with the law and various guidelines which all provide for the humane treatment of suspects in police custody.

5.10 Women in a man’s land

‘Women make up only 3.5 per cent of the prison population in Zimbabwe. Therein lies the dilemma. The female prisoner presents a problem to prison management but given their small numbers, one that is liable to be overlooked.’

Stewart J, ‘Prison is no place for a woman’ in Musengezi C and Staunton I, (2003) a TRAGEDY of lives, Women in prison in Zimbabwe.

The first person I interviewed during the research was a ZACRO member. Using the Bible as his referral point, he mentioned that women are different from men and as such should be treated differently. To underscore the line of divide between the two sexes, he explained how women become pregnant, give birth, breast feed, and menstruate, while men do not. This

²² 1994 ZLR (2) 195 (SC).

shows that women have specific problems which are different from men and need to be specifically addressed. Based on the women's testimonies of their horrifying experiences, one can argue that these police cells were specifically built for men and women have been accommodated simply as an afterthought.

Women and police officers I interviewed revealed that there are no facilities that cater for women's menstrual needs at police stations. One respondent said:

'They do not provide sanitary towels even if one starts to menstruate whilst in their custody and there are no disposal bins.'

This is another area that the ZRP is failing to address. This is so despite the fact that officers confirmed that many women start their period whilst in their custody possibly because of shock and fear. Those who are in the process of menstruating are usually denied the chance to collect or change their sanitary wear upon arrest. It emerged during the research that this chance to access such facilities would depend upon the arresting detail and how understanding, friendly and accommodating they were.

When I participated in police visits I confirmed that there is no sanitary provision for menstruating women. Relatives bring these for the inmates. At Machipisa police station I asked the officers how those who do not have visiting relatives manage their menstruation and how they dispose of their soiled sanitary wear since I had not seen any disposal bin (sanitary bin) inside or outside the cell. One said:

'Kana tine matissue tinovapa voshandisa vorasira mutoilet voflusher. Tikaisa bin vanoziuraya...'

(Meaning, 'If they have tissue papers they provide to the inmates who will use them and dispose of in the toilet.')

According to the officers, having a disposal bin in the cell would enable them to commit suicide. The problem occurs if inmates do not have visitors to bring them tissues and the police do not have tissues with which to provide them (which occurred during our visit). Women told me how they tried and failed to manage their menstruation whilst in police custody. Officers are aware of some of their coping mechanisms. One male officer had this to say:

‘Police officers do not respond to the menstrual needs of these female offenders. More often than not, female offenders end up tearing pieces of cloth from the cells blankets or their own clothes for use as pads. Police does not view this as a social need hence no provision is made for them.’

Various women narrated to me how they tried and failed to manage their menstruation whilst in police custody. Those who would fail to tear off the blanket would helplessly leave the blood to flow and wipe themselves with the blanket. The victim of ‘*Chipo Chiroorwa*’ mentioned above said:

‘If they had allowed me to communicate with my relatives they were going to bring me some pads. I had no option but to fold my only pant which I was putting on and use as substitute for cotton wool.’

Police officers were complaining that the toilets were blocking because of cotton wool, pads and some cloths. Yes, women know about this problem but do they have any other option? Only a few indicated that during visiting hours they would give their relatives their soiled sanitary wear to dispose of. The rest said the only option they had was to dispose of the used sanitary wear that they had been given by their relatives was to throw it into the toilet hole.

As if the above situation is not bad enough, women are allowed to have only one pad whilst inside the cells regardless of the duration and density of one’s menstrual flow. Another respondent said:

‘I have a vivid memory of how I spent 5 days and 4 nights soaked in one sanitary pad and ended up smelling like a rotten piece of meat.’

As the women spoke I could relate to what I had witnessed at my work place, women suspects whose clothes would be soiled with blood. This now explained why!

Women revealed how they were socialised to keep menstruation a secret. However, this is impossible for one who is in police custody, as life is totally controlled by and revolves around the officers. Others had to disregard their culture and inform male officers that they had menstruated. It is difficult to manage menstruation whilst in police cells, there is no running water, bathing, sanitary wear, soap or disposal bin. The Supreme Court in the *Nancy Kachingwe* case stated that the state had is required to provide sanitary wear upon a person’s arrest if it is requested. It is unfortunate that ever since this judgment was pronounced, none

of what the judge ordered has been enforced. Zimbabwean laws do not specifically address this issue. However, section 56(3) of the Constitution prohibits discrimination on the grounds of gender and sex. Through the process of interpretation this section can be used to protect menstruating women in police cells. Women's lived realities has shown that equal treatment before the law as provided in section 56(1) in this case is unwarranted as it will lead to unequal results as observed by Dahl:

‘...rules on equality of treatment do not, of themselves, materialise into equal or just results, either in individual cases or collectively. Often it is just the opposite, that the goal of equality demands unequal treatment in order to give weak parties or groups the opportunity for equality and equal worth (1987: 2). In this respect law can only be properly evaluated if one, in addition to understanding the text of the law and its intention, has insight into the law's consequences.’

The failure by the ZRP to provide sanitary wear is an affront to women's dignity as enshrined in the Constitution, which right should be respected and protected. These innocent women, who have not yet been proven guilty, suffer multiple punishments because of their biological make-up. Although it never emerged in my research, Esme Chombo (2008) in her dissertation indicated that the prolonged use of sanitary wear causes toxic shock and rash.

As discussed above, women suspects face challenges as they cannot hide or manage their menstruation independently. Zimbabwe should provide this basic need (sanitary wear) to cater for this natural and essential process. It is unfortunate that there is no international instrument which specifically mentions the necessity of having this facility. Even the SMR is silent on this important issue. To my surprise it recognises the need to provide men with facilities for regular shaving yet ignores the importance of providing adequate sanitary wear to women. It is correct when they say that ‘the law is male’. However, there are international instruments that outlaw discrimination on the basis of sex and other such instruments that provide for the respect and protection of human dignity. It is through a sensitive gender interpretation and application of these instruments that one can argue that there is protection and provision for women's natural and unavoidable physical needs. Examples of such instruments are the UN Convention on Civil and Political Rights (article 10), the African Charter (articles 3(3) and 5(d)), CEDAW (article 2) and the ICCPR (article 2).

‘Dignity is the fundamental element of human self-esteem and self respect,’ (Dahl, 1987:98). It is high time that law enforcement agencies acknowledge the biological differences between men and women and start to act on the implications they have for the different and gender-specific treatment of them, for example, by having a specific budget allocation for sanitary wear for women inmates. Although it was not the focus of my study, women mentioned that the mismanagement of menstruation in police cells negatively affects the way they present their cases in court and this has a bearing on the outcome of their cases. During a group discussion at Chikurubi Female Prison an inmate who was detained for two days in January 2014 at Waterfalls police station after she had concealed the birth of her child shared her experience. She had given birth the previous day and was still bleeding. She asked but was denied the right to take her shoes, some tablets and cotton wool from her house. Her menstrual flow was heavy and she had no option but to use the blanket which was in the cell to wipe her blood. This however, only worked when she was in the cell as she could not take the blanket outside the cell. She left the blood to flow when she went outside the cell. It was difficult for her to compose herself in court. She had no confidence to talk in court with men in the gallery. However, I appreciate the need for further research to confirm her position or this finding.

5.11 A special group with special needs!

There is no special treatment for a special group of people who are either pregnant or breast feeding. They are not given food on the basis of their condition. They also sleep on the floor with inadequate blankets. Officers confirmed the women’s position that breast feeding mothers are detained in the charge office. Many police officers are not even aware of the requirement that they need authority to detain breast feeding women from the Officer Commanding Province provided for in Volume 1 of the Police Standing Orders. Mai Tinotenda who was detained at Matapi police station in October 2013 with her baby aged 1 year 2 months mentioned that she stayed in the charge office for 3 days because she had a baby. The officer said it was not safe to detain her in the police cells with the baby as the conditions were bad. Relatives would take her baby home for bathing and feeding and return her to the charge office. She was never given a blanket despite having a baby.

There are no appropriate facilities that allow nursing mothers to be with their children. It is undesirable upon detention to separate a child from its mother. Any form of incarceration

adversely affects the children's welfare. The children's needs are not taken care of whilst in police custody. They are deprived of their rights to food, water and health care as enshrined in the Constitution and various international instruments, for example, the Convention on the Rights of the Child and this compromises their health. A special diet is required by both pregnant and breast feeding women (and so do their babies) for them to remain healthy. The Convention on the Elimination of All Forms of Discrimination (CEDAW) (article 12) requires state parties to ensure the provision of appropriate services to women who are pregnant or in confinement where necessary and specifically mentioned is the provision of 'adequate nutrition during pregnancy and lactation.' The Kampala Declaration does not specifically mention the special needs of pregnant women. There is a need to have separate institutions with necessary adequate provisions to house the nursing female suspects. Such provisions are not offered to women suspects despite Zimbabwe being a party to CEDAW. This may possibly be because Zimbabwean law puts great emphasis on equality without recognising the differences between men and women based on their differences in sex and gender.

'Female offenders represent a small proportion of arrested offenders and create few social problems' (Morris 1987: 1). It was pointed out in the book by Ekirikubinza (1999) that because women constitute a relatively small number, those who are responsible for these penal institutions perceive it as 'uneconomic to adequately invest in women's custodial institutions...' This however, is not fair as it discriminates against women on the basis of their sex and gender. Should women suffer simply because they are more law abiding than their male counterparts? This should not be the case because the criminal justice system's aim is to have, one day, a free crime society. As noted above, female suspects in police custody have been neglected not only by ZRP officials but the law as well.

5.12 Conclusion

International human rights framework has the spirit of fulfilling, promoting and protecting human rights. Zimbabwe should work hard to bridge the gap between law and practice relating to police detention conditions. It should seriously consider and observe the provisions of various instruments which prohibit inhuman or degrading treatment or punishment. Zimbabwe is a party to these international instruments which advocate for the respect of the dignity inherent in a human being. These are UDHR (1948) (article 5), the

ICCPR (1966) (articles 7 and 10) and the African Charter (1979) (article 5). The above discussion shows that despite Zimbabwe being a state party to these international instruments, gaps continue to exist in relation to its compliance with them.

The research portrays police officers as the direct perpetrators of human rights violations. However, it is the legal responsibility of the Zimbabwean government to create an enabling environment for police officers and women detainees to ensure its adherence to national and international legislation. The Zimbabwean government has failed to provide adequate resources to the ZRP to ensure that Constitutional provisions and Police Standing Orders are complied with. The research also revealed that ZRP is under-resourced.

CHAPTER 6

6.0 CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Zimbabwe's new 2013 Constitution contains a declaration of rights which protects all persons, including female suspects in police custody of their fundamental rights. Of great interest is section 50(5)(d) which provides for detention conditions that must be consistent with human dignity which includes opportunity for physical exercise, the provision, at the state's expense of adequate accommodation, ablution facilities, personal hygiene, nutrition, medical treatment and appropriate reading materials. The Supreme Court of Zimbabwe has shown its willingness to extend this Constitutional protection to women detainees in police custody through its judgment in the landmark case of *Nancy Kachingwe & 2 Others v The Minister of Home Affairs and the Commissioner of Police*. The ZRP has its standing orders which are consistent with the new Constitution and some of the requirements stated in the *Kachingwe* case. All this reflects Zimbabwe's desire to conform to various international instruments which provides for acceptable detention conditions which includes the SMR and the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment. Despite Zimbabwe being a party to various international instruments discussed in this study and its having a very progressive legislative framework on detention conditions, a noticeable gap still exist when it comes to compliance. The violation of detainees' rights whilst in police custody as discussed in this study indicates the shortcomings relating to the implementation of these provisions by the police. There is dissonance between the law and practice.

The state is primarily responsible for the breaches of its human rights obligations through omission or commission done by police officers or the ZRP as an institution while acting on state authority. However, Zimbabwe's failure to satisfy international standards relating to detention conditions is undoubtedly due mainly to the lack of resources and training on the part of the police officers concerned. The research which was conducted by the ZLHR and Law Society of Zimbabwe revealed the absence of budget allocations to feed detained suspects and witnesses whilst in police custody.²³ The government should do something

²³ Publication on pre-trial detention in Zimbabwe by ZLHR, Law Society of Zimbabwe (2013).

about this unfortunate state of affairs. Without giving the ZRP an adequate budget allocation suspects will continue to suffer the dire conditions uncovered by this research.

Interrogation of the Zimbabwean law reveals how section 50 of the new Constitution is gender blind in its wording as there is no specific mention of women as a special group with special needs. Its general provisions apply to both men and women in detention as if the two sexes experience similar challenges. Similarly, police standing orders do not adequately address women issues. Menstruating, pregnant and breast feeding women are exposed to the same conditions as men which conditions are inhuman and degrading and amount to serious violations of the detainees' rights. It is high time law makers realise that women are a vulnerable group of people whose rights are abused and who are in the greatest need of protection by the state. This protection is only guaranteed or justiciable if it is enshrined in the Supreme law of the country, the Constitution.

The negative attitudes of police officers towards female suspects also contribute to the challenges faced by these detainees as they do not respond to their needs. They also implement the law improperly and so discriminate against sex workers, gays and lesbians. The ill treatment of female suspects by officers exacerbates the already existing problems caused by the appalling structural conditions of police cells which are not suitable for human habitation. It is important that all police officers undergo human rights training to ensure that they respect and uphold human rights as provided by section 219 of the Constitution.

6.2 Recommendations

There is a need to take urgent action in order to address issues that have been raised above. Below are my recommendations based on the findings of my research.

- There is a need for the full and proper implementation of the written laws by law enforcement agencies.
- The State should increase budget allocations to upgrade the infrastructure of police cells.
- A review of the laws is required to create and refine legislation which expressly addresses the sex and gender specific issues of women in detention.

- The ZRP should provide police training on gender and/or incorporate gender in the police training curriculum.
- The ZRP should provide continuous, comprehensive and effective human rights training for all police officers.
- There is a need to have regular and periodic visits to police cells by independent monitoring groups.
- The Government should partner and work with civil society in the mobilisation of resources.
- There is a need to review the salaries of police officers in order to minimise corruption within the organisation.
- Police officers who violate the human rights of their fellow citizens should be investigated, arrested and brought before the courts of justice and be held accountable by the same criminal justice system which they are supposed to respect and uphold in the course of their service to the public.

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Newspaper article

Newsday 22 January 2014 “Chinamasa budget hopelessly small: Parly”

Appendix 1: Letter from the police dated 24.10.2013

ZIMBABWE REPUBLIC POLICE

Official Communication
Should not be addressed to
individuals



Police General Headquarters
7th Street and Josia Chinamano
P.O.Box CY 34, Causeway
Harare, Zimbabwe


Telegrams: COMPOL : Telephone HARARE- 703631 : Fax: (263)-(04)-703631

24 October 2013

Miriam Chiba
Number 8 Webley Close
Strathaven
HARARE

**RE: APPLICATION FOR CLEARANCE AND AUTHORITY TO
CONDUCT RESEARCH IN PARTIAL FULFILLMENT OF THE
MASTERS IN WOMEN'S LAW DEGREE: SOUTH AND EASTERN
AFRICAN REGIONAL CENTRE FOR WOMEN'S LAW
[SEARCWL- UZ]**

1. We refer to your minute to the Chief Staff Officer [**Press and Public Relations**] dated 7th of October 2013.
2. Please be advised that the **Commissioner General of Police** has not approved your application for clearance and authority to interview police officers, female offenders in detention and visit police cells.
3. You are advised to book for other sources of data in your research process. May we take this opportunity to wish you the best in your studies.


(NYATHI P) Chief Superintendent
Staff Officer [**Press and Public Relations**]
to the **Commissioner General of Police**
POLICE GENERAL HEADQUARTERS