

UNIVERSITY OF ZIMBABWE



**OPERATIONALIZATION OF MALAWI'S PREVENTION OF DOMESTIC
VIOLENCE ACT:
A FOCUS ON WOMEN AND THE VICTIM SUPPORT UNIT**

By

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Abstract

This study notes that Malawi's Prevention of Domestic Violence Act, 2006 is such a positive development with regard to protecting women from physical domestic violence.

However, it emphasises that there are operationalization problems with the Police Victims Support Unit (VSU) as one agency of the Act's implementation. These problems have a negative bearing on the achievement of the Act's purpose, namely, to ensure the

State's commitment to eliminating domestic violence and providing effective legal redress and social support to victims of physical domestic violence. The implementation problems range from the State's lack of political will to deal with issues of physical domestic violence; insufficient funding of the VSU; absence of relevant structures; gender insensitivity among VSU officers and legal illiteracy, among others. All of these factors impact negatively on the quality of VSU services rendered to women victims of physical violence. Through personal interviews and focus group discussions with women victims of physical domestic violence where they shared their personal experiences, it was revealed that most women victims are not accorded the effective legal redress that the Act through the VSU tries to provide. By so doing, women victims' enjoyment of their human rights is violated. Based on the research findings, several legal and non-legal interventions are proposed to redress these shortcomings.

Declaration

I declare that this research paper, 'Operationalization of Malawi's Prevention of Domestic Violence Act: A focus on women and the Victim Support Unit' is my own work and it has not been submitted at any other high learning institution for the award of certificates or any other form of assessment.

.....

Signed: Hannah Supply

Date: 6 April, 2018

Dedication

To all the women who have at some point suffered physical domestic violence but never accessed effective legal redress or received any psycho-social support that they so much needed.

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First of all, I would like to give thanks and praise to my Father above, the Lord God Almighty, by whose power I was able to conduct this research. For keeping me in perfect health, granting me the physical strength and wisdom I needed, I am forever grateful. Glory and honour be to His Holy Name.

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List of abbreviations and acronyms

SADC	Southern Africa Development Community
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CSO	Civil society organization
FGD	Focus group discussion
GBV	Gender-based violence
GR	General Recommendation
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
MDG	Millennium Development Goal
MDHS	Malawi Demographic and Health Survey
MHRRC	Malawi Human Rights Resource Centre
MoGCDSW	Ministry of Gender, Children, Disabilities and Social Welfare
MP	Member of Parliament
NGO	Non-governmental organization
NORAD	Norwegian Agency of Development
NPA	National Plan of Action to Combat Gender-Based Violence
PDVA	Prevention of Domestic Violence Act, No. 5 of 2006
SEARCWL	Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
SMS	Short message service
UDHR	Universal Declaration of Human Rights
UN	United Nations
VSU	Victim Support Unit
VSU Guidelines	Guidelines for the Support and Care of Victims of Gender Based Violence, HIV/AIDS Related Abuses and other Human Rights Violations (2010)
WILSA	Women in Law in Southern Africa
WLA	(Malawi) Women Lawyers Association

List of regional and international human rights instruments

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in
Africa (Maputo Protocol)

Southern Africa Development Community Protocol on Gender and Development
Addendum to the SADC Declaration

Universal Declaration of Human Rights (UDHR)

List of statutes

Malawi Constitution, 1994

Malawi Prevention of Domestic Violence Act, No. 5 of 2006

List of policies

National Gender Policy (2015)

National Strategy to Combat Gender-Based Violence (2000)

National Plan of Action to Combat Gender-Based Violence (NPA)

List of figures

Figure 1: Interactive Model of Qualitative Data Analysis47

List of tables

Table 1: Showing details of the respondents and key informants interviewed43

Table of contents

Declaration.....	3
Dedication.....	4
Acknowledgements.....	5
List of abbreviations and acronyms	6
List of regional and international human rights instruments	7
List of statutes	7
List of policies.....	7
List of figures.....	8
List of tables.....	8
Table of contents.....	9
CHAPTER 1	12
1.0 INTRODUCTION	12
1.1 Background to the study	12
1.2 The birth of the Prevention of Domestic Violence Act	14
1.3 An overview of the Victim Support Unit (VSU) in relation to the Prevention of Domestic Violence Act (PDVA)	16
1.4 Problem statement	18
1.5 Purpose of the study	18
1.6 Objectives of study	19
1.7 Research assumptions.....	19
1.8 Research questions	20
1.9 Location of study	21
1.10 Outline of succeeding chapters.....	21
CHAPTER TWO	22
2.0 THE LAW, LITERATURE AND THEORETICAL FRAMEWORK.....	22
2.1 Introduction	22
2.2 Theoretical framework	22
2.2.1 <i>Existentialist feminist theory</i>	22
2.2.2 <i>Cultural or radical feminism</i>	23
2.2.3 <i>Relational feminism</i>	25
2.3 The legal framework for the protection of women against domestic violence.....	26

2.3.1	<i>International legal framework</i>	26
2.3.2	<i>National legal and policy framework</i>	28
2.3.2.1	<i>An overview of the Prevention of Domestic Violence Act</i>	31
2.3.3	<i>Other literature reviewed</i>	32
2.4	The effectiveness of a law	35
2.5	Conclusion.....	36
CHAPTER THREE		37
3.0	METHODOLOGICAL FRAMEWORK.....	37
3.1	Introduction	37
3.2	Research design	37
3.3	Methodologies	38
3.3.1	<i>Women’s law approach</i>	38
3.3.2	<i>Grounded approach theory</i>	38
3.3.3	<i>Actors and structures analysis</i>	39
3.3.4	<i>Human rights approach</i>	40
3.4	Target population.....	41
3.5	Sampling techniques.....	41
3.6	Sample size	42
3.7	Data collection methods	43
3.8	Emerging themes	44
3.9	Data collection tool.....	44
3.10	Data collection procedure	45
3.11	Data validity and reliability	45
3.12	Data analysis.....	46
3.13	Ethical Considerations	48
3.13.1	<i>Confidentiality</i>	48
3.13.2	<i>Informed consent</i>	48
3.13.3	<i>Voluntary participation</i>	49
3.14	Conclusion.....	49
CHAPTER FOUR.....		50
4.0	THE VICTIM SUPPORT UNIT’S OPERATIONALIZATION OF THE PREVENTION OF DOMESTIC VIOLENCE ACT.....	50
4.1	Introduction	50

4.2	Procedure for assisting women victims of physical domestic violence.....	50
4.3	Factors affecting how Victim Support Units discharge their duties and obligations	51
4.3.1	<i>State’s lack of political will</i>	51
4.3.2	<i>Inadequate funding for Victim Support Unit’s operations</i>	52
4.3.3	<i>Absence of shelters and tailor-made Victim Support Units</i>	53
4.3.4	<i>Inadequate training of VSU officers</i>	54
4.3.5	<i>VSU Officers’ lack of full appreciation of their mandate</i>	56
4.3.6	<i>Individual personalities of VSU Officers</i>	59
4.3.7	<i>Gender insensitivity</i>	60
4.4	Conclusion.....	60
CHAPTER FIVE		62
5.0	THE LIVED REALITIES OF WOMEN VICTIMS OF PHYSICAL DOMESTIC VIOLENCE AND THE VICTIM SUPPORT UNIT.....	62
5.1	Introduction	62
5.2	A woman victim of physical domestic violence at the Victim Support Unit	62
5.3	The decision whether or not to report physical domestic violence to the VSU.....	64
5.3.1	<i>Economic dependence</i>	64
5.3.2	<i>Combined social factors</i>	65
5.3.3	<i>Inadequate legal knowledge</i>	66
5.4	Satisfaction with the Victim Support Unit’s services	67
5.4.1	<i>Reception</i>	68
5.4.2	<i>Privacy</i>	68
5.4.3	<i>Effective legal remedy</i>	70
5.5	Conclusion.....	72
CHAPTER SIX.....		73
6.0	AFTER ALL IS SAID AND DONE, THEN WHAT?	73
6.1	Introduction	73
6.2	Discussion.....	73
6.3	Moving forward.....	74
6.3.1	<i>Legal interventions</i>	74
6.3.2	<i>Non-legal interventions</i>	75
Bibliography		77

CHAPTER 1

1.0 INTRODUCTION

1.1 Background to the study

*'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...'*¹

It was not until the 19th century that the human rights discourse took root in the world, being evidenced by the Universal Declaration of Human Rights (UDHR), despite the fact that every human being is born with these rights.² With respect to women however, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³ took an important place in bringing women who constitute more than half of the world's human population into the focus of human rights concerns. The spirit of CEDAW is rooted in one of the goals of the United Nations (UN) namely: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. However, it was not until 1992 that the CEDAW Committee adopted General Recommendation (GR) No. 19 to specifically tackle the issue of violence against women.

Globally, the most common form of violence experienced by women is physical violence inflicted by an intimate partner.⁴ In the world at large, studies show that at least one in three women have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives.⁵ Despite being a problem world-wide,⁶ it is only relatively recently, as discussed above, that violence against women has been recognized as a serious violation of human rights and been accorded significant attention.

¹ First statement of the Preamble to the UDHR.

² United States Declaration of Independence, 1776.

³ Adopted by the UN on 18 December, 1979 and entered into force on 3 September, 1981.

⁴ UNITE to End Violence Against Women Fact Sheet.

⁵ World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council (2013). [*Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*](#), p.2.

⁶ World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council (2013). [*Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*](#), p.2.

In Malawi, various local newspapers and media houses reported a lot of incidents of a woman either having been severely battered or in some cases been killed, by an intimate partner. For instance Nyasa Times recorded an incident where a husband assaulted his wife with a *panga* (knife) because she refused him sex;⁷ in Lilongwe, a couple ended up being hospitalized at Kamuzu Central Hospital after the man allegedly chopped off his wife's hands following a quarrel, thereby provoked the community's wrath who beat him up for the act;⁸ in Kasungu, another of Malawi's districts, a 40 year-old man allegedly killed his wife over an explicit short message service (SMS) found on the wife's cellular phone from an unknown lover.⁹ The Nation newspaper had similar accounts and in addition, recorded the scalding of a woman with hot porridge by her brother-in-law after the victim tried to protect her sister whom he was assaulting.¹⁰

This trend of events sparked renewed interest by Malawi's Women Lawyers Association (WLA). Usually when these incidents would happen, an account would be given in the nation's news and the WLA would discuss possible action that the organization could take to intervene and fight for the plight of their fellow women. For instance in September 2017, the WLA organized a march protesting against recent domestic violence incidents in which 7 women were either killed or disfigured by their partners. Some of the incidents that sparked these protests (which took place in all regions of the country) included the death of a young mother who was killed by her husband in southern Malawi for refusing to open the door for him when he returned from a night of drinking; and deep cuts on the face a police officer's wife in Lilongwe, who was beaten by her husband because he suspected her of dating another man. In addition to these incidents, there was also the tragic death of Miriam Siula, a 30 year old woman from Lilongwe, whose ex-boyfriend stabbed her with a knife three times in the chest and stomach while her helpless mother watched, and all because she decided to end their relationship.¹¹ In addition to such protests, the WLA also took it upon itself to render

⁷ <https://www.nyasatimes.com/husband-who-stabbed-wife-for-refusing-sex-is-jailed/> accessed on 27 March, 2018.

⁸ <https://www.nyasatimes.com/lilongwe-man-chops-wifes-hands-gets-vigilante-justice/> accessed on 27 March, 2018.

⁹ <https://www.nyasatimes.com/malawi-man-strangles-wife-to-death-over-sms/> accessed on 27 March, 2018.

¹⁰ <http://mwnation.com/man-scalds-law-porridge/> accessed on 27 March, 2018.

¹¹ <https://www.voanews.com/a/gender-based-violence-spurs-protest-malawi/4029408.html> accessed on 27 March, 2018.

free legal services to women victims of domestic violence. The services provided generally include legal representation, litigation and referrals.¹²

Domestic violence against women takes various forms, such as physical, emotional/psychological, economic, and sexual violence. However, this study focused on physical domestic violence primarily due to one reason, namely, its prevalence. As far as the statistics are concerned, more women are subjected to physical domestic violence. In a study conducted on the patterns of intimate partner violence, a study of female victims in Malawi showed that the majority or 20% of the sample studied suffered physical domestic violence.¹³ The Malawi Demographic and Health Survey (MDHS), a baseline survey conducted in 2004, indicated that 13% of ever-married women reported having ever experienced emotional violence, 20% experienced physical violence and 13% experienced sexual violence. About one-third of ever-married women (30 percent) experience at least one of the three forms of violence, while 4% experience all three forms of violence.¹⁴ This violence is mostly perpetrated by men as husbands or boyfriends.¹⁵ The forms of physical violence as revealed by the survey, ranged from slapping and twisting (16%), forced intercourse of marital rape (13%), punching (8%), pushing, shaking or having something thrown (7%), being kicked or dragged (5%).¹⁶ Statistical studies further conducted reveal an increase in the occurrence of domestic violence cases generally; from a record of 8,861 in 2006 to 15,213 in 2014 (Chipao, 2017).

1.2 The birth of the Prevention of Domestic Violence Act

As evidenced by the MDHS of 2004, prior to the enactment of the Prevention of Domestic Violence Act, No. 5 of 2006, domestic violence, in all its forms was prevailing in Malawi. There had been discussions about the need to take further action in order to help the situation but for years nothing was done and women continued to suffer, without any form of help. After being beaten in the home, in some cases women would report the matter to police, seeking help but no help would be offered. The police did not treat such cases as criminal

¹² <https://www.voanews.com/a/gender-based-violence-spurs-protest-malawi/4029408.html> accessed on 27 March, 2018.

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3591730/> accessed on 27 March, 2018.

¹⁴ The Malawi Demographic and Health Survey (2004: 272-273).

¹⁵ Violence against Children and Young Women in Malawi: Findings from a National Survey, 2013.

¹⁶ NGP (2015: 14).

cases. Instead, they would send the victims back home, asking them to try and resolve the matter within the family.

Specifically in the year 2005, Oxfam's Malawi programme together with its partners launched a campaign to eliminate gender-based violence (GBV) which led to the passing of the Prevention of Domestic Violence Bill in Parliament in April 2006. Prior to this move however, in 2002, the Malawi chapter of Women in Law in Southern Africa (WILSA) had been leading some work on domestic violence with the goal of developing a Bill against domestic violence.¹⁷ The Bill was drafted but the process stagnated when it got into government offices. Three years down the line, as the year 2005 drew towards an end, the media started reporting incidents of violence from across the country. Between the months of January and March 2006, the Daily Times and The Nation newspapers reported slightly over 80 cases, ranging from wife killing, wife battering, and grievous bodily harm to rape. One of the accounts of physical domestic violence that triggered such reactions was that of a woman, from northern Malawi, who had her hands chopped off by her husband over a quarrel that they had had.¹⁸

After two weeks of such disheartening news reports, Oxfam resolved to put out a press statement that condemned the violence and called on key leaders (the Government, Judiciary, Police, Chiefs, and Church leaders) to take action. The statement struck a chord, the initiative was commended, and some groups offered to be part of a solution to the problem. The most striking response was that of the Malawi Police in Blantyre who arrived at Oxfam's offices in a van mounted with loudspeakers, broadcasting messages against gender-based violence. Within a month of its press release, Oxfam took further steps. With the Malawi Police, it mounted public campaigns in over half the districts in Malawi (about 13) to disseminate the current legal provisions against GBV, and the existence of Victim Support Units (VSUs) which were launched in the year 2001. Oxfam worked with media partners to hold radio and television debates with different stakeholders on all the radio stations in Malawi. Public

¹⁷ Seizing the Moment: A Successful Campaign on Domestic Violence in Malawi *June 23, 2009* <https://oxfamblogs.org/fp2p/seizing-the-moment-a-successful-campaign-on-domestic-violence-in-malawi/> accessed on 27 March, 2018.

¹⁸ Seizing the Moment: A Successful Campaign on Domestic Violence in Malawi *June 23, 2009* <https://oxfamblogs.org/fp2p/seizing-the-moment-a-successful-campaign-on-domestic-violence-in-malawi/> accessed on 27 March, 2018.

reaction was mixed, but one thing was clear – the silence on domestic violence against women and children had just been broken.¹⁹

With public opinion now well mobilized, Oxfam staff and the Ministry of Gender spotted an opportunity to reintroduce the abandoned Prevention of Domestic Violence Bill. Members of Parliament (MPs) were the primary targets of all these combined efforts. MPs were aware of the issues, but most of them held traditional views that condoned domestic violence. The general consensus was that MPs were more likely to listen if approached by the Ministry of Gender rather than a civil society organization. MPs also respect chiefs, so a well-connected non-governmental organization (NGO) volunteered to lobby the chiefs to attend Parliament on the day the Bill was to be tabled.²⁰

The Minister of Gender, then a woman, personally lobbied alongside the President to garner support from cabinet colleagues, and arranged a meeting with the Leader of the Opposition. Activities included working dinners with MPs, individual lobbying of MPs during the sitting of parliament, the mobilization of chiefs, translating briefs on the Bill into *Chichewa* (the local dialect) and public campaigns through faith-based groups, media, women’s rights NGOs as well as women lawyers. The Ministry together with Oxfam staff went ahead and developed technical notes and lobby materials on GBV to support MPs in their debates for the Bill. The Malawi Police even produced fliers in support of the Bill that they took upon themselves to circulate among parliamentarians. Following a very difficult debate in parliament, with opponents that accused the Bill’s supporters of attacking Malawi’s culture, the Bill was passed into law, with a majority of only three votes.²¹

1.3 An overview of the Victim Support Unit (VSU) in relation to the Prevention of Domestic Violence Act (PDVA)

Victim Support Units (VSUs) form a critical part of community policing initiatives of the Malawi Police Service. They were introduced in 2001 (well before the Act itself) with the

¹⁹ Seizing the Moment: A Successful Campaign on Domestic Violence in Malawi *June 23, 2009* <https://oxfamblogs.org/fp2p/seizing-the-moment-a-successful-campaign-on-domestic-violence-in-malawi/> accessed on 27 March, 2018.

²⁰ Seizing the Moment: A Successful Campaign on Domestic Violence in Malawi *June 23, 2009* <https://oxfamblogs.org/fp2p/seizing-the-moment-a-successful-campaign-on-domestic-violence-in-malawi/> accessed on 27 March, 2018.

²¹ Seizing the Moment: A Successful Campaign on Domestic Violence in Malawi *June 23, 2009* <https://oxfamblogs.org/fp2p/seizing-the-moment-a-successful-campaign-on-domestic-violence-in-malawi/> accessed on 27 March, 2018.

aim of protecting, promoting and upholding the rights of victims/survivors of all forms of criminal and civil activities, especially those of vulnerable women and children and they operate under the Guidelines for the Support and Care of Victims of Gender Based Violence, HIV/AIDS Related Abuses and other Human Rights Violations, 2010 (VSU Guidelines). VSUs were also introduced in order to offer much needed assistance to victims of various crimes. As police previously focused their efforts on offenders, VSUs sought to shift and focus on victims also who had been sorely ignored and had suffered greater harm in the process (VSU Guidelines, 2010).

The Prevention of Domestic Violence Act, No. 5 of 2006 (PDVA) makes no specific mention of the VSU as an implementing agency. However in Part X, the Act confers powers and duties on the police to handle any form of domestic violence case and assist any victim of domestic violence. Given the prior nature of the police, as described above, the VSU is that section of the police that has the mandate conferred by the Act. Under the Act, the duty to respond to physical domestic violence is given to every police officer (section 34(1)). The section further stipulates that it shall be the duty of every police officer responding to a domestic violence complaint to complete a domestic violence report which shall form part of a national domestic violence register. The police officers are also mandated to enter into premises without a warrant where the situation deems it necessary to protect life or property (section 36).

In addition, under section 4, police officers also have the mandate to assist a victim in obtaining an order under the PDVA by personally making an application for the order. In cases where a court issues any of the orders provided for in the Act, the police are given the power to arrest without a warrant the person who may be in breach. This power is to be exercised with caution, i.e., only if an arrest is reasonably necessary to protect the prescribed person (section 38). In the event that a case of domestic violence proceeds to court and the court refrains from issuing any of the orders or punishments provided for under the Act, having considered the relevant factors (i.e., the preservation of the family unit), the court may require the defendant or respondent to enter a bond of good behaviour. Where such bond has been breached, the police are to furnish a report and file it with the court to forfeit the bond.

Further, according to section 43, as service providers, police officers are to assist a victim of domestic violence as may be required including: arranging for the victim of domestic

violence to find suitable temporary shelter and to obtain medical treatment, if required; ensuring the victim's access to information about the range of service providers and the kind of support that may be provided by any of the service providers; and informing the victim of domestic violence of their right to available legal remedies, including the right to apply for an order under the Act.

1.4 Problem statement

Having recognized physical domestic violence as the serious problem that it is, and State obligations created at the international level to combat it, the State has over the years taken a number of actions to curb the pandemic. The State developed a National Strategy to combat GBV and a National Gender Policy which is periodically reviewed every 5 years. Specifically, the state passed a number of pieces of legislation, the most important of which regarding domestic violence is the Prevention of Domestic Violence Act (PDVA), in order to protect women within the domestic sphere. The adoption of the PDVA was considered such an important milestone, given the difficulties that surrounded its adoption and looking at the situation in which most women lived and the dangers to which they were exposed in the sanctuary of their own homes. With the adoption of the PDVA, it was hoped that all forms of domestic violence would be dealt with sufficiently, and that women would be better protected. However, contrary to the anticipated results after the adoption of the PDVA, as the reports and statistical studies have shown, physical domestic violence against women actually seems to have escalated despite the PDVA intervention.

The PDVA lists a number of implementing agencies, i.e., the court, social welfare, the Ministry of Gender, and the police. An investigation into these agencies and how they actually operationalize the PDVA should help to explain why the Act has so far not achieved its purpose or worked to bring about the much desired results. The police, particularly the VSU, being the most likely entry point for the woman victim of physical domestic violence into the formal justice system, offered a good place to start the investigation.

1.5 Purpose of the study

The purpose of this study was to investigate the factors that affect the police VSU's operationalization of the PDVA. The study further sought to investigate what could be done to improve the current situation.

1.6 Objectives of study

To achieve its purpose, the study focused on the following specific objectives:

Assess how effectively the PDVA is being implemented by the Victim Support Unit in offering effective legal remedies and psycho-social support to women victims of physical domestic violence.

- (i) Examine the procedure laid down by the law as to how women victims of physical domestic violence are to be assisted at the VSU.
- (ii) Investigate how women victims of physical domestic violence are actually assisted at the VSU.
- (iii) Investigate some of the challenges faced by the VSU as it carries out its mandate when assisting women victims of physical domestic violence.
- (iv) Recommend strategies for improving the situation for women by ensuring a possible reduction in the number of occurrences of physical domestic violence.

1.7 Research assumptions

The following are the assumptions that guided this study.

- (1) The PDVA is rendered less effective in curbing physical domestic violence against women due to problems of implementation by agencies of implementation, such as the VSU.
- (2) Women are not given satisfactory treatment at VSU when they report incidents of physical domestic violence.
- (3) The law lays down complex bureaucratic processes to be followed by women victims of physical domestic violence in order to get help, keeping women away from utilizing the law in place.

- (4) Stereotypical society values entrenched in VSU officers affect the manner in which they render assistance to women victims of physical domestic violence, affecting the Act's effectiveness.
- (5) There are factors that affect how the VSU operationalizes the PDVA.
- (6) There is a need for legal and non-legal interventions to improve the situation and ensure a reduction in incidents of physical domestic violence against women.

1.8 Research questions

The study focused on responding to the following research questions:

- (1) Is the PDVA rendered less effective in curbing physical domestic violence against women due to problems of implementation by agencies of implementation, such as the VSU?
- (2) Are women not given satisfactory treatment at VSU when they report incidents of physical domestic violence?
- (3) Does the law lay down complex bureaucratic processes to be followed by women victims of physical domestic violence in order to get help, thereby keeping women away from utilizing the law in place?
- (4) Do stereotypical society values entrenched in VSU officers affect the manner in which they render assistance to women victims of physical domestic violence, affecting the Act's effectiveness?
- (5) Are there factors that affect how the VSU operationalizes the PDVA?
- (6) Is there a need for legal and non-legal interventions to improve the situation and ensure a reduction in incidents of physical domestic violence against women?

1.9 Location of study

The study was conducted entirely in the city of Lilongwe. This was primarily because of its proximity and hence very cost-effective. It made it possible to schedule or reschedule data collection appointments without too much difficulty with regard to distance travelled to various sources of information. The second reason was that the city is very large hence enabling easy location of and access to all the categories of sampled respondents. It is where, for instance, most headquarters of various institutions are situated, i.e., the Malawi Law Commission, the Malawi Human Rights Resource Centre, the Malawi Police Service, among others. The study was conducted in urban and peri-urban areas which assisted in data triangulation.

1.10 Outline of succeeding chapters

The study has six chapters, this being the first chapter, introducing the study. The second chapter gives the conceptual and theoretical framework within which the study was undertaken. A discussion of the methodologies employed in the study, the data collection methods and their significance in informing the study as well as data analysis forms chapter three. The fourth and fifth chapters analyze the key findings of the study, trailing the research objectives as well as the research questions to achieve the purpose of the study. Lastly, chapter six makes a conclusion of the study, outlining the possible strategies that may be employed to ensure that the PDVA is rendered more effective in achieving its set purpose.

CHAPTER TWO

2.0 THE LAW, LITERATURE AND THEORETICAL FRAMEWORK

2.1 Introduction

This chapter discusses the relevant national and international legal framework for the protection of women against domestic violence. It will further expound on the legal theories that helped to inform the study.

2.2 Theoretical framework

Under discussion are strands from three feminist theories, namely, radical feminism, existentialist feminism and relational feminism.

2.2.1 Existentialist feminist theory

Unlike other feminist theories, the existentialist theory goes beyond problematizing culture, customs, religion, or patriarchy. In a publication, *The Second Sex*, by Simone De Beauvoir, one of the major proponents of the existentialist feminist theory argues that women are oppressed and that the root of such oppression lies in the fact that man has declared himself ‘the self’ and woman as ‘the other’ (De Beauvoir, 1949). From time immemorial, women in the world’s different communities have internalized the categorization that men are the essential in society and their own positioning in society inessential when compared to men’s position. This proposition resonates with Barnett’s argument which says that man is the measure against which all else is judged (Barnett, 1998).

This existentialist feminist thought is essential to the study because, as the study will show, it is this categorization, this hierarchy that has been created, rating women as second-class citizens that is part of the root causes of the problem of physical violence at the hand of their intimate partners in the domestic space. Again, this strand helps with understanding why the response given to women’s issues like physical domestic violence receive attention that leaves a lot to be desired, by individuals in official positions, as well as the State itself, which is vested with the obligation to protect all its citizens, males and females alike. Once we start talking about the self and the other, what we are stating is inequality, that men and women are not equal as human beings and therefore cannot enjoy their human rights equally.

It is the inequality that originates from this hierarchy that works as a backbone to the problem of physical abuse of women – a behaviour that is now widely accepted to be highly discriminative (Millet, 1970). As such, it needs to be dealt with accordingly, if the male and the female are to enjoy their various rights on an equal basis. As the Preamble to the Universal Declaration of Human Rights (UDHR) puts it clearly, men and women are to be treated equally as they are all of equal inherent worth as members of the human family.

2.2.2 Cultural or radical feminism

Radical feminism holds the view that gender and gender inequality are nothing natural (Chambers, 2005), but overwhelmingly socially constructed (MacKinnon, 1989). Radical feminism's theoretical watchword therefore is patriarchy, or men's pervasive oppression and exploitation of women, which can be found wherever women and men are in contact with each other, in private as well as in public. Radical feminism argues that patriarchy is very hard to eradicate because its root -- the belief that women are different and inferior -- is deeply embedded in most men's consciousness (Lobber: 16). The theory further advances that patriarchal control is seen as being particularly evident in culture, religion, and the control of women's sexuality (Bentzon *et al.*, 1998).

Radical feminism claims that most men have the potential to use physical violence against women, including rape and murder. They point to the commonness of date rape and wife beating, of murders of ex-wives and former girlfriends. The threat of violence and rape, radical feminism theorizes, is the way patriarchy controls all women (Lobber: 17) It is the theory's stance that men assert themselves supported by customs or laws denied to women, and that men's possession of physical strength is equated to power over others (Jaggar, 1984). For a radical feminist therefore, the task is to unravel women's subordination and lack of power (Bentzon *et al.*, 1998). In challenging society's basic structure, radical feminism strands identify a need to revolutionise its existing organization (Jaggar, 1983), while at the same time, call for a redefinition of social relations and condemn or overthrow the present (Andersen, 1983).

True source of inequality lies not in the failure of society and law to accommodate women, but in that the law and society are deeply gendered in all their aspects and that the relationship between the sexes is determined by the dominant position assumed by men, resulting in female subordination (Barnett, 1998). Woman is seen as a social construct in

relation and inferior to man, the superior who from infancy is trained to assume an unquestioned supremacy (De Beauvoir, 1997).

Essentially the arguments put forward are that women are not as autonomous as men in society. Unlike men, women live in a world with two sovereigns: the State and men - and this is true not just some of the time but all of the time. A legal regime which ignores this central reality will simply perpetuate the fundamental, underlying inequality (West, 1987: 181).

From this strand of feminism, it can be seen that patriarchy, which exalts men in society poses huge problems for women. The fact that men are regarded as more superior causes them to oppress women in all kinds of ways. It is within that realm that they exert physical force in the domestic sphere - seeing that physical power is equated to power over others. Radical feminism therefore speaks directly to the subject of physical abuse of women by men in the domestic sphere - physical violence is at the heart of patriarchy. This is supported by statistics in this study which reveal that the majority of the population that suffers physical domestic violence is women, and the majority of its perpetrators are men.

Again the inferiority of women which patriarchy entrenches goes a long way to explain how women's issues are handled by society as well as the State. This is true of the PDVA which, before it was passed into legislation, was met with so much resistance as it was felt that there was no need to have such a law.²² Fortunately, in spite of such vehement opposition, it made it into the statute books. This study advances the view, however, that the prevailing attitude of that that time (i.e., indifference to women's problems) still subsists among most people today, including the policy makers, which is something that can help explain why the Act has received 'meagre' support for its effective operationalization. The parliamentarians who opposed the passing of the Bill then are the same ones who are still in power today which therefore does not make it surprising that the Act is not given much State support for its operationalization.

²² Seizing the Moment: A Successful Campaign on Domestic Violence in Malawi *June 23, 2009* <https://oxfamblogs.org/fp2p/seizing-the-moment-a-successful-campaign-on-domestic-violence-in-malawi/> accessed on 27 March, 2018. It also came from one of the key informants whose NGO was very instrumental in lobbying for the Act. She further recalled an article published in the Times Newspaper carrying comments from a member of the Malawi Law Society Executive Committee, who remarked that the Bill was stupid. Such views shared brought confusion because already, when the women who had been to the Beijing Platform meeting returned and organized an initiative they called 'Bringing Beijing to Malawi', they were ordered to disband immediately as they were said to want to overthrow the government.

Further to the above, the radical feminist strand is also essential to this study as its tenets inform some of the recommendations that have been proposed in this paper. They include, for instance, the need for the deconstruction of society's current structure.

2.2.3 Relational feminism

Contrary to radical feminists, relational feminists celebrate, rather than deny, sexual difference. Prominently associated with this view is Carol Gilligan, who observed that the historical exclusion of women's perspectives has impoverished prevailing descriptions of moral development. She and others assert that there is a uniquely feminine approach to moral problem solving that embodies an 'ethic of care,' based on relationship and responsibility, and that stands in stark contrast to what she describes as a typically masculine approach that emphasizes the logic of abstract rights and justice.

Under the gendered version of this dichotomy, women tend to value intimacy and connection and to define themselves in terms of their relationships to others; men tend to value separation and autonomy and to define themselves in terms of their personal achievements. For these relational feminists, women's disadvantage results not from the recognition of difference but from a male-constructed hierarchical ordering of values that places feminine attributes in an inferior position. In their view, denial of difference in our pervasively gendered culture inevitably would result in the further devaluation of women's experience (Judges, 1995: 1325-1326).

Using this feminist thought in the study helps in understanding some of the decisions that some women make when encountered with physical domestic violence, particularly at the hands of their intimate partner. Being as relational as women are, there are a number of factors that they take into account based on the ties that they have with their families, their children, as well as their communities at large. As the study shows, part of the explanation as to whether the law is effective or not has to do with the actions and inactions of the women themselves, the interlocking oppressions that they deal with on a daily basis. Relational feminism therefore is a theory that helps to explain in part why women fail to report and suffer in silence, or fail to go through with the criminal/civil procedures after having reported the matter to the proper authorities.

2.3 The legal framework for the protection of women against domestic violence

2.3.1 International legal framework

There are a number of international human rights instruments that have dealt with the issue of domestic violence in all its forms since the phenomenon came to be accepted as a human rights issue.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) offers a good starting point in this area. This is not only because the Convention is a women's Bill of Rights, but especially because it was the first international instrument that tackled the issue of violence against women. Article 1 of CEDAW classifies physical violence against women as a form of discrimination.

The categorization of physical violence against women as a form of discrimination however only came out later in CEDAW's General Recommendation (GR) No. 19 where, in its Preamble, it stated that the definition of 'discrimination' in article 1 of CEDAW includes gender-based violence - that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence (GBV) may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence (UN GR No. 19 Para 6 of the Preamble). CEDAW's definition of discrimination brings out the aspect of physical abuse (which in this study means any act or omission which causes or is intended to cause physical injury or reasonable apprehension of physical injury). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) has similarly defined discrimination and violence against women in article 1(f) and (j). Based on that premise, States parties are obliged to undertake to incorporate legislation and sanctions to that effect for its realization (article 2 of CEDAW and the Maputo Protocol).

Gender-based violence is the general term that is used to capture violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between the two genders, within the context of a specific society (Bloom: 2008). Among acts of GBV are physical, psychological harm and economic deprivation.

Although both men and women can fall victims to any form of GBV, however, because of the root causes of GBV (unequal power relations), it is women who are most susceptible to it. Domestic violence, in all its forms, is a direct form of GBV. Gender Based Violence covers domestic violence, sexual harassment in the workplace, human trafficking and sexual and emotional abuse, to name but a few examples.²³

Domestic violence means any act, criminal or civil, arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship. To further unpack the definition of domestic violence in the context of this paper, physical abuse and domestic relationship are isolated for contextualization. Physical abuse refers to any act or omission which causes or is intended to cause physical injury or reasonable apprehension of physical injury.²⁴ A domestic relationship is understood to be a relationship between persons who are family members and share a household residence or are dependent on each other socially or financially, and includes relationships where: the applicant and the respondent are husband and wife; a person has a child in common with the respondent and that person is being subjected or is likely to be subjected to domestic violence by the respondent; one is a parent and the other is his or her child or dependent; and the applicant and the respondent are or have been in a visiting relationship for a period exceeding twelve months.²⁵

Due to its direct link to GBV, some of the provisions for domestic violence are found in frameworks that provide for GBV. GR No. 19 provides further detail in dealing with the issue of domestic violence. Paragraph 24 of the Recommendation provides that gender-based violence laws against family or domestic violence should provide adequate protection to women and respect their integrity and dignity. Recommendation No. 19 further stipulates that there must be appropriate protective and support services provided to victims of physical violence.

The Recommendation also makes reference to gender-sensitive training of judicial and law enforcement officers and other public officials as being very essential for the effective implementation of the Convention. Under the Recommendation, effective complaints

²³ <http://www.sadc.int/issues/gender/gender-based-violence/> accessed on 30 March, 2018.

²⁴ Section 2 of the Prevention of Domestic Violence Act, No. 5 of 2006 (PDVA).

²⁵ Section 2 of the Prevention of Domestic Violence Act, No. 5 of 2006 (PDVA).

mechanisms and remedies, including compensation should be provided. There must be support services established for victims of family violence including refuges, specially trained health workers, rehabilitation and counselling (paragraphs I and K) (article 4 of the Maputo Protocol).

The Maputo Protocol also urges States to integrate a gender perspective in their policy decisions, development plans and activities in all other spheres of life (article 2(1)(c)). Article 2(2) calls for the modification of social and cultural patterns and other traditional practices that are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women. Furthermore, article 26 of the Protocol specifically provides that States are to provide adequate funding in their budgetary allocations for the implementation and monitoring of actions aimed at preventing and eradicating violence against women and achieving other rights therein recognized.

The SADC Protocol on Gender and Development provides that perpetrators of GBV including domestic violence are to be tried by a court of competent jurisdiction.²⁶ It further stipulates that states parties are to ensure that cases of GBV are conducted in a gender sensitive environment, and establish special counselling services, legal and police units to provide dedicated and sensitive services to survivors of GBV.²⁷ In addition, States parties are to introduce, promote, and provide gender education and training to service providers involved in GBV including the police and community sensitization programs regarding the available services and resources for survivors of GBV.²⁸ Article 24 of the Addendum to the SADC Declaration stipulates that states should allocate the necessary resources to ensure the implementation and sustainability of the above programs.

2.3.2 National legal and policy framework

The 1994 Republican Constitution of Malawi duly provides for the right to equality and non-discrimination. Section 20 of the Constitution prohibits discrimination of persons in any form, and all persons are guaranteed equal and effective protection against discrimination on grounds of sex among others. Section 24 is specifically on the rights of women and in it provision is made to invalidate any law discriminating against women on the basis of gender

²⁶ Article 20(1)(b) of the SADC Protocol on Gender and Development.

²⁷ SADC Protocol on Gender and Development, sub-articles 6 and 7.

²⁸ Article 24 of the SADC Protocol on Gender and Development.

or marital status and for legislation to be passed to eliminate customs and practices that discriminate against women particularly practices such as sexual abuse, harassment and violence.

As was emphasised in chapter one of this study, there are a number of studies that have been carried out in relation to GBV and domestic violence (Mellish *et al.*, 2015). Domestic violence, particularly that by intimate partners, is the most studied form of GBV within the country. Because the studies in this area can take a number of perspectives, the better part of the work has been from the scientific perspective. Of the other studies conducted from other perspectives, i.e., sociological perspective, focus has been on a range of social aspects and not so much evaluations of the GBV interventions, despite the fact that the country is has a number of interventions on domestic violence and GBV generally.

Most of the studies covering forms of domestic violence (compiled in Mellish *et al.*, 2015 – A Literature Review to Inform National Response) revolve around the various forms of GBV that exist; their prevalence; the trend of their occurrences; what is known about GBV among specific populations or settings; factors associated with GBV; what interventions have been undertaken to address GBV and how effective they have been; and the key government documents that exist on GBV and the information they contain. In most cases, the studies were conducted to assess the GBV situation prior to the implementation of an intervention to address GBV or related issues. The information gathered from such studies would then be used to design an intervention or to establish a baseline against which its effects could be measured.

For instance, a National Strategy to Combat Gender-Based Violence was adopted in the year 2000 to run for about five years. In that Strategy, domestic violence was lumped together with GBV. For instance on page 15 the Strategy states the following:

‘All of the four main types of GBV (physical, sexual, emotional or psychosocial and economic) are prevalent in Malawi in varying degrees. Incidence of physical violence, which includes, but is not limited to beating, hitting or battering and threats of physical violence, is quite high in Malawi. According to the Gender Based Violence Study, the most common form of physical violence experienced among both females and males in Malawi was beating, hitting, or battering. Experience of this form of violence was twice as high among females as compared to males (24.5% versus 12.4%).’

The studies that the quotation above makes reference to include studies conducted on domestic violence or violence by intimate partners.²⁹

The Strategy was reviewed, and succeeded by other strategies over the years. Further in 2104, the Ministry of Gender, Children, Disabilities and Social Welfare (MoGCDSW) commissioned a review of the National Response to Combat GBV of 2008–2013 (Centre for Development Management, 2014). The review’s objective was to evaluate the progress and results achieved during the strategy’s implementation and make recommendations for the new strategy.

The review looked at results achieved during implementation; the extent of coordination and partnership; the effectiveness and sustainability of the plan; the effectiveness of approaches used in the national response and the extent of the plan’s linkage with other sectoral policies. Currently, the State has a National Plan of Action to Combat Gender-Based Violence (NPA) which will expire in 2020. The Plan is a statement of Government priority actions to address gender-based violence in Malawi in the five-year period. The NPA draws on experiences from previous national responses on GBV, learning from gaps and sustaining best practices. Largely the studies have revolved around this area.

In the literature review conducted to inform the national response (Mellish *et al.*, 2015), it was discovered that there was a critical gap in all the studies that had thus far been conducted, namely, the absence of studies that evaluate GBV policy and program interventions. As with the Strategy, the literature review combined various forms of GBV including all forms of domestic violence that women suffer at the hands of their intimate partners,³⁰ and the Baseline Study that was conducted by National Statistics Office.³¹ Evidence on evaluation of policies is scant for what does and doesn’t work regarding changes to harmful attitudes about GBV, stopping the different forms of violence, and getting survivors the help they want and

²⁹ For example, the Strategy cites UN Women, 2008, Fact Sheet: How widespread is violence against women? Published by the United Nations Department of Public Information. DPI/2498; World Report on Violence and Health. Geneva, World Health Organization, 2002; NSO, UNFPA and UN Women, 2013, Gender Based Violence Survey: A baseline report of 17 districts in Malawi; and Pelsner, E., L. Gondwe, C. Mayamba, T. Mhango, W. Phiri *et al.*, 2005. Intimate Partner Violence: Results from a National Gender-Based Violence Study in Malawi. Crime & Justice Statistical Division, National Statistical Office. Pretoria, South Africa: Institute for Security Studies.

³⁰ A study by Pelsner *et al.*, 2005.

³¹ Malawi Demographic and Health Survey, 2004 and 2010.

need. But such information is very critical in helping to ensure that national efforts to address GBV are ultimately effective (Mellish *et al.*, 2015).

2.3.2.1 An overview of the Prevention of Domestic Violence Act

In 2006 the state adopted the PDVA (or the Act) to address violence within a domestic relationship. The purpose of the PDVA is to ensure the State's commitment to eliminate GBV occurring in a domestic relationship and to provide for effective legal remedies and other social services to persons affected by domestic violence (section 3 of the Act). The definition of a domestic relationship in terms of the Act has already been given earlier in this chapter.

The Act criminalizes all acts of domestic violence under section 2. Presently, the Act restricts domestic violence to those acts that have a criminal element, meaning that only those acts with a criminal element are the ones covered by the Act when it speaks about acts of domestic violence.³² Under section 39, the Act further states that all existing criminal laws may be applied. As can be deduced, the Act speaks directly to the provisions of the Constitution to ensure that women enjoy their rights just as men do. The Act makes provision for several orders to ensure the protection of women in the domestic setting, and also lays down the roles to be played by its various agencies of implementation.

The scheme under the Act is meant to deal with domestic violence as a civil matter. This comes out clearly from the remedies available under the Act, the standard required to prove matters before courts of law, as well as the mode of commencement of proceedings under the Act.³³ The PDVA makes provision for various orders, i.e., protection, occupational, and tenancy orders, how they may be applied for, how they can be varied or discharged,³⁴ and who may apply for them.³⁵ The Act lays down the procedures for applications and template appendix Forms that are to be used when making application for any of the said orders.³⁶ It

³² 'Domestic violence' is defined as any criminal offence arising out of physical, sexual, emotional, or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship (section 2 of the Act). However, the technical review agreed on an amendment which essentially includes acts that are not criminal in nature like refusal to provide basic household necessities.

³³ Report of the Malawi Law Commission on the Technical Review of the Prevention of Domestic Violence Act, p. 18.

³⁴ Sections 5 to 18 of the PDVA.

³⁵ Section 4 of the PDVA.

³⁶ Sections 22 to 29 of the PDVA.

further outlines the duties and powers of various service providers like enforcement officers,³⁷ the police³⁸ as well as the courts.

Overall, the Act has eleven divisions. Division one deals with preliminary issues, the purpose of the Act and the people who may apply for orders under the Act. In the second division, there is an outline of the mode of application for protection orders and the granting of interim protection orders and protection orders. It further deals with circumstances where there are existing proceedings other than those of a protection order. The third division looks at applications for occupation orders, how they are to be granted, the effect of occupation orders and how they can be discharged or varied.

The fourth division makes provision for tenancy orders, interim tenancy orders and how they are to be granted; the effect of such orders; powers to discharge the order and the re-vesting of the tenancy in the name of the original tenant. Then the Act makes provision for the procedure relating to occupation orders and tenancy orders. In division five it goes on to provide for ancillary orders which courts can make with respect to furniture, etc. In division six, the Act deals with orders in general. Then in division seven it makes provision for proceedings in respect of applications for orders. These include the date of hearing, notice for such hearing and its service on concerned parties, and the effect of the absence of either party to the case. In division eight, the Act provides for the breach of orders made by courts. In division nine, it provides for the designation of enforcement officers, and their duties and powers. Then the Act deals with the powers and duties of police with respect to domestic violence in division 10. In the last division, there is provision for miscellaneous matters.

2.3.3 Other literature reviewed

Just as with the other GBV interventions generally, there had not been any studies conducted on the evaluation of the PDVA's performance, until very recently. In 2015, the Malawi Law Commission published a report on the technical review of the PDVA which had been under way for a few years. The work of reviewing the PDVA began after the Ministry of Gender

³⁷ Sections 31 to 33 of the PDVA.

³⁸ Sections 34 to 41 of the PDVA. In part, the sections provide for officers to assist victims, make arrests wherever necessary and to enforce the existing criminal law, etc.

and Child Development (as it then was) made a submission after noting that there were some technical problems in the implementation of the Act.³⁹

The technical review was done with the purpose of removing the technical impediments that had been observed. Because the problems revealed as posing practical problems to the effective implementation of the Act were those of a technical nature, focus was on technical aspects within the Act itself that were rendering it less effective in achieving its purpose. A good example is the recommendation to change the definition of ‘domestic violence’ which the Act had limited to criminal acts, omitting a large number of acts to which women are exposed but are not necessarily criminal in nature, i.e., refusal to provide basic household necessities. A whole section of victims had been left without assistance and remedies, but the technical review worked to rectify such problems. That being said, the review still did not evaluate the performance of the Act or its agencies of implementation.

However, after the publication of that Review there have been two studies relating to the evaluation of the domestic violence interventions. One such study was conducted in the year 2014, with its follow up in 2017. Among other things, the two studies focused on getting feedback about services offered by the VSU; gauging client expectations and reactions to services offered by the VSU; promoting accountability and meaningful involvement of communities in service delivery (Chipao, 2017). The survey was limited to men and women who had gone through the VSU for services.

Inasmuch as these works are key to mapping domestic violence, there are some fundamental distinctions between those two surveys and the present study. The first one being, the client satisfaction survey was quantitative in nature, and the present study is qualitative. Another significant difference is that the client satisfaction survey took a general approach, whereas in the present study, was conducted from a women’s perspective, being conducted with the woman and her experience as the starting and guiding principle. This distinction also speaks to the theoretical framework that the present study employed in order to analyze the issues and the information obtained from the field. As discussed in the above paragraphs, the study largely falls within the feminist legal thought, which presents a different perspective of the issues, even though some of those discussed may be similar in other respects. Further, unlike

³⁹ Malawi Law Commission, Technical Review Report on the PDVA.

the two surveys, which focused on all forms of domestic violence, i.e., economic, psychological and sexual, the present study focused on the physical form of domestic violence (like punching, pushing, being kicked, having something thrown at you, being dragged, just to name a few) and the VSU.

The client satisfaction surveys limited their participation to both men and women who had been through the VSU. In the present study however, focus was only on women who had VSU experience, as well as those who had suffered some form of physical abuse but did not make it to the VSU for assistance. This was thought essential to the study considering the fact that it was taking the women's law approach, so experiences of the woman, whether she had been through the VSU or not, would facilitate a deeper understanding as to what the VSU means to women; what keeps them away from utilizing the PDVA through the VSU; and how that may in any way be exerting a negative influence on the PDVA and achieving its purpose.

As noted earlier with the client satisfaction surveys, as the title clearly connotes, the focus was primarily on the quality of services rendered by the VSU - limiting the research base to clients, and not primarily the service providers. The present study focused on both, the clients as well as the service providers, since that would make it possible to identify not only the kinds of services rendered or not rendered by the VSU as a provider, but also collect input from the providers themselves as to why they render the kind of services they do, or better yet, fail to offer certain kinds of services that they should.

Another study was conducted in 2016. The study was on the implementation gaps of the PDVA in Malawi (Chipao, 2016). The study was conducted with the aim of identifying what gaps are there, why they exist, and how Oxfam's policy agenda -which was very crucial in adopting the Act in the first place - could be improved in order to promote better implementation. This study focused on all forms of domestic violence, and also focused on the implementation gaps in all the agencies of implementation listed in the PDVA. The study is very informative and, as was noted in the literature review, could actually be said to be first of its kind to inform the national response, since until then there had been a critical gap in studies on the evaluation of the various GBV interventions.

The major point of departure from this work is that the implementation gaps study focused on State responsibility, its general obligations on the international platform with regard to domestic violence, and how it was discharging such obligations and responsibilities. Unlike that research, the present study focuses solely on the VSU as an implementing institution of the PDVA, and how it has fared with its law-given mandate with regard to physical domestic violence.

It is hoped that the present study will add value to the existing body of knowledge in this area, and also work to bridge the critical research gap that has been noted with the earlier studies. Also, it is hoped that the study will provide insights for further areas of research and a reconsideration of efforts where they are needed in order to ensure that the PDVA achieves its ultimate purpose.

2.4 The effectiveness of a law

Any law is put in place in order to serve a certain purpose. In simpler terms, the term ‘effective’ could mean the capacity to persuade.⁴⁰ In some contexts, effectiveness (of the law) would refer to the law’s characteristics, i.e., easy to be understood, clarity in showing what the law means and how it affects citizens, being known to users, as well as clearly setting out rights and responsibilities. In this study, the understanding employed is that of the closeness of actual results achieved to meeting expectations.⁴¹

Allott⁴² further expands on the concept of effectiveness of a law and how that can be measured. Effectiveness of a law is measured by the degree of compliance. In so far as a law is preventive, i.e., designed to discourage behaviour which is disapproved of, one can see if that behaviour is indeed diminished or absent. In so far as a law is curative, i.e., operating *ex post facto* to rectify some failing or injustice or dispute, we can see how far it serves to achieve these ends. In so far as a law is facilitative, i.e., providing formal recognition, regulation and protection for an institution of the law, such as contracts or marriage.⁴³

⁴⁰ Merriam Webster’s Dictionary.

⁴¹ Black’s Law Dictionary.

⁴² Anthony Allott, The Effectiveness of Laws, 15 Val. U. L. Rev. 229 (1981) available at <https://scholar.valpo.edu/vulr/vol15/iss2/1/> accessed on 1 March, 2018.

⁴³ Anthony Allott, The Effectiveness of Laws, 15 Val. U. L. Rev. 229 (1981) available at <https://scholar.valpo.edu/vulr/vol15/iss2/1/> accessed on 1 March, 2018.

Different tools exist to measure the effectiveness of a law, i.e., public surveys. They can be used to capture people's perception of the institution and processes that uphold the rule of law, for example, responsiveness of the police, etc. Performance indicators measure progress towards a defined result. They are a tool for tracking progress in key areas of governance, the rule of law, as well as human rights. They provide a common way of measuring and presenting information that reveals whether standards are being met.⁴⁴

2.5 Conclusion

In a nutshell, this chapter has laid a foundation for the study by identifying and contextualizing the key terms in the study. It has also discussed the theories that informed the study and helped in the analysis of issues isolated. Further, it has also emphasised the regulatory framework for the protection of women against domestic violence, pointing out the obligations created on the international and regional platform and what the State has on the ground as a response to such obligations. The chapter has also looked at the key literature around the study area, noting the gap(s) and diverging from the existing body of knowledge, and building on it. The succeeding chapter will go into detail on the research methodology that was used to conduct the research.

⁴⁴ 'Measuring Effectiveness' @ www.unrol.org/article.aspx%3fartic/ accessed on 17 March, 2018.

CHAPTER THREE

3.0 METHODOLOGICAL FRAMEWORK

3.1 Introduction

This chapter discusses the research methodology that was employed. It describes the research design, the target population and sampling techniques, the data collection methods and tools, data collection procedure, data validity and reliability, data analysis as well as ethical considerations that guided the research.

3.2 Research design

The study was conducted using a qualitative research design. This study design was appropriate for three reasons. The first reason is that qualitative research methods enable researchers to investigate situations where little is known about what is going on (Gillham, 2000). Hence, the qualitative approach taken for this study facilitated the collection of in-depth information from participants through face-to-face interviews. In qualitative research, interviews are a popular and widely used means of collecting firsthand information directly from knowledgeable informants (Merriam, 1998; Burns, 1999). Secondly, the qualitative research design was appropriate for this study because the face-to-face interviews created an opportunity to explain or help clarify questions, thereby increasing the likelihood of getting the required responses. The third reason justifying the qualitative research design was that use of open-ended questions and probing gave participants the opportunity to respond to the questions in their own words, rather than forcing them to choose from fixed responses as would be the case with closed-ended questions (Stuckey, 2013). Such flexibility allowed participants to provide in-depth information on the issue being researched.

Undertaking qualitative research implies the use of small samples and the collection of data based on life histories, detailed accounts of specific life events or in-depth interviews with key informants. With qualitative research, it is less about numbers, e.g., how many are affected by a problem, and more about providing deeper insight into the problem and its issues, e.g., who is affected and how (Bentzon *et al.*, 1998).

3.3 Methodologies

3.3.1 Women's law approach

The women's law approach takes women as the starting point. It involves an exploration of the reality of women's lives and from their perspective interrogates and investigates the law (Bentzon *et al.*, 1998). The approach calls for the researcher to look at women's lived realities and situations in life as a basis for analyzing the position of women in law and in the society in which they live (Bentzon *et al.*, 1998). The purpose of the approach therefore is to engage in empirical knowledge about gender relations and local practices and procedures in a constant dialogue with theoretical generalization and concept building (Dahl, 1987).

In this study, a number of women victims of physical domestic violence were interviewed. Through in-depth personal interviews, empirical data from their experiences with the VSU was gathered. All women victims of domestic violence interviewed were different, having different experiences based on several variables, for instance, their level of education, their cultural and economic background. The women's law approach helped in discovering that economic activity or lack thereof and their knowledge of the law impacted the individual women's experience.

Upon enquiring from the women about their experience with the VSU and how helpful they found its services, I found that there were as many different experiences as there were women. Without adopting the women's law approach, such rich empirical data would not have been collected. More of what they shared will be presented in chapter 5 of this study.

3.3.2 Grounded approach theory

Grounded theory is another approach that was utilized in pursuing the study. The theory aims at engaging with the empirical knowledge about gender relations and local practices and procedures, in a constant dialogue with theoretical generalization and concept building (Bentzon *et al.*, 1998). Thus, like women's law approach, it calls for lived realities of people such that one needs firsthand knowledge of local practices, procedures in the area of research (Bentzon *et al.*, 1998). As a theory, it advances that despite having clear goals and assumptions at the onset of the study, a researcher needs to keep his/her mind open to new avenues of thought and research initiatives that are formed as a result of the constant monitoring of the research process. Nothing is to be taken for granted when conducting the

study because the initial assumptions may not be supported by evidence in the end, so a researcher needs to be ready to constantly revise their original ideas (Bentzon *et al.*, 1998).

In the study, this approach turned out to be very useful. It was an approach that assisted in tracking down the women and discovering the information the study set out to find. Women victims of physical domestic violence proved hard to find at first. However, after my third interview with a key respondent, she assisted by providing me with links to people that she thought could help with identifying them. For instance, I was led to the Malawi Human Rights Resource Centre (MHRRC) which actively deals with domestic violence issues. From there I was able to trace a few women. The interviews held with the various women helped to shape the research as the information brought forward was used to not only alter the assumptions, but also to bring into perspective other assumptions that were not originally conceived.

Throughout the conduct of the study, I followed a set of assumptions that acted as the study's guides. It was necessary to be very mindful that flexibility was needed on my part as a researcher, because being rigid would compromise the kind of valuable information that was eventually retrieved. As the research went on, it was found that some of the assumptions set out in the beginning were being challenged by the responses from informants. For instance, at first there was an assumption that the state lacks political power when it comes to dealing with domestic violence. However, due to responses, that assumption was altered to reflect what was on the ground as compared to what is provided for on paper in relation to the State's commitment to eradicating domestic violence. Another assumption was also altered with regard to the training of VSU officers depending on what was discovered on the ground. Initially, the study assumed that there was a complete lack of training of police VSU officers, but respondents revealed that there was some training that officers periodically undergo but that there was a problem with the quality of such training.

3.3.3 Actors and structures analysis

This perspective was incorporated because when talking about physical domestic violence, we are talking about various actors that the woman victim will encounter in various structures, be they formal or informal. In this study for instance, there were VSU officers with whom women victims get to interface in the police VSU as a structure. In addition, there

were also various other people with whom the women interact in the social strata within their community upon encountering physical domestic violence.

The actors and structures perspective accords an opportunity to focus on the woman and her relationships with other men and women within the society in which she resides. This opportunity is one that enables a researcher to uncover the norms, expectations, and social and economic forces that influence problem solving and dispute resolution (Bentzon *et al.*, 1998). Flowing from that understanding therefore, the perspective assumes that social and legal change takes place through interaction between human beings, or groups, and not through some seemingly abstract medium such as the law (Bentzon *et al.*, 1998).

This analysis was also important to this study in a number of ways. Firstly, it made it possible to uncover factors underlying the decisions women make when physically abused and the bearing that various actors have on their decisions. This includes people at the grassroots level, and those in the formal structure of the VSU. It was also used to uncover how other factors besides the law (like societal norms, customs and practices) are entrenched in the VSU officers and how they affect service delivery in one way or the other. Secondly, the analysis was also essential in terms of some of the recommendations that the study proposed.

3.3.4 *Human rights approach*

Domestic violence in general is a form of direct discrimination (General Recommendation No. 19 of the UN). Physical domestic violence impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions (GR No. 19, Preamble). Physical domestic violence therefore directly affects the enjoyment of several rights of the woman victim, including: the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; and the right to the highest standard attainable of physical and mental health. These human rights are all recognized and protected by the Malawi Constitution.

In the spirit of ensuring that women equally enjoy their rights, international instruments have been adopted, and these provide for the standards with which member states must comply. The instruments create obligations that each member state must fulfil, as was discussed in the

preceding chapter. With regard to violence against women, as with other areas, the various international instruments referred to in the previous chapter, create three kinds of obligations. The CEDAW Committee adopted the Dutch analysis of CEDAW's main aim which it said is three-fold, namely: to ensure the full equality of women before the law and protection against discrimination in the public as well as the private sphere; to improve the *de facto* position of women, and lastly to address prevailing gender relations and the persistence of gender-based stereotypes (Holtmatt, 1989).

The human rights approach was used to understand the nature of the obligations that bind Malawi as a state party to these instruments, and also to assess whether by its practices in this regard the country is fulfilling its international obligations. In brief, the study focused on the following duties and obligations: the appropriate protective and support services for victims; gender-sensitive training of law enforcement officers; effective complaints procedures and remedies (penal sanctions, civil remedies); and the provision of refuges, counselling and rehabilitation programs.

3.4 Target population

The research was limited to females who have ever experienced physical domestic violence at some point in their lives as well as police officers who were responsible for assisting women victims of physical domestic violence at the Victim Support Units. It also involved sourcing information from some civil society organizations (CSOs) that deal with issues of human rights and women. As has been stipulated in chapter one of this study, everywhere in the world it is women who form the majority of victims of domestic violence in all of its forms, thus the study undertook to study the issues in relation to women.

3.5 Sampling techniques

The following sampling techniques were employed to select the different participants who were interviewed during the study:

Purposive sampling. Respondents for the study were purposively sampled because they possessed the characteristics that were essential for achieving the objectives of the study. Hence women who had suffered physical domestic violence were sampled, whether they had at any point sought help at the VSU or not. The VSU officers were also purposively sampled

because of their role in assisting women victims of physical domestic violence at the Victim Support Units.

Snowballing or chain referral sampling. This is another sampling technique that was employed in the study. With this method, participants or informants, with whom contact had already been made, used their social networks to refer me as the researcher to other people who could potentially participate in or contribute to the study. Snowball sampling is often used to find and recruit 'hidden populations,' that is, groups not easily accessible to researchers through other sampling strategies.

When the study commenced, the interviewees willingly provided contacts, leading to other people who could help find the other set of interviewees who could not be easily traced. In all the referral cases, the present interviewee would be of the view that the person they were referring me to would also be well placed to assist with invaluable information. This helped further to purposively select women interviewees who faced physical domestic violence.

3.6 Sample size

According to Guest, Bunce & Johnson (2006), the size of a purposive sample in qualitative research typically depends on the concept of 'saturation,' or the point at which no new information or themes are observed in the data. Hence, there was no predetermined sample size for this study. Data collection continued until data saturation was reached with a sample size of 55 respondents (Table 1). After I had interviewed the 55 people, I discovered that there was no new information or new issues that were being raised, despite the fact that the questions had been kept broad and open-ended. It was at that point that a conclusion was made that saturation had been reached.

Table 1: Showing details of the respondents and key informants interviewed

SEX	KEY INFORMANTS	RESPONDENTS	AGE RANGE	TOTAL NUMBER
Female	12	33	26 - 55	45
Male	10	0	35 - 50	10
TOTAL	22	33		55

3.7 Data collection methods

Data for the study was collected through face to face interviews with individual women victims of physical domestic violence and through focus group discussions (FGDs) as well as desk research. There were five FGDs, two of which were held with police officers who were responsible for assisting women victims of physical domestic violence at the Victim Support Units, while three FGDs were held with the women victims of physical domestic violence. The face-to-face interviews were used to collect in-depth information through probing and the use of open-ended questions. Interviews were helpful in that they created the chance to have every question explained to the interviewee thereby minimising the collection of incorrect data but also allowing space for responses.

With focus group discussions, the main aim was to draw upon the respondents' attitudes, beliefs, experiences and reactions in a manner that would otherwise not be feasible if other methods were used, for example, observation or one-on-one interviews. This method was used for both VSU officers as well as women victims of physical domestic violence who felt more comfortable sharing their experiences with those who had been through similar situations. This is because FGDs provide insights into how people think, providing a deeper understanding of the phenomena being researched. Employing this mode of research complemented the other modes that had been employed. The FGDs that were conducted enabled participants to open up as they were free to engage together with colleagues and familiar faces in other settings.

Secondary sources also informed this study. Recourse was had to reports, other research literature, statutes and international human rights instruments particularly for the first three chapters of the study.

3.8 Emerging themes

In the course of conducting the study, there were certain issues that came out from the respondents' and key informants' responses, particularly the police VSU officers and women victims of domestic violence. These issues that were raised were thought to be very important and worth noting, despite the fact that they did not directly link to the topic of study. The themes that emerged are as follows:

- (a) Practical problems with enforcing certain orders issued by the courts in physical domestic violence cases, i.e., occupation orders for women who are married within the patrilineal society (since they relocate to their husband's home).
- (b) Protracted/lengthy court procedures that end up frustrating women victims of domestic violence.
- (c) High levels of corruption among officials at different levels of the formal justice system, be it at the police VSU or courts.
- (d) The absence of proper enforcement mechanisms for PDVA orders which in most cases makes the orders toothless.

3.9 Data collection tool

An interview guide was used to conduct the face-to-face interviews with respondents. Gill *et al.* (2008) recommend that when developing an interview guide it is crucial to ask questions that will yield as much information about the study phenomenon as possible and also be able to focus on the purpose and objectives of the study. Hence, the interview guide was developed based on the objectives of the study. It consisted of open-ended questions that focused on: assessing how effectively the PDVA was being implemented by the Victim Support Unit in offering legal remedies and psycho-social support to victims of any form of domestic violence; examining the effectiveness of the procedure laid down by the law for

assisting women victims of physical domestic violence at the VSU; enquiring from the women victims how exactly they are treated at the VSUs; and investigating the challenges faced by the VSUs as they carry out their mandate of assisting women victims of physical domestic violence. Furthermore, the interview guide had open-ended questions that were aimed at soliciting strategies thought capable of improving the problem of physical domestic violence against women. Open-ended questions on these themes sufficiently covered the purpose of this study and confined the focus to achieving the objectives of the study.

3.10 Data collection procedure

During data collection, information was provided to participants on the purpose and objectives of the study. The participants were also informed that they were purposively selected to participate in the study because of their exposure to physical domestic violence. During the interview sessions, I wrote down the responses to the questions. In addition, all except two of the interview sessions were recorded after securing consent from each of the individual participants. Recording helped to reduce the amount of time taken for each interview session as I did not have to take down too many notes. An interview guide was used to ask open-ended questions that focused on collecting data based on the study objectives. The open-ended questions were used to allow participants to freely express their responses. Stuckey (2013) states that the advantage of face-to-face interviews is that they give the researcher flexibility to probe initial responses for more understanding. Therefore, when the answer from the participants required more probing, follow-up questions were then asked with a view to getting a fuller understanding of the participants' responses.

3.11 Data validity and reliability

According to Patton (2002), every qualitative researcher should be concerned about validity and reliability while designing a study, analyzing results and judging the quality of the study. Lincoln and Guba (1985) argue that there is no validity without reliability, hence a demonstration of validity implies establishment of reliability. This argument is consistent with that of Patton (2002) who points out that the reliability of a study is a consequence of its validity. Mathison (1988) reports that 'triangulation has risen as an important methodological issue in qualitative research in order to control bias and establish valid propositions.' This view has also been emphasised by Golafshani (2003) who reports that triangulation is a way of enhancing the validity and reliability of research. Creswell & Miller (2000) describe

triangulation as ‘a validity procedure where researchers search for convergence among multiple and different sources of information to form themes or categories in a study’ (Creswell & Miler, 2000: 126). Therefore, employing different methods of collecting data and gathering data from different sources can strengthen the validity and reliability of the data and their interpretation. This view is consistent with that of Zohrabi (2013) who argues that ‘in order to triangulate the data, the researchers can obtain information through different procedures to heighten the dependability and trustworthiness of the data and their interpretation’ (Zohrabi, 2013: 254).

Therefore, in this study, the validity and hence the reliability of the findings were enhanced by triangulating the data sources. Besides interviewing women who had suffered physical domestic violence, the VSU officers were sampled as data sources. Triangulation of data collection methods was also another strategy for enhancing the validity and reliability of the findings. Data for the study was collected using face to face interviews, focus group discussions and desk research. This enhanced the reliability and trustworthiness of the data collected.

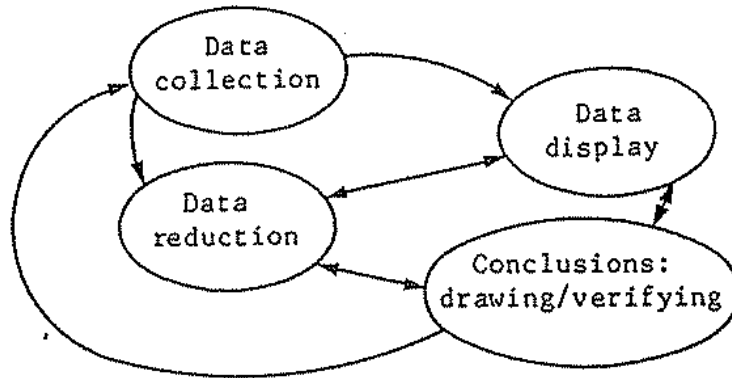
The study also used open-ended questions. The importance of open-ended questions in enhancing the reliability and validity of research is that the responses to open questions reflect more accurately what the respondents say (Nunan, 1999). Johnson & Turner (2003) also emphasise that use of interviews in qualitative research allows good interpretive validity. It has also been argued that ‘in order to obtain more valid and reliable information, the interviewer should select the respondents more carefully’ (Zohrabi, 2013: 256). Hence, to collect valid and reliable data for this study, the respondents were purposefully selected because they possessed the characteristics that were key to achieving the objectives of the study.

3.12 Data analysis

According to Baxter & Jack (2008), in a qualitative study, data collection and analysis occur concurrently. Therefore, data analysis for this study began as soon as the data collection commenced and it continued after its collection. The Interactive Model of Qualitative Data Analysis by Miles & Huberman (1994) was used in this study (Figure 1). According to this

model, analysis is defined as an interactive cyclical process consisting of data collection, data reduction, data display and conclusion drawing.

Figure 1: Interactive Model of Qualitative Data Analysis



Source: Miles & Huberman (1994: 12)

According to the interactive model, ‘the researcher moves among these four ‘nodes’ during data collection and then shuttles among data reduction, display and conclusion drawing / verification for the remainder of the study’ (Miles & Huberman, 1994: 12). According to Miles & Huberman (1994), data reduction is a process of selecting, sorting, organizing and transforming the data that appear in written-up field notes or transcription. Hence, in this study, data reduction began with the transcribing and typing of recorded interview sessions and field notes. Since data reduction is also aimed at sorting and organizing data in such a way that final conclusions can be drawn (Miles & Huberman, 1994), then analysis continued by focusing on how individual participants responded to each question, scanning all the responses with a view to identifying consistencies and differences (Dey, 2005). The data were then organized by putting all the responses for each question together to identify the recurring themes that emerged from the responses and organizing them into coherent categories.

The other node of qualitative data analysis according to Miles & Huberman (1994) is data display which is described as ‘an organized, compressed assembly of information that permits conclusion drawing and action’ (Miles & Huberman, 1994: 12). This study used data displays in the form of matrices (tables) and charts. The information was in some cases

presented verbatim to reflect the actual views of the participants without eroding their meaning in trying to paraphrase.

Conclusion drawing is another node in the interactive model. In this study, the findings and themes were summarized and conclusions were drawn with reference to the objectives and research questions. Following this interactive model enabled me to identify the emerging themes. Through this interactive cyclic process, I was able sort out the data collected and draw conclusions on the issues being discussed. It also made it possible to make proper follow-ups or schedule other appointments with informants who would further help with certain aspects of the study.

3.13 Ethical Considerations

Before embarking on data collection, permission to conduct interviews was sought from the responsible authorities in the police Victim Support Units. Then the selected police officers managing the Victim Support Units were contacted to arrange dates for data collection. Similarly, permission was also sought from individual participants. As the study was being conducted, the following ethical considerations were made:

3.13.1 Confidentiality

Confidentiality is aimed at protecting the privacy of research participants. For respondents to provide reliable information during the interviews, they were assured of confidentiality of their identities. Information collected about the individual respondents was treated without attaching or mentioning their names. Assurance was given to all respondents that all information collected during the interviews would not be made available to anyone or people not directly involved in the study.

3.13.2 Informed consent

Informed consent requires that all participants are provided with adequate information about the study that is being conducted. Hence in this study, all the participants were made aware of the purpose and objectives of the study and that I would use the findings for academic purposes only. This was aimed at enabling the participants to make an informed decision on whether to participate in the study or not. All the participants consented to take part in the study.

3.13.3 Voluntary participation

Participants were informed that their participation was entirely voluntary. No one was coerced to participate in the study. Participants were informed that they were free to withdraw from the study at any time. They were given the freedom to ask any questions about any aspect of the study that was unclear to them.

3.14 Conclusion

This chapter has given the research design that was followed for the study. It further outlined and discussed the research methodologies that were employed to conduct the research and why they were chosen. It explained the various ethical considerations that guided the research and how the data was triangulated in order to ensure the validity of the findings. The next chapter discusses the findings.

CHAPTER FOUR

4.0 THE VICTIM SUPPORT UNIT'S OPERATIONALIZATION OF THE PREVENTION OF DOMESTIC VIOLENCE ACT

4.1 Introduction

This chapter centres on the VSU, particularly looking at the mandate of VSU with regard to physical domestic violence against women, and the factors that have a bearing on the implementation of the Act.

4.2 Procedure for assisting women victims of physical domestic violence

In rendering service to women victims of domestic violence, there are a number of steps that are to be taken by officers in the VSU. These steps are laid down in the VSU Guidelines.

It is noted in the Guidelines that some victims report to VSUs with untreated injuries. As such, the officer attending should first of all administer first aid if that will assist the victim. If injuries sustained are of a more serious nature, the victim must be referred to a health facility. After receiving medical attention, the victim is to return to the VSU to lodge her complaint. In cases where the domestic violence has resulted in serious injuries, details of the victim, as well as the perpetrator if known, should be recorded and a docket must be opened for further investigations by the police. The victim should then be taken into a quiet private room for an interview.

The VSU officers are called upon to treat any GBV case seriously, bearing in mind that the abuse suffered was a life changing event for the victim. There should be no underestimation of its impact on the victim's life. Throughout the process, officers must protect the victim's privacy and safety. The officer handling the matter should enquire from the victim if she has any desire to press charges. The victim and the abuser may need to be separated from each other (if within the family setting), in which case the service provider may need to take the victim to a place of safety, i.e., shelter or rehabilitation centre. Witnesses, if there are any, are to be summoned to give evidence. If the act committed constitutes a felony, an arrest must be promptly made and preparations for criminal proceedings commence. Wherever necessary, the officers must make referrals to the institution that is most appropriate to handle the matter. It is also the duty of VSU officers to follow up on GBV victims.

In cases where a complaint brought is non-criminal in nature, i.e., conflicts, these are to be referred to other actors like chiefs, religious leaders, marriage counsellors, etc., for purposes of mediation and arbitration. Ideally, the police VSU can only mediate and arbitrate offences without serious criminal elements (VSU Guidelines, 2010).

4.3 Factors affecting how Victim Support Units discharge their duties and obligations

Despite the mandate conferred on the VSU by the Act and the procedure to be followed under the Guidelines, VSU officers do not always act in accordance with these provisions when rendering services to women victims of physical domestic violence. The study revealed that there are a number of factors that affect the manner in which the VSUs implement the Act. These factors are discussed below.

4.3.1 State's lack of political will

The study revealed that the state possesses political will to deal with issues of domestic violence against women. However this political will only extends to creating the necessary legal framework, policies, and strategies to deal with the problem of physical domestic violence. This is evidenced by the various actions that the state has undertaken (as covered in chapters one and two of this study), its crowning work so far being its enactment of the PDVA to ensure that women are now protected not only in the public but also in the private domain. To this extent, the state has complied with some of its international obligations, i.e., the obligation to put in place a legislative framework to deal with the issue of violence in the domestic sphere.

The study further revealed that when it comes to practically supporting the mechanisms that have been put in place, the state lacks political will. The state does not take the lead in ensuring that the mechanisms in place are fully implemented so that the most beneficial results intended by the PDVA that can be achieved. Most of the work done in this area has largely been led by donors and civil society organizations (CSOs). According to the respondents from the CSOs,⁴⁵ their donors have been removing aid from them to the point that currently and even with the combined efforts of the state and the CSOs, there is not much happening on the ground in terms of implementation. None of the respondents in this area

⁴⁵ For example, those from NGO-GCN.

gave any concrete reasons for the withdrawal of such aid. However, others generally speculated that, among other reasons, it could be due to the poor accountability of funds on the part of CSOs and the desire to fund international rather than national organizations. In its failure to take its rightful lead in this respect, the State is actually breaching its obligations in terms of the relevant international and regional instruments to which it is a party.

The general assessment that the State largely lacks political will in the practical aspect of tackling physical domestic violence against women is further substantiated by an official observation of national proportion. In the foreword to the second edition of the National Gender Policy of 2015, it was observed that the implementation of the Millennium Development Goals (MDGs) showed that Malawi is lagging behind in achieving MDGs Numbers 2, 3 and 5, all of which bear a gender connotation.⁴⁶ This confirms that the national political will to deal with this scourge leaves a lot to be desired. As noted earlier in the introduction to the study, women constitute the segment of the population which is most affected by physical domestic violence as their rate of suffering far out-numbers that of men.

4.3.2 Inadequate funding for Victim Support Unit's operations

Directly linked to the issue of lack of political will on the part of the state is the issue of funding. For the VSUs to operate they need to be funded, and being state entities, their funding must first come from the State. However, the funding that the VSUs receive is extremely inadequate. The funding received for VSU operations comes through the community policing department immediately under which the VSUs fall. But even then, most of the funds are directed to crime prevention, not to gender related issues. There is no special funding that is allocated for the operations of the VSU and that is a major challenge.

Since VSUs deal with women victims of physical domestic violence on a daily basis they must receive the resources they need in order to assist them effectively. Without such enabling resources (including transport), the effective performance of their mandate becomes a very daunting task for the VSUs. For instance, in the absence of such provision, VSUs are unable to conduct follow up investigations to find out whether what they have put into action is working. Problems also arise in cases where a VSU officer in a police formation deems

⁴⁶ MDGs 2, 3 and 5 effectively deal with: ensuring that children universally – including both boys and girls – will be able to complete a full course of primary education; empowering women and promoting gender equality; and promoting maternal health, respectively.

referral a necessary action in a particular case. Sometimes it is impossible to make a referral due to mobility problems and so the victim ends up suffering even more. This means that as a result of the VSU's failure to effectively carry out its mandate, the victim fails to obtain the effective legal remedy the legislation has promised her.

While it is appreciated that the state's resources may be limited, it cannot be avoided that there is a hierarchy of priorities for the state. Its available resources are allocated according to the relative political importance of the issues it faces, and not necessarily who is affected, as one informant stated:

‘Although it may be said that there is insufficient money in the state coffers, if the state is able to fund certain areas, it should also be able to fund the GBV area.’

This commonly held view simply buttresses the point that other issues outrank domestic violence by a large margin. Without sufficient funding, DV laws and policies which are now in place will simply remain paper ideals. The world at large is well aware of this fact and that is why it was noted earlier in the various human rights instruments that a special obligation was placed on states to ensure that they fund this issue sufficiently by allocating it the necessary resources to ensure the effective implementation and sustainability of programs undertaken to fight domestic violence. By failing to fund the police VSU adequately, the state is in direct breach of its regional and international obligations.

4.3.3 Absence of shelters and tailor-made Victim Support Units

The Prevention of Domestic Violence Act stipulates that the service providers have the duty to provide alternative temporary shelter for victims as it may be necessary to separate them from their perpetrators. The VSU Guidelines provide that a Victim Support Unit should consist of at least three rooms. The Act makes provision for temporary shelters where victims can be accommodated. However, 11 years after adopting the Act, the state still does not have any working state-run shelters. The single state-run shelter that was once operational has since been closed for renovations. Essentially and as of this moment there are absolutely no shelters. Again, such situations make it difficult for the mandate of the VSU to be carried out.

In the absence of such shelters, the VSUs are to act as temporary shelters. However, most of the VSUs are not designed for this purpose; most only consist of one room and, in some

cases, just a desk. This means that there is no place where the officers can properly accommodate any victim of DV, even temporarily. Consequently, the VSU officers' only option is to send the victim back home, straight back into the arms of her abuser. Often that is the last time the VSU gets to hear from that woman victim again as events unfold and she never returns for more help. Such instances, and there are many, reflect badly on the VSU as they are perceived as being unhelpful when, in fact, they, as well as the police as a whole, are often not entirely to blame for their failures; in many situations, the fault lies higher up, beyond their control.

This shortage of tailor made VSUs helps to explain the lack of privacy complained about by most of the women victims interviewed in this study. Where the VSU is just a room within a general police construct or, worse still, just a desk in some busy office, the chances of attaining the privacy prescribed by the law are very slim to none at all. In the end, the VSU's services are seriously compromised and they undermine or defeat the realization of the Act's purpose. Not only does the state's inaction render the Act less effective by failing to establish proper VSUs and shelters, the omission also amounts to a breach of the country's international and regional obligations which require the establishment and operation of a gender-sensitive environment for handling these cases and providing refuges for victims of violence.

4.3.4 Inadequate training of VSU officers

A triangulation of the data collected revealed that there are various forms of training that VSU officers undergo periodically. VSU officers, as well as other informants interviewed within the courts and CSOs, all referred to the fact that training is conducted for officers in the VSU on GBV generally and how to handle domestic violence cases.

In one focus group discussion conducted with officers of Lilongwe Police Station, all the VSU officers said that they had undergone several courses of training most of which had been organized by NGOs. One VSU officer at the Police Headquarters in Lilongwe Area 30 shared her view in a personal interview:

‘VSU officers undergo specialized training where they learn how to handle cases of domestic violence, what is expected of a VSU. There are aspects of customer care, counselling, conflict management and resolution.’

In separate interviews with a number of CSO personnel, i.e., from NGO-GCN and the Women's Law Resource Centre, one of them commented as follows:

‘As NGOs, we engaged a number of stakeholders on the implementation of the Act, including the police VSU. We provided trainings on the PDVA. The trainings were done at a regional level but targeting a number of individuals.’

However, what came to light is that although all such training has been conducted it is seriously compromised. The reason is that the facilitators are people from the CSOs themselves. They have the liberty to pick and choose who they will use to facilitate their training. Consequently, those chosen to train on PDVA matters are in some cases lawyers, but often not practitioners of the High Court, which means that they do not fully appreciate what is supposed to happen in practice.

There are two examples that illustrate this point. In the first case the police assisted a woman victim of physical domestic violence to approach the court to seek a protection order against her ex-visiting lover of about 9 months. Given the definition of a ‘domestic relationship’ in the Act, this woman does not actually qualify to bring such a matter under the PDVA. The police should have been trained to know that. The training they receive however is too general and does not clearly specify how the provisions of the Act play out in a court of law. Having been misled, the police in turn mislead DV victims who end up disappointed that they fail to secure from the courts the relief to which they feel entitled. A second example is where people approach the courts to obtain all kinds of orders which fall outside the ambit of the Act including protection orders and/or injunctions to enforce purely civil contractual obligations, e.g., loans, etc.⁴⁷ This reveals a mindset which simply encourages the general public to run to the police or court for every problem as opposed to explaining to them exactly how a particular dispute or conflict may or may not fit the purpose and specific requirements of the PDVA. Similarly, those offering training on issues of gender and psycho-social counselling to officers have a different understanding of gender, as one informant put it:

‘The popular view is that when one talks about gender then they are women sensitive, [or] women-biased when that is not the case.’

⁴⁷ From an interview with a magistrate in Lilongwe.

Gender refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. While most people are born either male or female, they are taught appropriate norms and behaviours – including how they should interact with others of the same or opposite sex within households, communities and work places.⁴⁸ But somehow the masses have come to equate gender with sex, and therefore women, which is such a distortion of what gender is all about. The term gender has come to be synonymously used with sex when the two are really not synonymous (Hurley, 2007).⁴⁹ The confusion that that creates also affects the quality of the training offered to the VSU Officers.

This problem of quality of training can, however, be traced back to the lack of political will and the trivializing of women's issues on the part of the state machinery. Under section 56, the Act ideally and specifically provides that the Minister may make regulations for the effective carrying out of the provisions of the Act, and without prejudice to the generality of the foregoing, such regulations may provide for: the designation of enforcement officers; the approval of services or programs for the purposes of the Act; the approval of persons or organizations that could provide services or programs under the Act; the prescribing of qualifications and experience for persons who may provide services; and any matter required to be prescribed under the Act. It is now more than 11 years since the passing of the Act and the Minister has still failed to make any such regulations. In the absence of any such appropriate regulations, those who organize these courses of training can hardly be blamed for choosing the trainers they do.

4.3.5 VSU Officers' lack of full appreciation of their mandate

This is yet another factor that influences how the VSU operates to implement the Act. There is a common understanding among VSU officers that it is their mandate to protect families from being torn apart. One VSU officer in a focus group at Lilongwe Police said:

⁴⁸ World Health Organisation, available at <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/> accessed on 2 April, 2018.

⁴⁹ With 'sex' referring to the anatomical and other biological differences between females and males that are determined at the moment of conception and develop in the womb and throughout childhood and adolescence. On the other hand, 'gender' is a social construction. It refers to the social and cultural differences a society assigns to people based on their (biological) sex. A related concept, 'gender roles' refer to a society's expectations of people's behaviour and attitudes based on whether they are females or males. Understood in this way, 'gender' is a social construction.

‘It is our duty to protect the family. As you know, it is a fundamental unit protected by the Constitution.’

Another officer, in a personal interview stated:

‘The PDVA stipulates that all domestic violence cases are criminal cases. A criminal case is a state case and state cases are handled by the police but very little has been done because families are to be protected from being lost. In trying to promote the PDVA the police have compromised so as not to break up families.’

While it is correct to say that the family is a protected unit under the Constitution, some VSU officers seemed to confuse this with the purpose of the PDVA and therefore their mandate. In other words, some officers do not fully appreciate the purpose of the Act. As stated earlier, the purpose of the PDVA is to ensure the State’s commitment to the eradication of Gender Based Violence occurring within domestic relationships and the provision of effective legal remedies and other social services to those who fall victim to domestic violence. This makes it very clear that, first and foremost, the PDVA is concerned with the security of each and every individual member in/within a domestic relationship (that being synonymous with the family set-up for purposes of this argument). Contrary to wording of the Act in section 3, however, the VSU Guidelines puts it in the following words:

‘The purpose of the PDVA is to protect the family unit as stipulated in the Malawi Constitution section 22(1). Every member of the family should enjoy full and equal respect and shall be protected by law against all forms of neglect, cruelty or exploitation.’

The above phrasing may have been intended to rephrase section 3 of the PDVA, but consequently it has somewhat distorted the meaning. Instead of prioritizing the protection of individual members of the family unit, the popular understanding of VSU officers is that it seeks to protect the family unit. That understanding commonly held by VSU officers affects how they carry out their mandate. This is demonstrated by the VSU officers’ failure to act in accordance with their mandate. In the interviews and focus group discussions with women victims of physical domestic violence in Area 36, a peri-urban area, some of the women said that the VSU Officers asked them to go back and try to resolve their issue at home at with

their *ankhoswe*'s (marriage advocates).⁵⁰ Just to emphasise this, two women victims shared the following experiences:

‘After narrating my story they asked me whether we had been to the *ankhoswe* with the issue. When I told them we had not, they advised me to go back and try and resolve the matter.’

The other one said:

‘When we (me and my ex-husband) went there, the police took on the role of *ankhoswe* and I did not like that....it is like they stepped off the shoes of police officers, they don't act like professionals completely.’

These reports resonate with what the officers themselves said on how they have compromised the operationalization of the PDVA in order to save families. A good example would be the practice of VSU Officers writing letters to the perpetrators and giving them to the victims to deliver directly to their perpetrators, if possible, or to the local community leader, mostly the Traditional Authority, to deliver to the perpetrator. The law does not make provision for any such procedure and neither do the VSU Guidelines. Upon further enquiry, one officer explained:

‘I would not say it is according to the Guidelines that we are to call or write the perpetrator. I would also not say that the practice is general to all GBV cases, criminal or not criminal. If there is a murder case which is GBV related, an officer would not make a call or write. So the issue of calling is just an operational or administrative culture that has arisen because of resource constraints. There is also the element of respect for the family that we consider. We would not go to take the perpetrator as we would a criminal involved in crime. And normally when we call or write, the perpetrators come.’

Some officers in a focus group discussion held at Lilongwe Police stated:

‘What we want is for families to be protected as the protected unit that it is in the law, and not for us as the police to be on the forefront of more family break-ups. Break-ups are problematic, there are issues of children and the like, so we try to avoid such things.’

⁵⁰ Marriage advocates are the uncles of the husband and wife to whom the couple go for counselling when they are having marital problems.

Apart from the problem of the lack of transport, this approach is also taken because of the understanding under which VSU Officers act. Even in more serious physical domestic cases, their response is basically the same, unless someone dies or there is a public outcry. So even in their trying to protect the family unit, VSU Officers fail to balance the interests of the woman victim of domestic violence who may be very brutally assaulted and those of the family. At the end of the day, the family unit takes precedence over the victim, as one key informant put it:

‘The woman is treated as less important than the husband, the community and her family getting embarrassed.’

These attitudes demonstrate the patriarchal nature of most Malawian societies which value men over women and which the radical feminists have identified as the root cause of most forms of women’s oppression. The idea that women are inferior to and less important than men is largely responsible for the ill treatment women suffer.

4.3.6 Individual personalities of VSU Officers

Each VSU Officer is a person who has grown up in a unique and different environment with unique and different life experiences, culture and norms. Taken together, all these factors define the private persona of each individual Officer. In other words, VSU Officers cannot be separated from what has shaped and continues to shape their personalities. At one point or another, however, their traits will betray them in the way they perform their duties. For example, a VSU Officer who has been raised to accept wife-beating will consider it acceptable behaviour. This may explain why the way one VSU Officer handles a victim of physical domestic violence will vary from that of another Officer given their different background and socialization. What also stood out was the fact that these forms of behaviour are not determined by an officer’s sex. A male VSU Officer might be better placed to assist a woman victim of physical domestic violence than a female Officer, and vice versa. Just as with women victims of domestic violence, the norms, culture, and values embraced by the VSU officers as actors influence how they perceive and decide to have a matter resolved and a woman assisted.

4.3.7 Gender insensitivity

Linked to the issue of personality is gender insensitivity. As the experiences of women showed, some VSU Officers still treat physical domestic violence as a family affair which needs to be resolved within the family. This is demonstrated by the fact that when the woman victim reaches the VSU, she is asked to take the issue back home to the family mediators for settlement. The VSU Guidelines mandate that only domestic violence of a non-criminal nature is to be referred to chiefs, counsellors, etc., for arbitration and mediation. But when such referrals are made, the Officers seem to be oblivious to the gravity of the harm suffered by the victim because they appear to refer most matters to mediation. What seems to escape such Officers is the fact that while the Act actually sought to bring this serious issue out from the shadows of the private domain into the public sphere, they are in fact doing the opposite and pushing it back.

This practice seems to reveal that they are yet to fully grasp and appreciate the gendered nature of this problem and the kind of treatment it calls for. When confronted with a domestic violence scenario, it takes some VSU Officers a while to actually realise that what they have before them are gender related issues which require an understanding of their power dynamics to enable the Officers to manage the particular matter in the best possible way. What they mostly see is a criminal matter. This could also partly explain the over-reliance of the police on the Penal Code rather than the PDVA. The masculinities of the actors, particularly male, play a big role. Over the past few years mentalities have changed but the current trend of how gender issues, like the physical abuse of women, are handled reveals the need for a much more fundamental shift that allows for the continuous deconstruction of the masculinities that still exert a stronghold over the majority of VSU Officers who require to become more gender sensitive. Achieving this would go a long way to making VSU Officers more proficient in carrying out their mandate to assist women victims of physical domestic violence which is a major purpose of the Act.

4.4 Conclusion

The PDVA clearly sets out the mandate of the police VSU. The VSU Guidelines complement this mandate by detailing what steps VSU Officers need to follow in order to fulfil it. There are several factors however that exert a negative impact on how the VSU implements the PDVA. The sources of these factors are found in the state, the institution of the VSU as well

as the individual VSU Officers themselves who implement the Act and come into immediate contact with its intended beneficiaries, women victims of physical domestic violence. The next chapter concludes the study and makes possible recommendations.

CHAPTER FIVE

5.0 THE LIVED REALITIES OF WOMEN VICTIMS OF PHYSICAL DOMESTIC VIOLENCE AND THE VICTIM SUPPORT UNIT

5.1 Introduction

Women victims of physical domestic violence all have different stories to tell. Among them, however, are some similarities concerning not only the assaults they suffer but also what they experience with the VSU (for those who have actually approached the VSU for assistance). This chapter focuses on the various experiences of women, especially at the hands of the VSU.

5.2 A woman victim of physical domestic violence at the Victim Support Unit

The study revealed that when a woman takes an eligible complaint to the VSU, she is welcomed by the Officers who usher her into an interview room. Then she is asked to introduce herself and state her reasons for visiting the VSU. Then, if she has serious injuries that need medical attention, the VSU Officer gives her a letter (report) which she is told to take with her to the hospital so that she can receive treatment for her injuries after which she is told to return to the VSU for further assistance with her issue.

Upon her return to the VSU, she is then asked to narrate her story again in the event that she finds different Officers on duty from those who initially assisted her. The Officers write her a letter which she is asked to take directly to the perpetrator. (In all cases interviewed in the study, a husband or ex-husband was said to be the perpetrator). If she states that she is unable to personally deliver it, she is asked to take it to the local authority (mostly the Traditional Authority or Group Village Head), for them to deliver the letter. In some instances the Authority will deliver the letter, in others they will not. There are a number of factors that will determine what action is taken by the local authority. Some of the reasons that were given by the women include: extent of proximity or familiarity between the perpetrator and the local leader; corruption of the local leader by the perpetrator; in some cases, the local authority talks to the woman concerning the abuse she has suffered and the matter is said to be resolved there. One woman explained:

‘I went to the police after I was beaten by my husband. They wrote a letter for me to go to the hospital and go back after getting my results. To my surprise when I returned they gave me a letter to give my *ankhoswe* (marriage advocate). When I gave him the letter, he did not even bother to read it, instead he cut it into pieces and told me a marriage is between two people, go and discuss.’

For those whose letters managed to get through to the perpetrator, the experiences also varied. In some cases, the perpetrator accompanied the woman victim to the police as requested in the letter. One woman reported:

‘The police counselled us and my husband showed change for a week and then he went back to his old habit of not leaving money for food and beating me.’

The study further revealed that sometimes the perpetrator would simply ignore the letter and in the worst cases, the woman is victimised and gets an even worse beating for having dared to report the matter to police in the first place. In such instances, some women return to the police VSU with a further report of what happened. In others, however, it was reported that the women simply refrain from taking the matter any further. A number of factors which contributed to which of the above actions a woman would decide to take were cited. One of the factors is that women fall silent rather than take the matter further for fear of further victimisation.

In the event that both the perpetrator and woman victim had visited the VSU in response to the request, the police would invariably enquire if the marriage advocates to the marriage have been made aware of their matter. If it is made known to them that the woman went straight to the VSU without informing the marriage advocates, the parties are referred back home to have the ‘dispute’ mediated by the marriage advocates. The victims are further informed that if they are unhappy with the resolution reached by the marriage advocates, they should return to the VSU for a further consideration of the matter. Whatever the outcome from the marriage advocates, most women do not return to the VSU. However, some do return, but mostly with a request to withdraw the matter, stating that they had resolved the dispute.

5.3 The decision whether or not to report physical domestic violence to the VSU

The study revealed that there are normally a number of factors that determine whether the woman victim of physical domestic violence returns to the VSU after having been given a letter summoning the perpetrator. These factors also relate to her 'choice' to withdraw the matter from the VSU after having reported. When looked at more closely, this 'choice' to withdraw is not a real choice because there are a number of converging issues that coerce her into making that resolution within herself. These factors include children of the family, the society's reaction to her action, her extended family, among others. Some of these factors are also true of the women victims interviewed who have suffered or were presently suffering physical domestic violence and were 'choosing' to remain silent and take the beatings. The following were some of the factors that were cited:

5.3.1 Economic dependence

The lack of economic independence seemed to weigh heavily on the majority of the women victims interviewed. Some of the women victims interviewed were aware of what they needed to do, and where they needed to go to obtain some kind of help for their situation. However, because in most cases they could do absolutely nothing to generate an income for their survival (and that of their children), they simply 'choose' to stay and endure the physical pain. Before making a decision to report physical violence, they have to weigh the negatives and the positives of taking that action. Given their situations, they may resolve that it is best not to voice their complaint and just put up with it. After all, they will either suffer from hunger and be deprived of their shelter, or suffer from physical pain but have food on the table and some form of a roof over their heads.

Even in cases where the woman victim's desire is to report to the VSU, it is not always possible because of the cost involved in accessing the relevant institutions. Some women live further away from Police units than others. Money may be required for them to travel to find a VSU. To obtain medical help, they need a report from the police. So in most cases, they will have to make several trips to get legal help. As has already been discussed, for the women to get assistance at the VSU they are first given a letter to give to their husband, after which they are to go back. All that travelling requires money. To some this amount might be insignificant, but to a woman who is struggling to find money to feed herself and her family

every day, such an amount might be too much to spend to secure legal help. As a result, some women just desist from going back to the VSUs.

This also has a bearing on the State's obligation to protect and promote the rights of women. In terms of the PDVA, it also fails to provide effective legal redress against this social scourge.

5.3.2 Combined social factors

About 90% of the women victims interviewed grew up within cultures (both matrilineal and patrilineal societies) that treat violence against women as acceptable conduct. In one particular instance, a woman, who had been burnt with a hot iron by her husband, lied to the medical personnel claiming that it was an accident in a bid to protect him and secure the medical treatment that she urgently needed. She probably felt the need to lie to the medical personnel because, as the trend has been until recently, victims of violence would not be given medical attention without having first obtained a police report of the incident that had led to the injury. So she probably felt that to reveal the truth about the incident would force her to report the matter to police, action she was afraid to take.

Before getting married, part of the advice that women would be given by their parents, uncles and aunts (who are essentially marriage advocates), and some of the older members of their societies that were close to their families was that *banja ndikupilira* (meaning, 'Marriage is all about endurance'), and so they were expected to endure some of the hardship and not go running back to their parents' home. For that reason, some women victims 'choose' to endure the physical torture which they have been socially indoctrinated to believe they should suffer and is of greater value than preserving their own safety or comfort they receive from their families and their children. In other words, accepting the beatings is the price or the sacrifice they pay to remain a member of their family and community. Since society all around them has normalized wife beating for centuries, these women victims are seldom if ever offered much social support from friends or family.

Feeling left all by themselves, the women 'choose' to endure and maintain the approval and association of their immediate and extended families, members of their society and friends – whom they will have come to value. The relational nature of women, as explained by relational feminists, helps to understand this otherwise inexplicable behaviour of women.

Because women place such great value on intimacy and connection with others and define themselves in relation to their relationships with others, they often relent having taking courses of action in order to maintain these important relational ties.

In other instances, the women victims not only lack support from those who should otherwise support them, but they actually receive condemnation for wanting to or taking action against a physically abusive husband. Women victims often receive comments such as '*Zoona ukufuna umumangitse mamuna wako?*' (meaning, 'Do you really want to have your husband arrested?'), as some women expressed. Others are even blamed for the misconduct of their husband and are accused of having 'done something' to trigger his violence against them. Such comments make women victims feel that they are wrong to seek some kind of remedy for their suffering. In one instance, after reporting the matter to police, a woman victim went looking for help from her husband's family. There she was told that since she had reported the matter to the police she should not ask them of any kind of help but wait for the police to resolve the matter.

These experiences reveal the influence that people in the society have on a physically hurting woman. As advanced by the proponents of the actors and structures perspective, partly used to analyze the data collected, society as a structure, with all its actors (the friends, the extended family, the neighbours) all have a bearing on whether a woman victim decides to get help or not. This, coupled with the relational nature of women, i.e., the great value they attach to ties and bonds that they create with people, from the perpetrator to external members of their community, greatly affects women's choice to utilize the law that exists for the very purpose of protecting them. The actors and structures analysis helps in understanding the roots of the decision or rather the indecision and hence inaction that women victims are often unfairly accused of making.

5.3.3 *Inadequate legal knowledge*

Some women who were interviewed had the idea that reporting a matter to the VSU is the same as having their husbands imprisoned. The general feeling is that the moment they report their husbands, the next thing that follows is his imprisonment. It also came to light that in most cases, women do not want their husbands imprisoned even after having physically abused them. In one focus group discussion with eight women victims of domestic violence

who were gathered from three surrounding peri-urban areas,⁵¹ all of them said they had been repeatedly abused by their husbands but had never reported the matter to police because:

‘We do not want our husbands arrested.’

What this demonstrates, at least in part, is that there is an information gap between what they know and what the relevant law actually provides. Awareness raising campaigns have been conducted, as the informants from the CSOs mentioned. However, what is happening on the ground reveals that there is a need for more awareness raising campaigns on the PDVA and the role of the VSU. These have not been as intense as they should, so most people at the grassroots generally do not know what the law says - as can be inferred from the remarks condemning women victims for reporting such violations to the VSU. They are not aware of the other alternatives provided by the law, for example, how the law can help them with protection, occupation and tenancy orders. Given the poor economic status of most of the women and the fact that they are more relational in nature than men, it is not very surprising that women become fearful of having their husbands locked up. It is for these reasons, among others, that they go rushing back to the police expressing their desire to withdraw their original complaint against their husbands. What they desire is an intervention that will stop their husbands abusing them, not one that will get them locked up.

5.4 Satisfaction with the Victim Support Unit’s services

When the study commenced, there was an assumption that generally women are unhappy with the services rendered by the officers in the VSU and that consequently, most women do not invoke the CSU’s mandate to assist them. A number of questions were asked in order to establish the truth pertaining to this assumption.⁵² A number of factors emerged flowing indirectly from the experiences that the women victims of domestic violence shared, as well as directly from answers to questions in this area.

⁵¹ Some from Kaphiri area, others from Chinsapo and area 24 in Lilongwe.

⁵² Such questions included, Are you aware of the PDVA or any law that is there to assist you when facing domestic violence? Do you know the procedure that you need to follow in order to obtain help like Protection Orders? What was your experience like with the VSU when you reported your matter? Were you satisfied with how they received and assisted you? Was the environment conducive enough for you to freely express yourself? A further question to describe the setting was also asked, Given your experience with the VSU, would you recommend it to a fellow woman victim of domestic violence? Also, if they had reported to the police but then later withdrawn it, they were asked to share some of the reasons that made them decide to withdraw. Women who suffered domestic violence but never reported it to the police were also asked, Why did you not report the matter to the police?

5.4.1 Reception

The reception at the police VSUs appears to be very warm, friendly. Of the women interviewed in the study, none ever stated that they were welcomed with coldness or indifference upon arrival. They were generally made to feel at ease. There is also a balance in the sex of the officers interviewing every woman victim to make her comfortably lodge her complaint. In the event that the victim is not comfortable with a male VSU officer present, wherever possible, they bring in a female officer in his place. To that extent the VSU is quite friendly and flexible.

5.4.2 Privacy

Whether there is privacy or not during an interview session varies between VSUs. At some stations, where the VSU is located in a separate building detached from the other police departments, privacy is attainable. This is the situation, for example, in respect of the VSU at the Police Headquarters in Area 30 Lilongwe and Lilongwe Police which are both situated in urban areas. But in other stations, which form the majority of VSUs, privacy is very difficult to secure. These are the situations, for example, at Mwenyekondo Police unit and Kawale and Chinsapo police units in Lilongwe peri-urban area. The reason for this is largely due to lack of sufficient space.

During the study four police stations were visited and of these stations only two had separate buildings serving as VSUs (listed above). In one police station in Lilongwe Area 18, there was a structure which had been specially built by a well-wisher. Besides having an interview room, the building had a waiting room, and two other rooms which were to be used as a shelter for men and women victims of domestic violence as well as rest rooms. Furniture in the form of beds, mattresses and bedding had also been provided. However after some time, due to problems of infrastructure, the administration decided to turn it into a building for general police work, dividing the building's four rooms into a Prosecutions office, a Road Traffic office, a Criminal Investigations Department office and a VSU room. This 'VSU room' is open to uncontrolled traffic because it also serves as a tuck shop containing a refrigerator in one corner of the room and snacks which are displayed on one of the two desks which are also in the room. The way the police are using this room deprives victims of the privacy they need. Furthermore, when victims arrive they have to sit on the veranda of the building or under a tree while waiting to be assisted. These areas are visible to all those attending the three other police departments which are now housed in the VSU block.

While the police may have been compelled to change the purpose of the VSU building, expecting to professionally deal with victims of domestic abuse in a room which doubles as a tuck shop betrays a grave lack of consideration for such victims, their trauma and the unique nature of physical domestic violence cases. It is clear from its conduct that the police administration is of the view that issues of violence against women can be handled in exactly the same way as other issues. A starker example of lack of gender sensitivity to issues of physical domestic violence is surely hard to find.

The actors and structures analysis helps in explaining such conduct in that it reveals that the various officers who deal with women victims in the VSU institution have not yet become sensitive to this issue as it affects women so that they can render them the most appropriate services in the most effective way, by not devaluing them or reacting with such indifference to them and their trauma. It demonstrates how the actions made by these relevant actors, the VSU Officers, may ultimately influence women victims. Indeed, the public exposure and the lack of privacy which victims are forced to endure at the hands of the administration when they attend the VSU for assistance may very well discourage victims from seeking help at all from this police station.

For example, one woman victim said that during her interview the door to the room was open while people were coming in and out and at some point a number of officers gathered in the room. She lamented:

‘There was simply no confidentiality.’

Her experience was one to which other women related as they also shared their own experiences and concurred with her. There is a better chance of a woman victim enjoying the privacy she needs to relate her ordeal in a physically separate VSU building or room. However, even if the VSU facility is required to share a room in which other police work is being conducted (as in this case where there is little room for privacy) the conduct of other officers (those not necessarily belonging to the VSU) also shows a lack of professionalism and an indifferent attitude toward domestic violence victims. The women victims who said they had no privacy gave examples how, despite the door to the VSU room being closed, other police officers would keep coming in and out during their interview session. For instance a woman victim who went to a separate VSU facility had this to say:

‘The police lacks sensitivity and confidentiality. The door was kept ajar, people were just passing nearby, and the room had about three or four officers come into the room. So I feel like openness is a problem in such a scenario.’

The fact that these three or four officers kept interrupting the interviews shows their failure to appreciate the nature of physical domestic violence cases, or the impact that the experience has on the victim.

Yet it is not all bad news, however. There are VSUs and officers who behave more professionally. At some point during the study, a visit was made to one police station with the intention of conducting a focus group discussion with VSU officers. In between waiting time, an enquiry was made from one officer who was seated outside an interview room. After introductions I requested to be allowed inside to passively observe the proceedings of the interview. The request was declined as the officer stated that doing that would interrupt the interview session. Later on, in focus group discussions as well as personal interviews with women victims of physical domestic violence, some women victims referred to the fact that their interview sessions were kept private, with no interruptions and that the door to the interview room remained shut the entire time. One such experience was shared through a Focus Group Discussion in which one woman victim said:

‘As for me I was very happy with how the police received and assisted me. I liked how they handled my issue, very timely and I found the environment very conducive.’

5.4.3 *Effective legal remedy*

In the study, of the women victims that had the experience of a VSU, about 85% said with that they were not happy with the assistance that had been rendered at the VSU. When asked whether they were satisfied with how the VSU assisted them, most of them answered in the negative. For instance, one woman said;

‘When we (me and my husband) went there, the police took on the role of *ankhoswe* and I did not like that. I wanted my then husband to restore my car which he had damaged after a conflict. I explained I was no more interested in our marriage but the police were quick to say that I should not rush to end the marriage. They did not advise me of available options like the court.’

Another woman who had been repeatedly severely beaten by her then husband went to the police each time she was abused (switching police stations at some point hoping to get better treatment), and when asked whether she was satisfied with the help she got in the end, she had this to share:

‘Frankly, I was far from happy. The way the police handled my matter was as though they did not want to *zinthu zozizira* ([they were] so indifferent’). I think the police help better in criminal cases like theft, robbery and others. I felt like maybe I was not supposed to take my matter to the VSU in the first place. I felt like there is no place where I can really go for help with an issue like this one. I have questions that I still have no answers to.’

Another experience that stood out was of a woman who said she never got any help at all. After obtaining a letter summoning the husband to the station the husband told her he could not do such a thing. She returned to the station with that response, only to be told that in the circumstances the police could not assist her since they could not drag her husband to the station. That was the end of the matter and she returned to her life of constant physical abuse.

The State has an obligation to ensure that there are effective remedies for victims of family violence. This is stated in the Maputo Protocol, the SADC Protocol on Gender and Development, as well as General Recommendation No. 19 which speaks to effective complaints mechanisms and remedies. The State recognizes that obligation and thus set out to ‘provide for effective legal remedies and other social services to persons affected by domestic violence’ as a purpose for the PDVA. For instance it provides for Protection Orders to ensure the safety of victims, and these orders can even be applied by the police officers.⁵³ But in all the cases covered in this study (33), in no case did the VSU officers invoke the power given under section 4. In some cases it is because the VSU officers are not very familiar with the Act, as they do not use it as much as they use the Penal Code. In other cases it is simply a lack of motivation on their part to handle these matters. To deal with them quickly, they choose to refer the matters back to the locations to be dealt with by the marriage advocates. In so doing, the VSU officers effectively keep the women victims from accessing the various effective remedies that the Act provides for either by way of civil or criminal proceedings.

Using the Actors and Structures approach shows how the VSU officers act as a hindrance to women victims’ accessing legal remedies. The norms and social forces embraced by VSU

⁵³ Section 4 of the PDVA.

officers as actors play a major role in how they assist women victims of physical domestic violence, despite the fact that they undergo professional police training. It is the social norms and expectations that they embrace that make them keep sending the victims back to the society. In one instance during a focus group discussion with VSU officers at Lilongwe police station, an officer said:

‘Depending on the environment of where the local police formation is located, the VSU officer there may end up yielding to what the local people want so as to be in harmony with them and the traditional/community leaders – who in most cases feel that the police have taken up the role of *ankhoswe*. This has in some cases brought about conflicts and tensions, so as a preventive measure they will not do their work as they are supposed to but end up emulating the ways of the locals in dealing with the issue.’

This view is a good example of how the norms as well as society’s expectations work to affect the actors in their formal justice structures, and how they render service to women victims of physical domestic violence. Culture and tradition end up being exalted above the law.

5.5 Conclusion

Women victims of physical domestic violence in some cases know what they are supposed to do and where they are supposed to go. In instances when they go, they barely ever receive satisfactory help to alleviate their situations. The inadequacy of police VSU structures and the attitudes of the VSU officers both prevent women victims from accessing the effective legal remedies that the Act seeks to afford them. In other cases, women victims desist from going to the police because of interlocking oppressions that they deal with from day to day. This ranges from the fact that they are in most cases poor and therefore economically dependent on their abusive husbands; the norms and expectations of the societies in which these women live which lead to their condemnation and lack of social support when they attempt to seek legal remedies. The information gap on the existing law and its provisions also has a bearing. In the end, all these factors work together to prevent women victims from accessing effective legal remedies. The next chapter summarizes the whole study and makes recommendations.

CHAPTER SIX

6.0 AFTER ALL IS SAID AND DONE, THEN WHAT?

6.1 Introduction

The PDVA has worked to shift the focus of physical domestic violence from the private to the public domain. This is because until the adoption of the Act, physical domestic violence was considered a purely family matter in which the police would not intervene. The Act emphasised domestic violence as a subject matter of its own importance, with its own regulating law. The Act provides possibilities for accessing legal redress for physical violence suffered in the home. This chapter draws conclusions from the study and makes recommendations.

6.2 Discussion

Women victims of domestic violence go through different experiences peculiar to them in the home, although in some cases the different experiences give them similar experiences in the public when they attempt to seek legal help. Some women are still not aware of where they can go to get help. Those who are aware and seek help are in most cases left unsatisfied with the help they get, or never get, from the VSU. In yet other cases, women know what they need to do but they are kept back from doing so due to a myriad of blocks that they stumble over and eventually fail to get the help they need. These include social factors, economic dependence, and a limited understanding of the law.

The procedure laid down by the PDVA is not cumbersome for women. In fact, it is not hard to follow through. However, there are certain cultures that have developed within the VSU structure that make the process difficult for them to follow. In addition, there are economic costs involved which have proven to be a big challenge for most of the women victims.

The VSU as a service provider faces a number of challenges that make it difficult in most cases to discharge their mandate accordingly and therefore realize the purpose of the Act. There are challenges at the level of the state, institution and individual officer. There is insufficient funding for the police VSU; there are no shelters for victims or sufficient custom-built VSUs to ensure that the necessary services are provided to the victims; compromised training for officers; all these result from the state's lack of political will and consequently

they yield highly compromised services to victims, which in the process greatly undermines the achievement of the purpose of the Act. Gender insensitivity of officers and their individual personalities also pose a hurdle. All these factors combined render the Act less effective in providing legal redress to women victims of domestic violence, but also bring the State in conflict with its regional and international obligations.

As noted in chapter two, when a law is said to be effective it will have attained a closeness of the actual results achieved to meeting the expectation. The PDVA has yet to come close to achieving its purpose as the study has shown. The problems do not lie with the Act itself but on how it is implemented. It can therefore be concluded that there is need for interventions to enhance the effectiveness of the Act.

6.3 Moving forward

The following are some of the recommendations suggested for the improvement of the situation.

6.3.1 Legal interventions

- (a) Revise the budgetary allocation upward. Other thematic areas in ministries receive special funding, for instance HIV/AIDS. Currently funding for the VSU comes from ORT which comes as a large chunk, catering for the police generally and then further split at the institutional level. Having its own budget vote would assist in the day to day activities of the VSU in terms of operationalizing the Act.
- (b) Construct shelters for victim of domestic violence and more custom-built VSUs. This will enable the VSU officers to render more beneficial services to victims, i.e., more privacy in the interview room, and temporary shelter for battered women.
- (c) Capacity building. State investment should be made in the proper gender training of VSU officers, including refresher courses organized by police and they should not be donor-dependent. It is only officers who are gender sensitive who can appreciate the gendered nature of physical domestic violence against women and place them in a position to better assist victims. This also links to the need for the Minister responsible for the Act to gazette the list of service providers so that police can refer

matters where they need to be referred, but also for CSOs and others to engage recognized service providers to train officers.

- (d) Engage the ministry responsible for civic education to provide civic education to the masses on the relevant law provisions and the role of VSU in domestic violence matters. This involves putting the law in a more user friendly format, i.e., translated versions without watering down the meaning in the actual text(s).
- (e) There are no clearly defined performance tracking mechanisms. Employing such measures would help to check who is doing what and how well or badly and it would provide an opportunity to enforce accountability and strengthen any weak areas in the VSU's duty to provide all services required under the PDVA.

6.3.2 *Non-legal interventions*

Since it is undisputed that physical domestic violence is a social problem, social solutions would therefore also be required to resolve and eventually eliminate it since the law is not able on its own to solve social problems.

- (a) Employ more social means for prevention of physical domestic violence. A complementary approach is needed because the law on its own is not adequate in dealing with social problems. Traditional leaders, faith-based organizations must be brought more on board to condemn physical domestic violence and strengthen the social support system for victims.
- (b) Introduce programs, like edutainment and working with the societies' informal gatherings, with the aim of continuously deconstructing the masculinities that have taken hold of our societies through civic education. Sensitize the masses, especially the next generation, on the equal inherent worth of men and women. This is essential because the challenge remains that the system within which these changes are sought is still male-dominated.
- (c) The saying goes, 'You send a thief to catch a thief.' Men are in most cases the perpetrators of domestic violence as studies have shown. Therefore, in the fight against physical domestic violence men need to be targeted and involved. This will

ensure that the struggle is not just seen as another one of women's issues which they alone must be the burden of solving.

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