
**SEXUAL VIOLENCE AGAINST WOMEN: A CRITICAL ANALYSIS OF THE
KNOWLEDGE OF THE LAW RELATING TO A RAPE VICTIM'S RIGHT TO
COMPENSATION.THE CASE OF LINDI, TANZANIA**

**By
Lilian RUGARABAMU**

Supervisor: Dr Rosalie Katsande

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Abstract

In the Lindi Region of Tanzania (and possibly throughout the whole of Tanzania), victims of rape, the general public and the majority of legal service providers are almost completely unaware of the provision of section 131(1) of the Penal Code which imposes a duty on presiding judicial officers to order convicted rapists to pay their victims compensation for the injuries they have suffered. Although this progressive pro-women provision has been on the statute books for the past 17 years, the fact is that these mandatory orders are hardly ever requested by prosecutors or victims or awarded by magistrates. The researcher, a practising magistrate, used this research to discover the reason/s for this travesty of justice in view of the huge amount of publicity which (she remembers) heralded the amendment to section 131(1) (in 1998) to include the payment of compensation and the widespread public knowledge of the extremely heavy penalty for rape of 30 years to life imprisonment which is mentioned in the same section. She found that although the wording of the section is sound in its language (i.e., on its face), its implementation is extremely problematic. Using the overarching grounded Women's Law Approach (which focuses on ascertaining the lived realities of women and girls who are victims of rape, a number of whom she interviewed) to direct the research, she invoked complementary approaches such as the actors and structures, sex and gender analysis and human rights approaches to reveal the impact on victims of the treatment they receive at the hands of the various service providers they encounter (including the police, health officials, prosecutors, defence counsel and magistrates and judges) in their quest for justice from the inception to conclusion of a rape case. Desk research and the observance of court practice revealed that judicial officers have to apply section 131(1) alongside other statutory provisions, the impact of which totally defeats the purpose of awarding mandatory compensation orders in that rapists are only obliged to pay their victims on completion of their sentence. The resulting practical ineffectiveness of compensation orders seems to explain the uneasy silence or professed lack of knowledge surrounding them, especially on the part of lawyers and magistrates interviewed by the researcher. In order to rectify this situation, the researcher recommends a two-pronged course of action involving (1) a high profile publicity campaign to alert women generally of their claim for compensation in order to galvanise whatever lack of political will they may encounter (2) to help bring about an amendment to the law to ensure that rapists pay such compensation at the beginning of their sentences. All law enforcers involved in rape cases are required by law to create awareness among victims of their right to compensation right from the very beginning at the reporting stage of their cases; their failure to do so constitutes a violation of their right to know about their rights in terms of article 18 of the Constitution and other relevant international human rights instruments.

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Declaration

I, Lilian K.E.Rugarabamu, hereby declare that this dissertation is my original work. It is a reflection of my personal research and has not been presented anywhere before.

Signed.....

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Dedication

To all victims of rape and sexual violence.

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It took me 18 months to complete my journey writing this dissertation. I came across many challenges but also a number of awe-inspiring people who have contributed much to the completion of my journey. I will not be able to mention all of them in here, but some deserve a special note of thanks.

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To all, I say *Akhsante Sana* (Thank you very much).

List of abbreviations and acronyms

CAT	Court of Appeal of Tanzania
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CURT	Constitution of the United Republic of Tanzania
DEVAW	United Nations Declaration on the Elimination of Violence against Women
GO	Government Organisation
ICCPR	United Nations International Covenant on Civil and Political Rights
LIWOPAC	Lindi Women's Paralegal Aid Centre
NGO	Non-governmental organization
OCD	Officer Commanding District
OWE	Organization for Women Empowerment
SADC Protocol	SADC Protocol on Gender and Development
SEARCWL	Women's Law, Southern and Eastern African Regional Centre for Women's Law
SMS	Short messaging service
SOSPA	Sexual Offence Provisions Act
TAWLA	Tanzania Women Lawyers Association
TAMWA	Tanzania Media Women's Association
TAWJA	Tanzania Women Judges Association
Tsh	Tanzanian Shillings
VEO	Village Executive Officer
WEO	Ward Executive Officer
Women's Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

CURRENCY CONVERSION

US\$1 = Tsh 2,300/= (As at 2nd February, 2016)

List of national laws

Child Act, Chapter 21 [Revised edition, 2002]

Constitution of the United Republic of Tanzania of 1977, as amended from time to time (CURT)

Criminal Procedure Code, Chapter 20 [Revised edition, 2002]

Penal Code Act, No 3 of 1971

Penal Code, Chapter 16 [Revised edition, 2002]

Sexual Offence Provisions Act (SOSPA)

List of international laws

The United Nations International Covenant on Civil and Political Rights (1966) (ICCPR)

Convention on the Elimination of all Forms of Discrimination against Women (1979) (CEDAW)

United Nations Declaration on the Elimination of Violence against Women (1933) (DEVAW)

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

Southern African Development Community (SADC) Protocol on Gender and Development (2008) (the SADC Protocol)

List of cases

Musa Mohammed v Republic Criminal Appeal No 216/2005 (CAT, Mtwara) (unreported)

Bosnia.v Herzegovina Case No K-76/08

Leonard Jonathan v Republic Criminal Appeal No 225/2007 (CAT, Arusha) (unreported)

Gouriet v Union Post Office Workers AC 435; (1977)3WLR300; [1977]3ALLER70

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Executive summary

In 1998 section 131(1) the Penal Code was amended to include a duty on judicial officers presiding over rape trials to grant a mandatory order for compensation against the rapist in favour of their victims. This meant that the law recognized women's and girls' rights to liberty, dignity and protection by the law. Although this amendment has been in place for the past 17 years, neither victims nor the public are aware of the rape victim's right to be compensated. This is because its implementation has been very poor.

This state of affairs exists despite the country having a Constitution which provides for the right to information and equality before the law to all human beings (i.e. women and men). In addition, Tanzania has ratified several International Human Rights Instruments providing for the protection of women and girl victims of rape and for the realization of their rights to be compensated.

Using the women's law approach as the research's overarching methodology, I was able to construct the lived reality of women and girl victims of rape and their level of awareness of their right to be compensated. I also ascertained how the law enforcers implement section 131(1) and disseminate legal knowledge to victims of rape. I was able to understand the weaknesses that lay behind the poor implementation of section 131(1) and why people are unaware of its compensatory provision.

The law seems to give the right to receive compensation with one hand and take it away with the other, since it provides for the mandatory order for compensation but only requires the rapist to pay the compensation after serving his sentence, a minimum 30 years or life which is far too long for the victim to wait for their right to be enforced.

Grounded theory approach helped me to test my assumptions on the ground and triangulate various data collected from the field including whether victims of rape or public are aware of their right to a compensation order or not and whether victims are actually benefiting from or enforcing their right to such orders. The human right approach assisted me to determine the nature of the state's obligation in relation to the right of rape victims to information that section 131(1) gives them the right to be compensated. I realized that the state has failed to

keep victims of rape informed of their right to be compensated since most victims of rape are unaware that they have such a right.

The actors and structure approach revealed to me that various actors (i.e.. magistrates, state attorneys, staff within police, NGOs, and the media) are not raising legal knowledge in the minds of victims of rape of their right to be compensated. Therefore, right from the day they report their rape case to the police and throughout the prosecution of the rape trial, compensation is not raised in the court by the lawyers or judicial officers. The matter is never even discussed or dealt with and if it is dealt with, it is usually in the form of magistrates ordering victims to file a separate civil claim for compensation. Despite the existence of NGOs and the media, no any public education is being conducted to create any legal awareness of rape victim's mandatory right to compensation. All these weaknesses are due to the state's failure to honour its obligation to realize the rights of women and girl victims of rape.

Lastly, the sex and gender analysis assisted me in understanding why the most vulnerable victims of rape are women and girls as opposed to men and boys and the differences in the levels of legal awareness between the men and women.

The findings are based on the voices of women and girl victims of rape who are unaware of their right to compensation. The response from the key informants and other respondents apparently confirmed that they are not aware of the victims' of rape right to be compensated. There is poor or a complete lack of implementation of section 131(1) of the Penal Code by the law enforcers although the requirement to make the order is mandatory and this explains the reason behind victims' lack of legal knowledge about their right. The findings also show a need for compensation for victims of rape and the need for the utilization of the compensation provision of section 131(1) of the Penal Code.

The research recommends strenuous enforcement of section 131(1) of the Penal Code by the law enforcers and the creation of legal awareness among victims of rape in regard to their right to compensation. Education outreach programmes should be conducted and aimed at victims of rape and the public at large so that they can learn about their right and take steps to enforce it.

Other recommendations include: the enforcing of clear judicial guidelines for the judicial officers to follow in assessing compensation for rape injuries in terms of section 131(1) of the Penal Code; the introduction of a new regulatory body for the payment of victim's compensation; an amendment to section 131(1) compelling rapists to effect payment of compensation to his victim at the commencement of serving his prison sentence, as compensation is necessary and important because it helps victims to rebuild their lives and enable them to return quickly to society; the use of cell phones and short messaging service (SMS), the launch of 'Law day weeks', the creation and distribution of brochures/leaflets to disseminate legal information to the victims of rape and the public at large.

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE RESEARCH

'I should not like my writing to spare someone the trouble of thinking. But, if possible to stimulate someone to thoughts of his own'
(Ludwig Wittgenstein, *Philosophical Investigation*).

1.1 Motivation for the research

Presiding as a magistrate over a court room of people who are seeking justice is not an easy task because all eyes are on you. People's destinies depend on my decision. I was reading a judgment in which I had convicted an accused who was charged with the offence of grievous harm. I sentenced him to pay fine and compensation to the victim or, in default, to serve a jail sentence.

The accused opted to pay the fine and compensation without delay. The victim was happy that at last justice was done and seen to be done. A few days later I was assigned a rape case in which I convicted and sentenced the accused to 30 years imprisonment in addition to which I ordered the accused to pay compensation to the victim in accordance with section 131(1) of the Penal Code, Chapter 16 [Revised edition, 2002] (the Penal Code).

The accused appealed and it was dismissed. One day the victim came to my office and asked '*Your Honour, when will I be compensated?*' I thought of telling her after the accused has completed serving his sentence, i.e., after 30 years. I did not have a direct answer to that question. She left. I shared the problem with the other magistrate who had a similar case before him but we did not have answer as to why victims of rape have to wait for their compensation whereas victims of other offences do not.

The situation remained a puzzle and challenge to me. How can it be that 17 years have passed since rape victims have had the right to receive compensation in terms of section 131(1) of the Penal Code, yet (1) rape victims have to wait for their rapist to complete their 30 years jail sentences before they pay them their compensation; and (2) most rape victims and even legal service providers are unaware of this mandatory right to compensation in favour of the victims?

Therefore, I have decided to choose this topic and find out what is the problem with section 131(1) of the Penal Code. Does it really serve the purpose it was meant to serve? Does it actually protect rape victims? Are people aware of their right to compensation? If so, what is the problem? And, if not, what are the possible interventions that could be put in place to make section 131(1) work for and benefit rape victims. I also wanted to interrogate whether law enforcers are creating awareness among victims of rape and the general public of this right to compensation, and how to apply this provision of the law.

1.2 Introduction

'A right without a remedy is not a right at all'

Lord Denning (1978).

The right to compensation is a human right. Victims have the right be compensated for harm caused to them by acts which violate their rights. In order for victims to enforce their right they must first have knowledge of that right. While knowledge of their rights should improve the chances of victims of sexual violence securing justice, the fact is that the Tanzanian government and the majority of its law enforcers fail to provide victims of sexual violence with effective remedies, such as the right to compensation, for sexual violations perpetrated against them.

The journey of a raped woman to seek justice is not as direct or systematic as often alleged. She is forced to travel down many paths (Kidd *et al.*, 1999: 190). While there are many laws affording her rights for the different types of harm she has suffered (including the right of compensation) the problem she encounters is when she tries to implement and apply these laws to her benefit.

Traditionally in Tanzania, the rights and interests of victims of rape have largely been ignored. Victims are largely seen as serving the interests of the prosecution, i.e., to assist in prosecuting the case by providing the state with information that a crime has been committed, to help identify the perpetrator and to obtain the necessary evidence in order to secure his conviction (Liberty, 2003:6).

When perpetrators are tried, victims of rape often feel distanced from the trial proceedings because they do not feel they are given the proper opportunity to present their views and concerns in the proceedings and they are seldom informed about the progress of the trial or its eventual outcome (UNODCCP, 1999:1). In other words, they feel left out of the process and far too little is done to ensure that they are not alienated or further traumatized.

There is a rich body of international and national laws which seeks the protection of victims of sexual violence for the acts committed against them. According to these laws, State Parties, including the government of Tanzania, are obliged to protect victims by not only enforcing their rights but by creating awareness among victims that they actually have such rights (i.e., a duty to increase their legal knowledge) so that they can enforce them. In the case of sexual violations, such as rape, the government is obliged to make laws to protect its citizens against such crimes and this includes their right to receive compensation from the perpetrators of such crimes. The Judiciary is obliged to uphold and enforce these rights.

Against the backdrop of Tanzania's Constitutional framework which emphasizes equality (article 12 of the Tanzania Constitution) and equality before the law for all human beings (article 13), this study focuses on the levels of awareness of victims of rape in regard to their right to compensation as provided by section 131(1) of the Penal Code.

It is my belief that if raped women and girls are to be courageous trailblazers in the creation of the first of many paths to justice through the determined, measured and consistent application and implementation of this section, then the first and most important stride of that daunting journey must involve the combined participation of the community as well as the victims of sexual violence themselves in the vital creation of awareness of those rights.

Vital to the study are questions which necessitate answers, especially the main question which is, 'If the law exists, why is there such a glaring failure to apply and implement it?' Then there are other questions, such as, 'Why do victims of rape delay enforcing their rights? Is it due to their lack of legal knowledge? Or does the system fail them?'; 'Why is compensation ordered in so few rape cases even though the provision to make such an order is mandatory?' and 'Why are women and girls who are victims of rape so unaware of their right to compensation?'

1.3 Setting the scene

The nature of Tanzania's legal system is pluralistic and discriminates against women, girls and other marginalized groups in that where there is a conflict of law, the more empowered groups resort to enforcing those discriminatory laws against the less empowered groups to the detriment of the latter (Rwebangira, 1996). The existence of such a situation undermines women's rights and thwarts their access to justice.

Even though Tanzanian women and girls have suffered a long history of sexual violence, they have remained silent about their plight. Victims of rape tend not to speak out for fear of being despised, stigmatised and prejudiced by their community by the very act of having been raped.

Generally, women do not report or talk about a rape they have suffered. And this has led to a history of oppression despite women having enjoyed the protection of the Penal Code, Chapter 16 (which criminalises rape) which is part of one of the oldest received laws in Tanzanian law dating back to 1930. The Penal Code was part and parcel of the law long before the colony of Tanganyika gained its Independence from Britain in 1961 (TAMWA, 2014), and, since then, has been amended from time to time.

The Act was not gendered and also never recognized the rights of victims of sexual offences. So, for example, section 131 of the Penal Code, Act No 3 of 1971 (as it then was) provided solely for the state's punishment of rape as follows:

‘Any person who commits the offence of rape is liable to be punished with imprisonment for life with or without a corporal punishment.’

The law did not recognize the right of rape victims to compensation since it was based solely on punishing offenders and never considered the injuries or effects suffered by victims. It was in this respect that the law discriminated against victims because their right to be compensated was not made part of the law. Discriminatory provisions against women such as these and other factors impelled women human rights activists around the world to campaign for legal reform to bring local laws into line with universal standards.

Their chief strategy was to engage individual states and demand that they take action to safeguard the personal integrity, dignity and liberty of women and children as required under international law (Moulidi, 2009). Women in Tanzania immediately focused their efforts on advocacy against sexual offences committed against girls and women. It encouraged them to break their silence over various forms of violence in the process of creating awareness of the widespread existence of these crimes among its victims and the community at large.

This offered a ray of hope for women and girls who had been violated with impunity for years. It literally marked a turning point in the championing of the rights of victims of sexual offenders in that more incidents of sexual violence began to be reported and all aspects of violence against women received wider and better reporting.

Such coverage was supported mainly by the Tanzania Media Women Associations (TAMWA). It was not until 1998 that this successful advocacy campaign opposing violence against women gave birth to the Sexual Offence Provisions Act (SOSPA). SOSPA led to the amendment of different laws, one of which was the Penal Code, Chapter 16 [Revised edition, 2002], in which the whole of section 131, which provides for the punishment for rape, was amended to read as follows:

- ‘(1) any person who commits rape is, except in the cases provided for in the renumbered subsection (2), liable to be punished with imprisonment for life, and in any case for imprisonment of not less than thirty years with corporal punishment, and with a fine, and *shall* in addition *be ordered to pay compensation* of an amount determined by the court, to the person in respect of whom the offence was committed *for the injuries caused* to such person.
- (2) Notwithstanding the provisions of any law, where the offence is committed by a boy is of the age of eighteen years or less, he shall -
 - (a) if a first offender, be sentenced to corporal punishment only;
 - (b)
 - (c)
- (3) Subject to the provisions of subsection (2), a person who commits an offence of rape of a girl under the age of ten years shall on conviction be sentenced to life imprisonment.’ (my emphasis)

Also section 118 of the Child Act provides for an order of compensation to the victim of rape and where the offence is committed by a minor then the responsibility rests upon the parents or guardian in which the same state as follows:

- ‘(1) Where the child is convicted of any offence for the commission of which a fine, compensation or costs may be imposed, and the court is of opinion that the case would be best disposed of in the interest of the child by imposition of a fine, compensation or costs, whether with or without any other punishment, the court may in any case order that the fine, compensation or costs awarded be paid by the parent, guardian or relative of the child instead of by the child, unless the court is satisfied that the parent, guardian, or relative of the child cannot be found or that he has not contributed to the commission of the offence or that he has not contributed to the commission of the offence by neglecting to exercise due care of the child.’

The gist of the new section (i.e, section 131(1) of the Penal Code) was, among other things, to inject a much needed shot in the arm to strengthen the mechanism for using the criminal justice system to reinforce the legal regime to protect women and girl’s dignity (TAMWA, 2014:15) and to ensure that victims are compensated for the serious crime committed against them.

1.4 Research problem

It has been more than ten years since Tanzania amended section 131(1) of its Penal Code and made a victim’s right to compensation a mandatory order. Sadly, however, despite the ground-breaking influence of TAMWA and the women activists behind the positive reform of the legislation, victims apparently never lay claim to this crucial right. This appears to be due to the lack of legal literacy or knowledge of section 131(1) on the part of not only victims but the public in general. In addition, the abovementioned provision is not effectively implemented and applied by the Judiciary since most judges and magistrates fail to make any orders of compensation after convicting and sentencing an accused even though the Penal Code makes the award of compensation order mandatory.

The following challenge to the successful implementation of the section also needs to be considered. Accused persons generally only pay compensation orders *after* they have successfully completed their sentences. Therefore, one must ask, ‘Of what possible benefit would it be to a victim to receive compensation from a convicted rapist 30 years after his

conviction? What if the accused eventually failed to pay compensation?’ The law is silent on the matter.

Table 1, below, shows that the crime of rape is the second highest occurring crime in the region of Lindi.

Table 1: Showing statistics for all crimes (including rape) reported in Lindi Region at the Lindi Region Gender Desk (January 2014 to October 2015)

Statistics report for all crimes reported to the Lindi Region Gender Desk (January 2014 to October 2015)	
Cases reported	Number of cases
Rape	79
Sodomy	11
Kidnapping	3
Sexual assault	2
Harm	9
The murder of elderly	1
Threats	4
Grievous bodily harm	26
Abduction	2
Assault/accidents	110
Impregnating a school girl	1
Abusive language	31
Deserting the family	2
Total	279

(Source: Lindi Regional Police Commander)

The 79 rape cases reported in the Lindi Region shown in Table 1, above, may be divided into the various stages which have been reached by the state in its efforts to bring the accused to justice (see Table 2, below).

Table 2: Showing statistics for rape cases reported at Lindi Regional Police Gender Desk (January 2014 to October 2015)

Statistics for rape cases reported at the Lindi Region Gender Desk (January 2014 to October 2015)	
Under Investigation (with the Police)	66
Progressing through the Courts	10
Convictions	3
Total	79

(Source: Lindi Regional Police Commander)

Out of the 66 investigated cases for the Region of Lindi (shown above in Table 2), 19 of those cases are from the District of Lindi (made up of 14 in 2014 plus 5 in 2015). That District had total of 39 reported cases of rape for the period of January 2014 to November 2015, and the status of those cases are shown in the Table 3, below.

Table 3: Statistics for rape cases reported at Lindi District Police Gender Desk (January 2014 to November 2015)

Statistics for rape cases reported at Lindi District Police Gender Desk (January 2014 to November 2015)	
Cases under investigation	14(2014)
Convictions	8 including attempted rape cases
Acquittals	4
Charges withdrawn	3
No offence detected	1
Cases under investigation	5(2015)
Total No of reported rape cases	39

(Source: Lindi Officer Commanding District)

Out of the total number of 17 rape cases prosecuted in Lindi Resident and District Magistrate's Courts, only 5 convictions were secured and only in respect of one of them was an order for compensation, as shown in Table 4, below.

Table 4: Showing statistics for rape cases prosecuted in Lindi Resident and District Courts (January 2014 to November 2015)

Statistics for rape cases prosecuted in Lindi Resident and District Magistrate's Courts (2014 to 2015)		
Total cases prosecuted	Rape	Juvenile case
17	14	3
Convictions	3 – order for compensation made in only 1 case	2- no orders made compensation
Acquittals	5	Nil
Charges withdrawn	3	Nil
Pending	3	1

(Source from the Lindi Resident Magistrate In-charge)

It is of concern out of the 39 reported rape cases, only 17 reached court. And then only one single case of compensation was ordered out of five convictions.

The above data prove that victims face the prospect that (1) so few rape investigations are finally prosecuted through the courts; (2) that so few convictions are secured and (3) that so few compensation orders are awarded to victims on the rare occasion convictions are obtained. Taking these facts together should we be surprised to discover that women are likely to be deterred from reporting rape cases or, if they do, from continuing to pursue them and to opt instead to abandon and rather settle them privately out of court?

1.5 Objective of the research

In order to probe the research problem thoroughly, I went into the field with specific objectives in mind and they were:

1.5.1 Specific objectives:

- 1.5.1.1 To examine the extent to which compensation orders in terms of section 131(1) of the Penal Code, Chapter 16 [Revised edition, 2002] are enforced in favour of victims of rape.
- 1.5.1.2 To examine the need to provide victims of rape with knowledge of their right to compensation.
- 1.5.1.3 To investigate the economic loss suffered by the victims of rape as a result of paying, e.g., medical bills and other related expenses.

- 1.5.1.4 To assess the extent to which judges and magistrates implement the existing law on compensation to victims of rape.
- 1.5.1.5 To examine whether the utilization of section 131(1) of the Penal Code will compensate victims of rape for the economic loss they suffer as a result of having been raped.

1.6 Research assumptions

- 1.6.1 That section 131(1) of Penal Code which provides for a mandatory order for compensation to victims of rape will assist them to recover from the injuries suffered as a result of the crime.
- 1.6.2 That victims of rape are not aware of their right to be compensated by the rapist for the injuries sustained as a result of in the crime perpetuated against them.
- 1.6.3 That victims of rape suffer economic loss as a result of the crime because they have to pay for medical bills and other related expenses.
- 1.6.4 That there is a general lack or poor implementation by judges and magistrates of the existing law of compensation to victims of rape.
- 1.6.5 That the utilization of section 131(1) of the Penal Code by the Judiciary will go a long way in compensating victims of rape for the economic loss they suffer as a result of the crime.

1.7 Research questions

- 1.7.1 Does section 131(1) of the Penal Code, which provides for a mandatory order for compensation to victims of rape, assist them to recover from the injuries suffered as a result of the crime?
- 1.7.2 Is it the case that victims of rape are not aware of their right to be compensated by the rapist for injuries sustained as a result of the crime?
- 1.7.3 Do victims of rape suffer economic loss (such as having to pay medical bills and other related expenses) as a result of the crime of rape?
- 1.7.4 Is there a general lack of or poor implementation of the existing law on compensation to victims of rape by judges and magistrates?
- 1.7.5 Will the utilization of section 131(1) of the Penal Code by the Judiciary go a long way in compensating victims of rape for the economic loss suffered as a result of the crime?

1.8 Limitation of the research and reliability of data

Although the data collection was satisfactory, I encountered several challenges. For example, I failed to secure some appointments with some of the judges, the Secretary of the Tanzanian Parliament and the director of TAMWA. Therefore, certain aspects of my research lacked the depth I would have preferred.

It was also difficult tracing victims of rape since court records do not contain their contact details. Therefore, I had to approach the Officer Commanding District (OCD) of the relevant police stations and work through officers in the criminal investigation departments who went through records looking for their contact details. Some victims were only reachable with the help of ward and village executive officers in the areas in which they lived.

Some relatives of the victims thought that I was working with the human rights department and were under the mistaken impression that I was seeking their pardon/consent to secure the release of the imprisoned rapist from jail. It took some time for me to explain to them and for them to accept the purpose of my visit and research.

My field research took place during Tanzania's general election and this affected my research since people were very busy with election campaigns. There were also several public holidays. As a result I had to postpone my interviews with several key informants in the government until after the election.

I was unable to locate on the Parliament website the 1998 Hansard debate concerning the Sexual Offence Act and amendments to other laws. This forced me to travel from Lindi to Dodoma in order to find it but I failed to do so. Despite this, I can confidently say that the data I did manage to obtain was sufficient for the reasons which will be explained in the next chapters.

1.9 Delimitation

The Lindi Region comprises several districts, one of which is called Lindi District and its capital is called Lindi (see Figures 1 and 2, below). The research is limited to Lindi District and most of the interviews were conducted within the jurisdiction of Lindi District.

Also, since the topic deals with sexual violence against women it has to be understood that 'sexual violence' is a broad term which comprises different types of violence such as assault, battery, abuse, incest, defilement and rape. My research is specifically limited to the right to compensation to victims of rape only.

1.10 Conceptual framework

Knowledge is justified true belief, or true opinion combined with reasons (Hilpinen, 1970).

Violence means a physical force unlawfully exercised or the threat of causing of bodily injury (Adjetey, 1998:1). Violence may take the form of psychological, emotional, mental silent or physical.

Sexual violence means unwelcome behaviour of a sexual nature that relates to the gender or sexual identity of an individual and that has the purpose or effect of creating an intimidating or hostile environment for study, work or social living (Wagner, 1999:59)

Rape is the carnal knowledge of a female without her consent (Adjetey, 1998:3).

Rape is also defined under the Penal Code:

- '(1) it is an offence for a male person to rape a girl or a woman.
- (2) A male person commits the offence of rape if he has sexual intercourse with a girl or a woman under circumstances falling under any of the following descriptions:
 - (a) Not being his wife, or being his wife who is separated from him without her consenting to it at the time of the sexual intercourse;
 - (b) With her consent where the consent has been obtained by the use of force, threats or intimidation by putting her in fear of death or of hurt or while she is in unlawful detention;
 - (c) With her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by any drugs, matter or thing, administered to her by

the man or by some other person unless proved that there was prior consent between the two;

- (d) With her consent when the man knows that he is not her husband, and that her consent is given because she has been made to believe that he is another man to whom she is, or believes herself to be, lawfully married;
- (e) With or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man.’

Compensation means payment of damages or any other act that a court orders to be done by a person who has caused injury to another (Garner, 2004:854)

1.11 Overview of the research area

The research was centred in the Lindi Region, which is located in the South-Eastern part of Tanzania, contiguous to the Indian Ocean to the East and the Coastal Region to the north. The region comprises five districts which are Lindi, Liwale, Ruangwa, Nachingwea and Kilwa. The research was carried out in Lindi District as shown in the maps below (Figures 1 and 2) which show the rural and urban areas surrounding the Lindi Region and District.

The reason this area was chosen is because I work in the Lindi District Court as a Magistrate and I therefore found that it would be easier for me to obtain detailed and reliable information since I am conversant not only with the area but I also have personal knowledge of cases of rape where compensation was ordered but the order was never enforced.

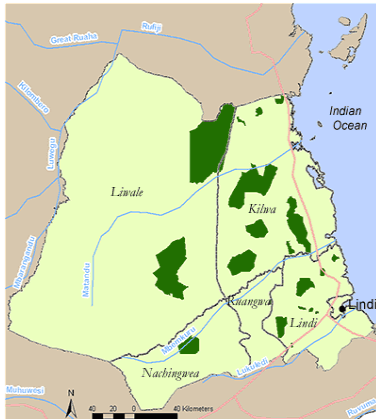


Figure 1: Map of Lindi Region and its five Districts



Figure 2: Map of Lindi District which shows the urban and rural areas surrounding the District

(Source: <https://www.google.co.zw/search?q=lindi+district+map&biw=1366&bih=634&tbm=isch&tbo=u&source=univ&sa=X&ved=0ahUKEw> Accessed on 2 March 2016)

1.12 Summary of the chapters

My research paper comprises five chapters. In chapter one I set out the introduction to the study, the research objectives, assumptions and questions which inform the study. In this chapter I analyze briefly not only the implementation of the right to compensation to victims of rape but also the role of legal information dissemination in creating awareness among victims of rape of their right to compensation.

Chapter two contains the methodological framework for the study and what emerged during my research. Chapter three covers the study's findings and an analysis of the data where I will discuss the provision of the law in regard to the right to compensation to victims of rape; the legal knowledge the victims of rape have in regard to the right to compensation and structural compliance in regard to section 131 of the Penal Code. Chapter four will explore the missing links of the research in which I will discuss the gaps in regard to the knowledge of the law that victims of rape have and chapter five will contain the study's concluding remarks and interventions by proposing what has to be done to enforce victims' right to compensation and to make sure that victims of rape are aware of their rights to compensation.

CHAPTER TWO

2.0 METHODOLOGICAL SOURCES - SOME REFLECTIONS

'Research is not used as a can opener is used'

(Huberman, 1987:589).

2.1 Introduction

Methodology has been defined as a theory and analysis of how research is done or should proceed (Hellum, 1990: 17). This chapter covers the methodological framework that I applied during my research and in it I discuss several methodological approaches I used in seeking to untangle the research problem by confirming or disputing my research assumptions. Also this chapter outlines the research design which helped to determine the methods of data collection I had to employ in order to best answer my research questions.

The choice of methodological approach is very important since it ensures that the data collected are credible and my intention behind the application of the methodological framework was to achieve an understanding of the lived reality of the women and girls at the heart of the research problem so that I could eventually propose meaningful working interventions that are likely to truly increase their awareness of both their rights and how to enforce them.

2.2 METHODOLOGIES APPLIED

'The beginning point must be that everything is a women's issue'

(Charlotte Bunch 1985).

2.2.1 Women's lived realities and access of right to compensation - A unifying perspective

Women's legal knowledge in regard to their right to compensation as victims of rape is directly linked to how the law impacts on their lives for the wrongs committed against them and if they are able to access such right. Smart argues that women's lives are greatly affected by the law (Smart, 1995: 177). I discovered that the methodology that best suited my research was the women's law approach which is defined as a legal discipline which explores the

reality of women's lives and from that perspective interrogates and investigates the law (Bentzon *et al.*, 1998: 26). I choose this methodology since it takes women as the starting point for the research and involves building up legal and social knowledge and encompasses the practices and perceptions of women and men (Bentzon *et al.*, 1998).

The approach has enabled me to look at the lived reality of women's legal awareness in regard to the right of compensation to victims of rape. I managed to interview both women and men in order to understand their awareness, experience and lived realities surrounding the right of women and girls to access justice in the form of mandatory compensation orders made by judges and magistrates against their rapists.

The women's law approach engages women at the grassroots level in order to achieve a holistic picture of their awareness and experiences as victims of rape in connection with their right to receive compensation from their assailants. Women who shared their experiences complained that they were not aware of the right to be compensated as victims of rape. All that they said that they knew about rape cases was that the victim has to go to court and give evidence.

This revealed that the application of section 131(1) of the Penal Code which offers protection in the form of mandatory monetary compensation to women and girls who are victims of rape is not considered by magistrates when they sentence the perpetrators of rape and victims are not even aware that such a right exists. As far as I am aware, very few orders of compensation have been awarded by magistrates or judges or applied for by victims.

Why is this happening? Why are victims not aware of their rights despite the positive gender provisions contained in the Constitution? What is the problem? Why do rape victims fail so dismally to access justice? Why do rape victims delay enforcing their rights? Is it because of their lack of awareness of their rights? Is it a failure on the part of the law or its enforcers? Is it a weakness of court procedure? What is it that prevents victims from receiving an immediate compulsory award for compensation which occurs almost routinely with other types of crimes? Why are there so few cases in which orders for compensation have been granted when such orders are mandatory? Why are people not aware of this right to compensation when it is clearly stipulated in the Penal Code?

During the interviews I conducted I discovered that during every stage along a woman/girl's entire journey seeking to access justice for rape (i.e., right from the reporting stage through to the perpetrator's arrest, having to attend hospital for examination, right up to attending court to assist the prosecution and the securing of the perpetrator's conviction and sentence by the court) there are a lot of gaps in the system which fail rape victims. As I traced their footsteps during this journey, I discovered how victims of rape are being treated by law enforcers and the various challenges they face and these will all be discussed in the next chapter.

As far as the law is concerned, I wanted to know whether magistrates and judges had, during the seventeen years since it had come into force, complied with the mandatory provisions of section 131(1) of the Penal Code whose primary objective was to enhance the rights, dignity and liberty of victims of rape. Since the intention behind the positive amendment of the law was to increase the protection of victims and remove as far as possible the oppression they faced in their pursuit of justice, I wanted to find out just what law enforcers did to raise legal awareness among victims of the crime and the community at large in regard to their right to be compensated.

2.2.2 The reality in regard of the right to compensation to victims of rape

To collect the required data I also used grounded theory which is an interactive process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it (Bentzon *et al.*, 1998: 17). It assists the researcher to collect, sift and analyse data, consider the implications of the findings and then determine what to collect next to meet the needs of the research and then to continue with the collection analysis cycle (Bentzon *et al.*, 1998: 18).

The purpose of this approach is to test the study's assumptions against the reality on the ground (i.e., to determine what the law is and what women's lived reality is in relation to it) and then to see whether and how the law enforcers are implementing the law and upholding and protecting women's rights and welfare. So, for example, the research stimulated questions such as, Are women really aware of their right to compensation or is it simply assumed that they have legal knowledge of their right to compensation? In other words, have their rights on paper in the Penal Code become actual rights which are realized by their enforcement during rape trials?

Since women and girls are victims of rape I found it necessary to select this approach so that I could question them during my research by collecting data concerning their awareness, experience and lived reality in relation to their right to be compensated for the violation that they had suffered. Also I needed to know the constraints encountered by them in accessing this right.

I managed to interview men and women in regard to their awareness of this right and I found that they were unaware of it. They knew that the punishment for the crime of rape may be as high as 30 years or life imprisonment but they were totally unaware of the right to compensation despite its existence in the Penal Code.

2.2.3 Right to compensation a human right issue

The right to compensation is a human right issue and every individual has the right to be compensated for the violation of her or his rights. In order to challenge the injustices faced by rape victims in the enforcement of their right to compensation, I employed the human rights approach which meant analysing their right within the context of the relevant international human right instruments.

My first assumption was that section 131(1) of the Penal Code provides for mandatory compensation to victims of rape that help them to recover compensation for the injuries they sustain as a result of the crime. This accords with the principle that once a right has been violated, the victim must receive compensation. According to this approach rights victims are rights holders (i.e., they have the right to receive compensation) and the government, through its Parliament and Judiciary, are duty bearers (i.e., it has the duty to order compensation) under both local and international human rights law (Goonsekere, 2000).

This approach provides that in this context the most important human rights of women and girls, as victims of rape, include the right to be compensated, the right to access legal knowledge and the right to access justice. The approach also inquires into whether a state, in this case, Tanzania, performs its obligations towards protecting women's rights in relation to compensation. Using the human rights-based approach made me realize that human rights have implications for choice of performer in which this may be direct and indirect concern with the right to compensation to victims of rape.

Since the Tanzanian government is the primary duty bearer it must take positive steps to ensure that the law in regard to ordering the payment of compensation to rape victims is effectively enforced. Also, the government has the prime responsibility to ensure that legal information is effectively disseminated to people in Lindi and that they are aware of such rights as such awareness raising will help victims to enforce this right.

As a result of the application of this approach I managed to analyze the existing legislation, policies and human rights instruments (1) to determine their applicability (a) to the state's obligation to ensure that raped women and girls are compensated and (b) to its duty to increase legal knowledge among the community at large and rape victims of the right to demand and receive compensation and (2) to determine the extent to which the state is complying with these obligations under the international human rights instruments to which Tanzania is a party.

2.2.4 The gendered nature of the right to compensation to victims of rape

'Gender is a cultural definition of behaviour and roles in a given society at a given time. It is different from sex, which is biologically based' (Tsanga, 1999:69).

Gender describes the social relations between and characteristics of women and men. It concerns women and men's participation in the determination of their lives including access to rights, power and control over resources (Coates, 1999; Katsande, 2006:11).

This approach helped me to understand the gender roles of women and men, how many men and women are aware of a victim's right to compensation, and why one sex is more aware of this right than the other. I was also able to find out how many women and men are raped and why one sex is more likely to be raped than the other.

As result of the interviews I conducted I discovered that women and girls are most often the victims of sexual offences as compared to men and boys. For the period January to October 2015 in the Lindi Region, 79 rapes were reported against women and 11 cases of sodomy against men. In this respect, Dahl agrees with Firestone who observes that the 'sex class is so deep that it is invisible' (Dahl, 1987:13). In reality, the differences between the sexes permeate almost every aspect of our lives and they are so pervasive that one often fails to

notice them. Men and women have different social ties, but the differences themselves are not, however, the problem. The problem is how they are mutually ranked, and that the society's evaluation of the sexes, women's qualities, characteristics, values and activities are systematically subordinated to men's (Jaggar, 1983:85)

As this study will reveal, most women do not have knowledge of the law regarding their right to compensation, and even if a woman is raped, the perpetrator's and victim's families sometimes meet and sort out the matter traditionally in which event compensation is paid to the head of the victim's family (be he a father, an elder brother or uncles) but not to the victim.

The sex and gender approach has enabled me to find answers as to why there is a gender difference in regard to the right to compensation. It also helped me to realize the need to create awareness by empowering these women and girls who are victims of rape with legal awareness about the law governing their right to compensation by having strong strategic plan on how to bridge the social construction gap which subordinates and oppresses women and girls.

2.2.5 Structural barriers

The actors and structures approach helped me to examine the actors and structures and their impact on the implementation, application and creation of legal knowledge in the mind of the public and victims of rape in regard to the right to compensation.

I wanted to investigate the effectiveness of the law enforcers and other agents (i.e. judges, magistrates, state attorneys, private advocates, police officers, doctors, court clerks, investigators, Ward Executive Officers (WEOs), non-governmental organizations (NGOs), cell-phone service providers and radio presenters) in disseminating legal knowledge and their experience in enforcing section 131(1) of the Penal Code in regard to a rape victim's right to compensation.

One of my assumptions was that there is a general lack of or poor enforcement of the existing law on compensation to victims of rape by judges and magistrates. This means that although the laws and structures exist for enforcing the law on compensation, the study enabled me to

find out the reason/s why judges and magistrates fail to comply with the mandatory compensation requirement of the provision.

I reasoned that they failed to award mandatory compensation orders because it would be impractical to do so since convicted rapists would only be required to pay such compensation after completing their 30 year term of imprisonment. My research shows that the police, hospital personnel and the staff at the Attorney General's office all fail to inform victims of this right. I then looked at how the actors within their structures influence those structures in the dissemination of legal knowledge concerning compensation among the victims of rape and the community at large. The use of this approach directed me to the key respondents for my research.

2.3 EMERGING ISSUES

During the research, issues emerged and I came to find out that the most vulnerable victims of rape are not just women (as I had originally assumed) but they are also young girls aged between 2 and 12 years old, the disabled, and women and girls with mental problems.

I found out that these groups are the most vulnerable because they are not able to defend themselves; the perpetrators are stronger than they are and they operate by threatening their victims. While some victims managed to talk about the attacks, other young victims had forgotten what had happened to them.

Those with mental health problems sometimes remembered what had happened to them and their reaction of fear was readily observable. I triangulated this information with a doctor who said that young girls aged between 2 and 9 do not remember what happened when they are young and this also applies to those with mental health problems.

I encountered difficulties when I met with a disabled victim who could not talk or hear. She only smiled. I felt very emotional when I realised that she could only walk on her knees. Her rapist was convicted and sentenced to life imprisonment. Her grandfather said he could not explain exactly what happened since he could not understand her sign language.

She communicated using sign language which no one seems to understand and it would take time to be with her in order to communicate with her and learn what she is saying. One can see how assaults against such defenceless victims so egregiously violate them and their rights since there are no legal mechanisms to ensure that this vulnerable group of people learn the legal knowledge which is necessary to protect them and or their right to the best possible standards of physical, mental and emotional health. There are also the special education needs that need to be satisfied in order for this child to enjoy her fundamental rights.

Members of victims' families and perpetrators often solve these rape cases privately between themselves and pay compensation to each other without reporting the crimes to the proper authorities. Sometimes even after the matter is reported they settle the case in the same way and then fail to appear in court to give evidence which gives the accused an advantage and the cases are withdrawn for lack of evidence. This information was triangulated by a state attorney who said that most cases end up being withdrawn due to the fact that family members decide to settle them at home without wasting their time coming to court or reporting the matter to the authorities.

If the victims fall pregnant the rapist normally marries the girl so he can take care of the unborn baby and the victim. In such cases compensation is also paid. Such arrangements are made because the victim's family believes that if the accused is imprisoned there will be no one to take care of the unborn baby. There is also the problem of the costs involved in following through with these cases in that perpetrators may be sentenced but victims do not benefit from the compensation they should receive. It is clear that law is only one of a number of factors which affect people's decisions, the action they take and the relationship they have (Falk, 1973:743). Hence it is often the case that people do what they want and think will be best for both sides.

2.4 RESEARCH METHODS

2.4.1 The sample

The essence of my research was qualitative. I found this to be the best approach because I needed to ask in-depth questions as to why women as victims of rape are not aware of their right to compensation. Therefore, I interviewed 296 respondents including the victims of rape from the Lindi Region and District and 46 government officials. I selected the respondents

purposively. The respondents included victims of rape, their family members, and other respondents who were directly associated with providing services to the victims of rape including police officers, judicial officers, doctors, officials of NGOs, state attorneys, media personnel, and community leaders. The sample population I managed to interview was a controllable number. A large number of those interviewed were women and girls as they were the victims of rape. In order to get divergent views men and boys were also interviewed.

2.4.2 Data collection methods

2.4.2.1 In-depth interviews with the key respondents

Table 5, below, gives details of the key respondents I interviewed.

Table 5: Showing the key respondents interviewed

Interviews	Female	Male	Total
Judges		1	1
Magistrates		2	2
State Attorneys		3	3
Regional Police Commander	1		1
Doctors		1	1
Cell phone service providers		1	1
Police Gender Desk at District level	1		1
Police Officer Commanding District		1	1
Police officer in Criminal Investigation Department		1	1
Ward Executive Officer (WEO)	1		1
Commissioner for Human Right and Good Governance, Southern Zone	1	1	2
NGOs	2	3	5
School teachers	12	10	22
Private practitioners		2	2
Total	18	25	43

The key respondents were selected based on their experience and the skill they were perceived to have in assisting victims of rape and providing them and the community at large within Lindi with legal awareness of their right to compensation.

Focus was mainly on how they enforced the provisions of section 131(1) of the Penal Code since the provision is mandatory. Also, focus was placed on the creation of awareness of the right to compensation among women and girls in Lindi.

Most of the government officials I interviewed were heads of different departments and they seemed to have knowledge of the law on rape. Although some were aware of the provisions of section of 131(1) of the Penal Code they had never applied it. Some were totally unaware of a rape victim’s right to compensation. Conducting interviews with this group of key informants allowed me to triangulate data between the information gathered from them, the relevant laws and the reality on the ground.

2.4.2.2 Individual interviews

The victims of rape were interviewed along with a mixture of purposely selected young and old men and women and almost all the interviews were done at their homes or in their farm areas.

Information was acquired in relation to their level of awareness of their right to be compensated in the event of a woman or girl being raped. The interviews focused on the following issues: their personal details; how long they had been residing in that area; and whether they had attended any meetings in their areas relating to raising awareness of the right of rape victims to compensation; how they had coped living in their community after they/their daughter had been raped and what effects they had suffered or injuries sustained after they were raped.

Table 6, below, shows the individual interviews I conducted.

Table 6: Showing the individuals interviewed

Individual interviews	Female	Male	Total
Victims	6		6
Victims’ family members	4	3	7
Others	1	1	2
Total	11	4	15

2.4.2.3 Focus group discussions

Focused group discussions were held in schools and offices. I managed to have a discussion with a group of selected women of different ages. They were surprised to hear that after a perpetrator is sentenced he must be ordered to pay compensation to his victim for the injuries he had inflicted. They also shared their lived experiences and said they were not aware of any right to compensation or any educational campaign raising awareness about it. They also complained that they felt that their presence in court after they had given their evidence was not considered important and that no one had kept them informed of their rights in the rape trial or even the progress of the trial. Most of them had similar complaints.

The staff of the Lindi Regional and District Police Gender Desk department creates awareness among members of the community in matters regarding domestic and sexual violence for the whole of the Lindi Region. Although they were aware of the right of rape victims to an order of compensation, they had not raised such awareness among them.

I also held a group discussion consisting of boys and girls from the Form Four (4) classes at Lindi Secondary School and Mingoyo Secondary School. They had different views in regard to the right to compensation but the challenge was that they were not aware that victims of rape have a right to compensation and were also totally unaware of any general legal knowledge. Their syllabus did not include any aspects of the law, rights, or legal system and they did not even know what was contained in the Constitution, and some students said that they had never even seen it. Table 7, below, shows details of the focus group discussions that were conducted.

Table 7: Showing respondents in focus group discussions

Focus group discussion	Female	Male	Total
Mitwero women's group	22		22
Police Gender Desk at Regional level	2	1	3
Secondary school students	57	64	121
Lindi local radio –Mashujaa FM	1	2	3
Total	82	67	149

2.4.2.4 Personal observation

I managed to observe the reactions of the law enforcers when responding to the questions I asked them in regard to their awareness and enforcement of section 131(1) of the Penal Code. Some declined to answer some of the questions I asked and refused to accept the fact that they had been ignoring the section and had never created any awareness among victims of rape that they were entitled to a mandatory award of compensation against the convicted rapist.

This method also helped me to observe where victims lived, the state of their health, and the security of their neighbourhoods. I noticed that many victims' houses were constructed of mud and were easily accessible and this, therefore, made their victims vulnerable to attack from potential rapists. Also, I managed to observe the distance between their houses, the police station and the courts. These distances are often very great as a result of which some victims failed to report rape attacks often as a result of their not being able to afford the high cost of transport involved in travelling long distances to access justice (i.e., travel between their homes, the police station, hospital and the courts). The photographs below show the typical sorts of houses in the research area. As can be seen victims are vulnerable to attack as their houses are constructed of mud and their doors are not well made.



Figure 3: Photograph of a typical mud hut in rural Lindi. Victims are vulnerable to rape attacks because their huts are built far from one another and there is no public lighting in the area.



Figure 4: Photograph of a woman standing next to her hut. Rapists can easily break into such homes because they are made of flimsy materials and are not securely constructed. The photograph shows the humble economic status of typical victims of rape.

During the interviews I conducted I observed from the facial expressions of some of the respondents that they did not have much legal knowledge. As a result, I obtained a great deal of data I would not have received had I confined myself to desk research. I also triangulated my personal observations with information I had gathered from other various sources.

2.4.2.5 Experiential data

Taking into consideration my work as a magistrate and the reality on the ground, I began to understand how people felt when they realized that they were being denied their rights (e.g., to mandatory compensation) as well as their right to be informed of their legal rights. I discovered people's experience and perception of their right to compensation and the effect on them of having been harmed not only by the rape they had suffered but also by being denied a mandatory award of compensation. I must confess I could help but feel very emotional about their plight.

2.4.2.6 Participatory method

The Tanzania Law Days were celebrated from 31 January to 4 February 2016 and their theme was, 'Towards Centric Justice Delivery: Stakeholders' Responsibility.' The aim of the theme was based on the creation of legal awareness among members of the community and educating and providing them with free legal advice. I was one of the participants and managed to use this celebration as an opportunity to create awareness among people generally of the right of rape victims to receive mandatory compensation.

2.4.2.7 Secondary source of data

Using this method I managed to peruse the 2014-2015 court records to find out how many rape cases were prosecuted and in how many cases orders for compensation were made, the wording of such orders and how they were enforced. Such information helped to answer those research questions pertaining to my research assumptions concerning the enforcement of the mandatory compensation orders to victims of rape. I also relied on books, journals, selected articles, precedents, online internet sources and reports. The SEARCWL library was also very useful in my research.

2.5 Evaluation of methodologies

The application of different methodological approaches and the various methods of data collection used during my research were of great help in analyzing and testing the research assumptions on the ground in determining the lived realities of the women and girls of Lindi who are victims of rape in relation to access justice and their level of legal awareness on their right to compensation.

The next chapter will discuss the findings of the research as to what the law provides in regard to compensation; the reality of what victims of rape, men and women actually know about section 131(1) of the Penal Code; why victims of rape need compensation; the extent to which the Judiciary enforces and raises awareness about this section and, lastly, whether the utilization of the section 131(1) of the Penal Code will actually bring about the compensation to victims of rape as intended by the section.

CHAPTER THREE

3.0 FINDINGS AND ANALYSIS

'The Human Rights and Fundamental Freedoms are the birthright of human beings; their protection and promotion is the first responsibility of the governments'
(Vienna Declaration of the World Conference on Human Rights, 1993)

3.1 INTRODUCTION

In this chapter I will discuss the research findings by analyzing the data collected during the research which is mainly guided by the five research assumptions in association with the research objectives and questions. The qualitative nature of the research meant that the type of data I collected allowed me to look at the research problem in depth and interrogate closely what is happening on the ground.

3.2 SITUATIONAL ANALYSIS

3.2.1 The provisions of national and international law in relation to rape victims' right to compensation: What does the law provide?

John Locke said, 'The protection of private rights ensures the protection of the common good' (Locke, 1980). According to positivist human right lawyers, co-operation and mutual respect are the most advantageous behaviour for individuals and a society (Meron, 1984:79). In this regard the primary aim of a mandatory order of compensation for victims of rape is to promote the dignity and peace of mind of the victim by requiring the rapist to give her at least some token of recognition of her invaluable worth in light of the heinous violation inflicted against her by the rape.

There are national and international human right instruments which provide for the right of victims to receive compensation for rape. Tanzania has ratified several international instruments, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (the Women's Protocol). According to international law there is a universal obligation to protect the equality of women whenever they are discriminated against. International law must effectively be enforced by the national courts which have an obligation to interpret the law so as to meaningfully enforce the rights

of women and girls who are victims of rape and entitled, among other rights, to receive compensation.

CEDAW and the Women's Protocol are the most important international instruments contributing to the struggle towards the elimination of discrimination against women and girls. Article 1 of CEDAW defines 'discrimination against women' as:

'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing, nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field.'

A similar wording and ideals are found in articles 12 and 13 of the Constitution of the United Republic of Tanzania (CURT) which advocate for the equality of all humans and their equality before the law. Article 15(1) and (2) of CEDAW require states to accord women equality with men before the law. Article 8(f) of CEDAW and article 8(a) of the Women's Protocol provide for equal access to justice and equal protection to all men and women before the law. This means that victims of rape have just as much right to the protection of the law when they are raped (i.e., to receive compensation from the rapist) as an alleged rapist has to receive a fair trial (i.e., to prevent him from being punished for a crime he did not commit). Section 25(f) in Chapter VI of the Penal Code provides for the different kinds of punishments which may be ordered by a court and payment of compensation is one of them.

Section 131(1) of the Penal Code provides as follows:

'...any person who commits rape is, except in the cases provided for in the renumbered subsection (2), liable to be punished with *imprisonment for life*, and in any case for *imprisonment of not less than thirty years with corporal punishment*, and with a *fine*, and shall in addition be ordered to pay *compensation* of an amount determined by the court, to the *person* in respect of whom the offence was committed for *the injuries caused* to such person.'
(my emphasis)

Section 348A of the Criminal Procedure Code (Chapter 20) provides for an order requiring the convict to pay compensation in cases of sexual offences as determined by the court. Also, section 118 of the Child Act (Chapter 21) vests in the court the power to order the parents or guardian of a convicted child to pay a fine or compensation to the victim.

Recognition by the national laws that victims have a right to receive compensation from convicted rapists is in line with the provisions of several international human rights instruments, (e.g., article 25 of the Women's Protocol, article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), article 32 of the SADC Protocol and article 4(b) which impose obligations on the state to make sure that it provides appropriate remedies for any woman whose rights or freedoms have been violated.

Access to justice requires that women enjoy equality of justice before the law. This means that procedures must be in place to guarantee non-discriminatory access to justice and that women have effective access to remedies when their rights have been violated (Human Right, 2014:109).

Unfortunately, when I went into the field, I found that the reality on the ground does not match with what the law provides. During my interviews with magistrates, I found that few magistrates have implemented Section 131(1) of the Penal Code because they found it difficult to do so. Court records showed that very few courts in the Lindi Regional and District courts have ever ordered compensation and up till today no victim of rape has ever received compensation from a convicted rapist. During an interview one magistrate said:

'I have sentenced the accused to 30 years imprisonment and order for compensation of 1 million Tanzania Shillings (approximately US\$434.70) be paid to the victim but the accused has appealed against conviction and order hence the same cannot be implemented. Even if the appeal will be dismissed still the victim has to wait till the accused completes the sentence and that is where the implementation becomes a challenge.'¹

One of the victims said:

'I know nothing about the right to compensation after I gave evidence in court, I never heard from anyone about the progress of my case. Since I have not met my rapist maybe he has been convicted, but am not sure.'²

The above two situations show, with respect, a clear and open violation by the Judiciary of non-compliance with national and international laws which are intended to protect the right

¹ In-depth interview with the Lindi Resident Magistrate In Charge at the Resident Magistrates Court on 2 December 2015.

² Interview with a victim of rape at Milola village on 27 November 2015.

of raped women and girls to be compensated by their convicted rapists. These specific laws include article 13(1) of the CURT (which provides for equality before the law); article 15(1) and (2) of CEDAW (which requires states to accord women equality with men before the law), article 29(2) of the CURT and article 8(f) of CEDAW (which provide for equal access to justice and equal protection before the law).

3.2.2 The reality of the legal knowledge that victims of rape and others have in regard to section 131(1) of the Penal Code in relation to the mandatory order of compensation to victims of rape

‘Legal literacy is to law what literacy is to the alphabet. If literacy means being able to read and write the “ABCs” (basic symbols) of written culture, then legal literacy means being able to read and understand the ABCs of law’

(Schuler, 1992:22).

3.2.2.1 The knowledge of victims of rape

Victims of rape and their family members were quite unaware of the fact that there is a law which provides a mandatory order for compensation to victims of rape and the order must be made by the court after convicting and sentencing the accused. Upon informing a victim’s mother about this, she said:

‘I don’t know if there is any order which provides for compensation. Even the police did not tell us anything about the compensation. If the orders are there why did the magistrate not give the order to the man who raped my daughter?’³

Also during the interview with the victim’s grandfather, he said:

‘I know nothing about the laws, also I am not aware if victims of rape have the right to be compensated at all. What I know is the punishment of 30 years imprisonment. I have never seen any public education on any law done in our village this is something new to me.’⁴

³ Interview with Happiness Athuman the victim’s mother at the victim’s house in Mnazi Mmoja Village on 12 November 2015.

⁴ Interview with the Hamidu Hamis the victim’s grandfather at his house in Kiwalala Village on 21 December 2015.

The research shows that neither the victims nor their family members know anything about the order of compensation for victims of rape. Therefore as the result of this lack of knowledge, they are not able to approach the court or prosecutor to claim such a right.

3.2.2.2 The knowledge of women and men

During my interviews I discovered that although many men knew how to read and write (as compared to women), they were not aware of what the law actually says in reality. It appeared that neither men nor women seemed to be aware of that part of section 131(1) of the Penal Code that covers mandatory compensation; they only seemed to know about that part of the section that provides that rape may attract a 30 year prison sentence.

3.2.2.3 The knowledge of government officials

Female and male government officials in Lindi seemed not to understand the clearly worded provision of section 131 of the Penal Code which directs a presiding judicial officer to make a mandatory order for compensation to victims of rape. I discovered that there were divergent opinions about this section.

The male government officials I managed to interview had knowledge of the provision concerning the mandatory compensation order and some had complied and made such orders. Although there were some women government officials who also knew about the provision, I found that they did not comply with it by either making such an order or advising victims or bringing to the court's attention that they had the right to such an order. During an interview, one female government official said:

‘I am very much aware about the right to compensation to victims of rape but, I have just never applied that section praying for compensation order before the court.’⁵

This shows that she was aware of the provision but apparently and for no valid reason chose not to request/pray the court to award the mandatory compensation order.

The Police Gender Desk Department deals extensively with the issue of sexual violence against women and its role is to educate and counsel victims of rape as well as taking action

⁵ Interview conducted with a prosecutor at Lindi Region Police office on 27 October 2015.

in cases involving general acts of violence in society. My interview with officials on this desk revealed that they were not aware of the right of rape victims to compensation as provided by section 131(1) of the Penal Code despite their involvement on a regular basis with the victims of sexual violence and with training programmes and raising awareness about sexual violence with the public in the urban and rural areas of Lindi.

3.2.2.4 The knowledge of representatives of NGOs

Representatives in NGOs like Lindi Women's Paralegal Aid Centre (LIWOPAC), SHIMKIKI and Organization for Women Empowerment (OWE) said they were aware of the offence of rape and the fact that culprits could receive a punishment of 30 years imprisonment, but they had never been aware of the mandatory order of compensation to victims of rape and they have never disseminated any information in regard to the entitlement to compensation as provided by the Penal Code. One respondent said:

‘Though I deal in creating awareness to people, I have never heard of the order for compensation to victims of rape. I have attended trainings in my organization but am not aware with the provision of section 131 (1) of the Penal Code. I think I will find the Act and read it after the interview.’⁶

3.2.2.5 The knowledge of teachers and students

Teachers and students interviewed were also unaware of the law which provides for the order of compensation to victims of rape. Unfortunately, even the students were unaware of article 18 of the Constitution which provides for the right to information and they even admitted to never having seen a copy of the Constitution. One Form Four student said:

‘I heard that there was going to be a new Constitution but I don't know even how it looks, though once a civics teacher talked about it, though not in depth. And this section 131(1), if it really provides for order of compensation, [I am] not aware even of what is that Penal Code. It is something new.’⁷

3.2.2.6 The knowledge of media personalities

The radio presenters at the Mashujaa FM radio station and members of the Mitwero women's group were aware that the only punishment for rape is 30 years imprisonment, but they knew nothing else. I asked how they came to know about that piece of information. Some said they

⁶ Interview with the respondent at Mingoyo on 5 November 2015.

⁷ Interview with Form Four students at Ngongo Secondary School on 2 November 2015.

had heard it from their neighbours, others said that the harsh punishment for rape was well known but they did not know which section of the law provided for such punishment or the awarding of a mandatory order of compensation to victims of rape. One radio presenter said:

‘Am not aware of the order of compensation to victims of rape and I have not heard if there was such a thing.’⁸

3.2.3 Why do victims of rape need compensation?

Nobody understands another person’s pain until he/she experiences a similar pain. Victims of rape suffer a great deal when they are raped. During an interview with a rape victim, she said:

‘The way the accused inserted his penis so harshly in my vagina I felt great pain inside as if someone was using a knife to cut off my body. I tried to rescue myself but he was so strong the accused continued on raping and beating me and forced me to look at his face while he is enjoying my body. I wanted to die because till to date the picture keeps on coming back.’⁹

Rape is described as the non-consensual intrusion of man’s penis into the vagina of a woman’s privacy and autonomy...while the physical pain might be greater with the insertion of a bottle or other object; it is a penis penetration that is regarded as especially significant. It is the ultimate declaration of male power in which the woman has to suffer the most intimate proximity possible between her and her assailant, a proximity not only humiliating in itself, but the one that creates fear of vulnerable disease and pregnancy (Burchell&Milton:1997).

It is an experience which shakes the foundations of the lives of the victims. For many its effect is a long term one, impairing their capacity to create or nurture personal relationships, altering their behaviour and values and generating fear (Wright, 1996). Also it is recognized as a significant factor that creates the risk of contracting life threatening diseases and serious reproductive health consequences (Ivana *et al.*, 1998:26). During the interview with a victim’s mother she said:

‘I don’t know what life will be since my daughter’s womb was removed she is growing up like a sculpture because she will never have a chance to carry a baby in her womb anymore. What hurts me the most is the fact that she don’t

⁸ Interview with the radio presenters at Mashujaa FM Lindi on 26 November 2015.

⁹ Interview with a rape victim at Milola village on 27 November 2015.

even remember if she was raped and am sure in a near future when she grows up she will ask me why she can't fall pregnant am confused.'¹⁰

3.2.3.1 Psychological trauma

'The trauma that results from severe human rights violations often leads to new human rights violations as conflicts intensify, hatred accumulates and makes restoration of peace more difficult'
(Michelle, 2004).

The psychological trauma that women and girls suffer as victims of rape is unimaginable. Victims of rape also suffer psychological trauma which also impacts on the lives of other family members since they need to take care of the victim and while they are attending to this their own productive lives are temporarily suspended. During an interview with a doctor, he said:

‘Victims of rape get psychological effects, some end up killing themselves, they need to be counselled to get away from that trauma.’¹¹

Also the reputation of the victim's family is lowered in the eyes of the community whose members point accusing fingers at and stigmatise the victim and all members of her family as a result of the rape. Bateman aptly describes this when he speaks of a rape impacting a victim's partner, members of her family, her children and grandchildren who are frequently forgotten and yet can also be profoundly affected by the whole experience (Bateman, 1986).

Therefore, the impact of rape is catastrophic to victims and society at large, since the crime causes psychological harm such as post traumatic stress disorder which may result in depression, self-harm, dissociative identity disorder and even suicide (TAWJA, 2015: 10).

3.2.3.2 Economic Loss

Rape may also lead to economic loss within a family if breadwinners are raped or breadwinners who are relatives of the victim dedicate their time to taking care of a raped member of the family and pursuing justice instead of focusing on generating income for the family's survival. It must also be remembered that since medical services are not free, any

¹⁰ Interview with Fatuma Abdallah, mother of the victim, at Mnazi Mmoja Village on 12 November 2015.

¹¹ Interview with the doctor at Sokoine Government Hospital on 19 November 2015.

money that may be generated may be used for the victim's medical needs rather than for the family's needs.

My research reveals that the income generated by most victims and their family members is not usually sufficient to cover the many costs consequential to a rape including medical and transport expenses. This is because most Tanzanians (and, therefore, most rape victims/victim's families) are engaged in farming, selling tomatoes, selling food (known as *mama ntilie*) and the making and selling of traditional liquor. They earn a relatively small income which usually only allows them to survive from day to day.

In such a situation a rape committed against any member of a family seriously undermines the family's economic stability since they suddenly need money for transport to go to police stations, hospitals (and pay medical expenses) and courts which are usually far away from villages. In addition, victims face the hidden cost of not being able to work while pursuing their cases (Anderson, 2003).

In a country where the average person may be able to feed herself on one US dollar per day, most Tanzanians who are of low economic status may only ever accumulate capital of a surplus of US\$10 to reinvest in their small informal business that they run. If that money has to be used to pay for the costs of a medical emergency (e.g. medical and transport expenses) if a woman or one of her family members is raped, that outlay may be so large that it may destroy their business. Or it may be a case of the family of rape victim falling deeper into economic difficulties and starvation if the breadwinner is forced to stop working or use her earnings to care for the rape victim. During an interview with a victim's mother she said:

'I depend on selling food (known as *mama ntilie*). My capital is 50,000 Tanzania shillings. When my daughter was raped I stopped cooking and the tender was taken by someone else since I was in the hospital for 7 days. The situation has affected my business at a greater extent because I used the money I had as capital to take care of the victim paying medical bills, buying medicine, food and transport. In that case I did not produce anything. Instead [I] used what I had as my balance to take care of my child who was raped.'¹²

¹² Interview with Zubeda Said at Mnazi Mmoja on 2 November 2015.

Sometimes when victims are admitted to hospital they have to pay for the medical expenses and food. Sometimes they have to pay for accommodation near health facilities so they can access them easily and at the right time rather than going all the way back to their village.

During an interview with some victims and their family members I found that after they go to the police station and are given Police Form No 3 (PF3) to complete, they have to go straight to the hospital for treatment. There they have to pay the medical expenses and this was corroborated by a doctor (when I triangulated the information) and he admitted that victims pay for their medical treatment. Table 8, below, shows the estimated daily costs incurred by victims of rape and/or their carers.

Table 8: Showing the estimated daily costs incurred by rape victims and/or their carers

TYPE OF SERVICE OR PRODUCT	COST (in Tsh)	COST (in US\$)
Transport from the village to police station/Lindi town one way	10,000 (Motorcycle)	4.34
	5,000 (Bus)	2.17
Registration at the Hospital	5,000	2.17
Admission to a bed	5,000	2.17
Food	2500	1.0
Medicine and treatment	50,000 ¹³	21.7
Guest house charges for a single bed	5,000	2.17
Total	77,500	33.69

(Source: Doctor at Sokoine Hospital)

According to Table 8, a victim and/or their carer (e.g., mother) has to spend at least US\$33.69 for the first day's costs. During an interview with the mother of a rape victim, she

¹³ The medical treatment is estimated at about 50,000Tsh (US\$21.70). Some of rape victims may require ultra sound at a cost of Tsh15,000 (US\$6.50), a major operation is estimated at about Tsh60,000 (US\$26), and a minor operation is estimated at about Tsh20,000 (US\$8.69). These are estimations of the cost since not all victims of rape sustain similar injuries or effects (Source: Doctor Sokoine at Hospital on 19 November 2015).

said that she normally she buys a bucket of tomatoes a day for Tsh20,000 (about US\$8.69) which she then divides up and sells in groups of 4 tomatoes at a time for Tsh200, making a profit of Tsh10,000 (US\$4.34).¹⁴ It can therefore be quite clearly seen that the costs incurred by rape victims and/or their carers far outstrip their average daily earnings.

Also, due to their prolonged nature (as a result, for example, of making follow-ups of a rape case from the date of reporting right through to the sentencing of a rapist) rape trials take a long time to be finalized. By the end of the ordeal both victims and their family members find they have received no satisfaction of any kind except maybe for the imprisonment of the culprit. Apart from that they have usually incurred a great deal of debt (for which they are not reimbursed) and the victim has been traumatized over and over again by reliving the rape whenever she has had to attend court and especially when she has had to testify against the alleged rapist.

3.2.3.3 Social stigma

Regardless of whether a rape trial ends in the conviction or acquittal of an accused, their victim derives almost no benefit from the trial apart from exposing herself and her family to social stigma. For this and other reasons which thwart a victim's effective and efficient access to justice (including poor transport infrastructure and expensive and time-consuming journeys between police stations, health facilities and courts) families feel tempted to settle rape cases out of court in a traditional manner which involves the culprit's family paying some form of compensation to the victim's family. And this practice is occurring in total ignorance and in open breach of the very clear provisions of section 131(1) of the Penal Code which were drafted with the clear intention of benefiting rape victims. Bidaguren explains this puzzle in the following words:

'People may also be unaware of how state law and system operates due to factors such as distance to courts or the sheer unavailability of state infrastructures in remote and in rural areas; it is also a reality that a considerable number of people, if not majority, tend to solve their problems outside official court processes' (Bidaguren and Estrella, 2000).

¹⁴ After her daughter had been raped, her mother had used all the money she had and borrowed the rest from a friend for her daughter's treatment and to make follow-up visits to the police station. They were given transport costs to attend the court to give evidence.

Research that has been conducted in many countries shows the way in which fear of crime in general and fear of sexual violence, in particular, can affect the very nature and quality of women's and girls' lives (Koss *et al.*, 1997; Calhoun, 1994). During an interview, a victim's mother complained that since her daughter had been raped, she had developed a fear of men and that if she saw a man she would run away. This problem had been going on for the past four years and considering that she had mental health problems, everything in her life was becoming a problem.

All the above circumstances point clearly to the urgent need for victims of rape to be compensated. Although compensation may not restore the dignity of a woman or a girl who has been raped, it may go some way to alleviating their pain and suffering, loss of enjoyment of life, loss of income, medical expenses and other incidental expenses, such as travel for medical treatment (Yadav, 2014). This has been acknowledged by Grotius who uttered the maxim, 'Every fault creates the obligation to make good the loss' (Bederman, 1996). In other words, payment of compensation constitutes in one way or another a formal recognition of the victim's suffering. Hence, a mandatory award of compensation to victims of rape is important for the empowerment of victims psychologically, physically, mentally and economically.

3.2.4 Structural compliance in regard to implementation and creation of awareness among victims of rape and society at large in regard to section 131(1) of the Penal Code. What is the real situation?

The effectiveness of the Tanzanian government as well as its entire legal system structure is measured not only in terms of their ability to comply with their obligation to award mandatory orders of compensation to victims of rape as required by section 131(1) of the Penal Code. It is also measured by the number and quality of the measures they take (1) to create awareness of this right to compensation among actual victims of rape and potential victims of rape within the community at large and (2) to ensure victims actually receive compensation.

Article 29 of the CURT, article 8 of the Women's Protocol and article 15 of CEDAW all provide for equal protection under the law. It is the duty of law enforcers to ensure that victims of rape and their rights are protected right from the beginning of a rape trial right up to its final determination.

While the reporting structure at village level (where both the alleged rapist and victim usually originate) is usually quite efficient, the problem arises when those community leaders simply do not know if rape victims are entitled to receive compensation from the rapist if he is finally convicted. If community leaders do not know about this right, how can it be legitimately expected for ordinary people, including potential and actual victims, to know about this right?

3.2.4.1 The role of the Judiciary

In terms of section 131(1) of the Penal Code, the Judiciary or, more precisely, the judicial officer presiding over a rape trial is specifically directed to make a mandatory order for compensation to be paid to victims of rape by the accused person after he has been convicted and sentenced. It is only such judicial officers who are empowered to make such orders. The reality on the ground, however, shows that there are very few cases where compensation has been ordered and, in fact, victims are not even aware of their right to be compensated. Even if an order for compensation were ordered, its enforcement or implementation would be problematic.

Concerning the issue of compensation, advocates said that magistrates only look at who, where, how and when the rape took place. Neither they nor prosecutors ever direct themselves during the trial to the details of the injuries or its effects suffered by the rape victim. This is because they consider their role is simply to deliver justice. Yet, despite the compulsory nature of the mandatory compensation order requirement of section 131(1) of the Penal Code, the court never goes further to consider the issue of compensation.

In an interview with one magistrate, he said the law clearly specifies that although the awarding of such a compensation order is mandatory, he said that section 131(1) gives the court a discretion. He said that there is a similar provision in the Criminal Procedure Code which provides that the court may make an order for compensation but it must not be for an excessive amount; if it is for an excessive amount the victim must claim in a civil case. Therefore, he said, magistrates do not often rely on such a provision.

Another respondent said:

‘I am aware of the provision but I have never come across the matter where there was an order for compensation, since rape cases are few. As the judicial officer I have never applied it am sure that the society is not aware of such right.’¹⁵

A perusal of judgments and court records shows that the payment of compensation can only be implemented after an accused has completed serving his sentence. This effectively means that one aspect of the just punishment against the convicted rapist (i.e., the rapist serving a period of imprisonment) directly frustrates the enforcement of another aspect of just punishment (i.e., the rapist’s duty to pay the victim compensation).

TAWJA argues that the adequacy of the remedy of compensation in sexual offences is generally questionable as it leaves the most serious injury to the victim unattended. In some cases the amount of cash that may be ordered as compensation will be required to be paid only after the rapist has completed his custodial sentence (TAWJA, 2015:11).

So, for example, in the case of *Musa Mohammed v Republic*¹⁶ the convicted rapist was sentenced to 30 years imprisonment and 9 strokes of the cane. He was also ordered to pay compensation in the sum of Tsh20,000 (approximately US\$10) to the victim.

His appeal was dismissed. The problem for the victim is that the rapist is only required to pay the victim her compensation after he has served his 30 year prison sentence. In addition, the relatively small award of Tsh20,000 (approximately US\$10) will not go far in restoring her lost dignity.

The precedents show that magistrates deliberately omit making orders for compensation and instead order the victim to file a civil claim for compensation. This is quite unfair since the Penal Code already provides for such an order being made against the accused after he has been sentenced. For example, in the case of *Leonard Jonathan v Republic*¹⁷ the magistrate

¹⁵ Interview with Advocate Dismass Muganyizi at Katulebe and Partners Advocates office on 27 October 2015.

¹⁶ Criminal Appeal No 216/2005 Court of Appeal of Tanzania – sitting at Mtwara, an appeal originating from Mtwara High Court Criminal Case No 86 of 2005 (unreported judgment).

¹⁷ Criminal Appeal No 225/2007 (CAT) Court of Appeal of Tanzania, Arusha (unreported).

convicted and sentenced the accused to 30 years imprisonment, corporal punishment of ten strokes and an order that the victim institute a civil claim for compensation against the convict. The accused appealed. Ultimately the Court of Appeal dismissed the accused's appeal but found that the trial magistrate had erred and remitted the case back to the magistrate to assess compensation payable by the accused to the victim in terms of section 131(1) of the Penal Code.

The research shows that magistrates know that a civil or criminal judgment of the court is supposed to be delivered in open court, that is, in the presence of the public (section 311(1) of the Criminal Procedure Act). When a judgment is delivered by a court, anyone (whether one was a party to the case or not) who applies for a copy of it can, subject to the rules applicable, be supplied with a copy. Thus, once a judgment is delivered, it becomes a public document and anyone may have access to it. It is in this manner that awareness of the development of the law takes place, including legal developments involving contentious aspects of the law, e.g., cases like the above case of *Musa Mohammed v Republic*.

But the above finding is challenged by the fact that most people do not understand legal language which means that it is difficult for them to understand what a judgment means. Also in a rape trial, a copy of the judgment is given only to the victim and the accused. For a third party to obtain a copy of any judgment involves a long procedure.

Women and young girls are a vulnerable group as they are usually poorly educated and they, therefore, benefit very little from the dissemination of court judgments. They also lag far behind when it comes to accessing justice, especially criminal justice, for example, in rape cases, as the research has proved.

Although the Judiciary exhibits annually at the trade fair exhibition, it has never chosen to create public awareness about the mandatory compensation orders for rape victims in terms of section 131(1) of the Penal Code, although this would be the ideal place to reach and teach the public about such an important issue of public interest.

A challenge still remains in relation to the implementation of a rape victim's right to compensation under section 131(1) of the Penal Code. This is not only because the law is seldom implemented because it is 'unknown' and is, in a sense, dormant and hidden, but also

because there are no guidelines as to how to assess the amount of compensation to which a rape victim is entitled.

In other words, the award is the product of the exercise of a judicial discretion. It will depend to a large extent on the goodwill of the particular magistrate or judicial officer presiding over a case. The section does not give such officers any guidance as to what elements or procedures should be followed to determine the amount of compensation.

It is proposed that an approach similar to that taken in the division of matrimonial property on divorce or the assessment of maintenance for a child may be used in the assessment of compensation of a rape victim. The open wording of section 131(1) of the Penal Code as it currently stands will most likely mean that each magistrate or judge will adopt their own approach to assessing damages. It is for this reason that in order to create consistency between similar cases and certainty in the law, the wording of the section should be amended to make the task of determining compensation easier, more specific and clearly regulated for the benefit of not only presiding judicial officers, victims and perpetrators of rape but also the public at large.

Then there is also the difficulty for judicial officers of applying the section in court. The presiding officer must have the necessary evidence before him or her when an assessment of compensation is being made. The fact is that as the law is presently administered, the payment of compensation to the victim has never been the focus of the case since its outset. The sole focus of the court has simply been to establish the crime of rape. Therefore, issues material to such assessment may not be or are unlikely to be available to the court.

In other words, a proper and full record of the victim's injuries may not have been fully and properly recorded when the victim was first or subsequently examined because it was not regarded as material to establishing whether the crime of rape had occurred. Therefore, it is understandably very difficult for a presiding officer to determine the issue of assessment of compensation based on facts which have not been fully raised in court.

There is also the problem that victims are not usually present in court when judgments are handed down. This is often because they are not informed of the time or date of the delivery of the judgment. Excluding victims from such an important part of the proceedings only

undermines their confidence and that of the public at large in the legal system and widens the gap between what they know and what they ought to know about certain of their basic fundamental rights relating to the prevalent crime of rape.

When it comes to executing an order for mandatory compensation against an accused who is serving his prison sentence for rape, it is the court that is required to order such execution upon being requested to do so by the state attorney. The state attorney is supposed to take step after a lapse of 30 days from the date of delivery of the judgment. This is the period within which the law allows an accused to appeal against the magistrate's judgment. The fact is that magistrates cannot, of their own accord, i.e., *suo moto*, order such execution unless they are approached by the prosecutor responsible.

Prosecuting attorneys of rape do not normally come to court with the intention of executing compensation orders. This attitude is probably due to the fact that (1) they are satisfied with the convicted rapist simply receiving the punishment of a prison term or (2) they simply accept that it would be impractical to obtain a compensation order which could only be enforced on a date so far into the future as to render it unacceptable or (3) victims, the complainants or 'clients' of state attorneys are usually unaware of the fact that an order for compensation was granted.

Due to a lack of training, magistrates lack adequate legal knowledge and skills to apply section 131(1) of the Penal Code in a correct, lawful manner. Magistrates also harbour negative attitudes when they deal with cases involving sexual offences.

3.2.4.2 The role of the police and state attorneys

Members of the police and state attorneys are the officials who deal with arresting the alleged rapist, investigating the crime, collecting evidence of the crime and drafting charges against an accused. The state attorney, who represents the Republic, prepares the criminal charges and conducts the prosecution against the accused. It is at the police station where the victim is given the PF3 form so as she can go and be treated at the hospital and there is also a Police Gender Desk which is a victim-friendly service which deals with all acts of violence.

Those stationed at the Gender Desk are well trained in regard to sensitive matters of violence, but the reality on the ground shows that they are not aware of the right to compensation to

victims of rape. Therefore, when questioning victims of rape they fail to ask essential questions which would help determine accurately the type and extent of their injuries in order to quantify a fair and reasonable amount of compensation which the convicted rapist should eventually pay the victim. Even though the police officers on the Gender Desk offer counselling and general education outreach, they do not advise victims of their right to compensation because they themselves are unaware of that right.

During my interview with Lindi Regional Police Commander, she said there is Gender Desk in all police stations in all districts and their staff members have undergone training to help victims successfully report cases of violence by improving their treatment and counselling of victims and creating awareness among members of the community at large about how to report such cases. When I triangulated this evidence, it was corroborated by rape victims, advocates and police officers alike. One respondent said:

‘I felt very happy when I was attended by the ladies who were not having uniforms at the police station and the way they handled my daughter’s case I was so confident that justice will be done.’¹⁸

She was not made aware, however, of the fact that the victim, her daughter, had the right to be compensated.

From the point of view of the prosecution, the findings show that state attorneys focus simply on winning the case by raising only the essential elements of rape and ignoring those facts which would be material to the victim’s claim for compensation, e.g., specific details about injuries to their person and/or damage to their property. This approach by the state frustrates the victim since they are directed to give evidence only about what the prosecutor thinks will establish the offence of rape and seldom, if ever, will they be directed to testify about the detailed nature and extent of their injuries. As a result, victims often feel that they are insensitively treated and left out of the proceedings. They are also rarely informed about the progress of rape trials or their outcome.

Women were surprised to hear that the law provides for an order of compensation in their favour. They complained that they are not kept informed of the progress of rape trials, they

¹⁸ Interview with Zainabu Hamis mother of the victim at Mingoyo Village on 13 November 2015.

are not informed about their rights or about the offence with which the accused is charged, they are never told what the law says or how the rape trial progresses after they have testified before the court and, once they have given their evidence, they are generally made to feel that they are no longer important.

Sometimes victims meet their alleged rapist walking about freely in the village when they thought they were in prison. As a result of this lack of information from the police they start experiencing feelings of helplessness (Chamber and Millar, 1986:51). Studies also show that failure by the authorities (i.e., the police, state attorneys or the court) to inform rape victims of developments in their case was a major contributor to victims' feelings of dissatisfaction with those authorities (Shapland *et al.*, 1985).

3.2.4.3 Role of NGOs

The NGOs which are located in Lindi play a major role in advocating for different rights by training and educating the community on different rights and empowering women, girls and children. They have been co-operating with the police Gender Desk unit in creating awareness about violence crimes and child rights in general but they were not aware of a rape victim's right to compensation as provided for in the Penal Code. Therefore they have not created legal awareness of this right among victims of rape or the community at large.

The fact that people in Lindi are unaware of the amendment to section 131(1) of the Penal Code (to include mandatory compensation for rape victims) means that the national dissemination campaign which led to that amendment was not effectively carried out.

During an interview with a victim's family member who resides in Mingoyo village, he said he had never seen any organization nor any one providing legal education in their area and the Chairman of NGO, called Shimkiki-Mingoyo agreed with this and said they had not conducted any public education programmes concerning this issue because of the general election but that they would do so after the election.

3.2.4.4 The role of the media

Radio presenters whom I interviewed were not aware of orders for compensation for rape victims which are provided by the law. They said they host programmes concerning road

traffic issues since their radio covers the whole region. They acknowledged that there is a need to run programmes to disseminate legal knowledge concerning different rights.

3.2.4.5 The role of the Commission for Human Rights and Good Governance Southern Zone-Lindi

This commission deals with creating awareness in the community of human right issues. They also ensure that human rights are protected. Until I informed them they were not aware of the order for victim's compensation as provided under the Penal Code and, therefore, they had not incorporated such information in any of their outreach work, i.e., it was not a subject of any of their training courses or seminars. They also use Lindi local radio to disseminate their information in regard to human rights but so far they have never raised the issue of compensation for victims of rape.

Their work consists mainly of giving advice and directives on the proper procedures to follow if someone has a complaint. For example, in rape cases, they normally help victims to lodge a complaint with the police. People, in general, and victims of rape, in particular, are not aware of their right to compensation. No one in the NGO office has ever done anything to create awareness about this right and they have never come across any complaint where a person or a rape victim was claiming such compensation.

Therefore, the amendment of section 131 of the Penal Code to include the right of a rape victim to be compensated by her rapist was a great step towards the realization and protection of women's rights, dignity and liberty. Imposing this right to compensation in the form of a mandatory order against a rapist showed the depth of the state's genuine concern for the welfare of Tanzanian women who fall victim to rape and its desire to restore their dignity and essential worth by at least helping them to recover some of the expenses incurred as a result of the violation against them, although it may not necessarily restore their dignity. The judge in the case of *Bosnia v Herzegovina* explained what lies behind such orders for compensation. The court awarded damages in the form of compensation in a lump sum identifying the award as symbolic satisfaction 'which will help her stop feeling like a victim and mitigate the consequences she suffers as a victim of a criminal offence and...see her justice being done.' The court concluded '...in criminal procedural law, this right has an even deeper meaning since, by providing compensation to a victim of rape, the principle of social justice is being established (NO.K-76/08 dated 11 /9/2009).'

The research data and records show that there is a mandatory order for compensation provided by the law. The problem is that the said provision is not implemented or is poorly implemented and, as a result, rape victims do not benefit as they should from this compensatory provision and there is also a grave lack of knowledge of the said provision among service providers (magistrates, judges, police, state attorney, and lawyers), victims of rape and the community in general.

Although the actors (judges and magistrates) and structures (courts) are in place and the law is a good one (section 131(1) of the Penal Code), that law is not active (at the instance of the actors who are meant to enforce it) and, therefore, not delivering justice to the rape victims who were intended to benefit from it. There is no point in having a good but inactive law, i.e., one which is not being effectively implemented.

There is an urgent need to change the mindset of service providers (magistrates, judges, lawyers and police) who, so far, have failed to treat sexual offences with the seriousness they deserve by actively creating legal awareness among all service providers and the public so that everyone comes to know about the crucial right of rape victims to receive compulsory compensation from their rapists.

Victims of rape are excluded from the law which is meant to benefit them (i.e., they do not know about the compensation provision) and they feel excluded from the operation of the procedures and people who have a duty to ensure that it is enforced (i.e., generally, judicial officers presiding over rape trials do not apply this provision and, therefore, fail to inform rape victims about it or make compensation orders in their favour).

We need to give genuine consideration to protecting fully women and girl's dignity and their rights under the law. The research shows that there is a massive lack of legal awareness about the rights of rape victims among all government officials, the public at large and victims themselves and that is largely why victims' rights fail to be respected and implemented.

3.2.5 Will utilization of section 131(1) of the Penal Code achieve the need to compensate victims of rape for the loss suffered as a result of the crime?

The law provides for the awarding of a mandatory order of compensation against convicted rapists to victims of rape. This means the effective utilization of section 131(1) of the Penal

Code will assist victims in covering the costs incurred as a result of the crime committed against them. During the numerous interviews I conducted there were different views in regard to the utilization of the law. One respondent said:

‘The utilization of the section will not assist anything since most of the accused are jobless and cannot afford to pay compensation, the section will be utilized only to a small group who can afford to pay still it is challenging.’¹⁹

Another respondent said:

‘Utilization of the section by the Judiciary will not put an end to the offence, instead it will reduce the rate of the commission of rape offences because it will add punishment to the accused and will help the victim to cover some of the injuries sustained, I think that was the reason of the legislation in this section.’²⁰

The research findings revealed that if the law enforcers follow up cases and make sure that compensation orders are obeyed by convicted rapists it will be easy to enforce this section in a regular, routine manner.

Also proactive efforts by all law enforcers to take the evidence put before them seriously and create awareness among the victims at the early stage of rape cases will assist state attorneys in their efforts to raise and deal fully with the issue of the victims’ injuries before the court. Hence magistrates and judges will be in a much better position to make fair and reasonable orders of compensation. The granting of compensation orders will also help to deter the crime of rape in the community.

The utilization of the section is likely to be rendered most effective if an accused were to be is required to pay compensation before completion of his sentence and if he fails to pay it, then his property ought to be attached and sold to compensate his victim. It is hoped that such an approach will encourage offenders to willingly compensate their victims rather than witness their families suffer privation. This will help the victims realize and benefit from the enforcement of their rights and reduce the rate of rape offences in the society. In other words,

¹⁹ Interview with a state attorney at the AG chambers on 6 November 2015.

²⁰ Interview with the judge at Mtwara High Court on 10 November 2015.

potential rapists will be deterred from committing rape if they know that they will have to pay their victims compensation for their crime.

The enforcement of section 131(1) of the Penal Code will be more effective if the law is made more specific as to the elements to be considered when a presiding officer awards an order for compensation than if one is simply to depend upon the good will of the officer. Therefore, it will be wise to identify the type of injuries and the effects suffered in each case of rape since injuries and effects differ. Some women and girls may fall pregnant or contract HIV-Aids, as a result of a rape .Therefore, injuries and their effects must be specified and compensation awarded according to the particular injuries suffered by each particular victim.

Compensation may be paid, e.g., to assist a victim who is a student to transfer and continue their education far from the place where the rape was committed. This would help her psychologically to get over the rape and continue with her life. For adult victims the compensation could help them with start-up capital for a business because of the loss suffered during following up on their case and treatment could allow her to establish a business away from where the rape took place, i.e., away from the social stigma of her community and where she could feel more safe.

3.3 CONCLUSION

My findings were informed by my assumptions and answers to my research questions which aimed at satisfying my research objectives. My findings showed that even though the compulsory compensatory provisions of section 131(1) of the Penal Code exist for all to see in Tanzania's legislation, the actors responsible for enforcing it, the unfortunate victims of rape as well as the public at large are not even aware of it. The enforcement of section 131(1) by the very few who do know about it is poor due to a lack of clear procedures/guidelines which should be available when enforcing it.

Also the public, women and girls who are victims or rape are not aware that they have a right to receive compensation from their rapists. In other words, their ignorance of their rights is being used to deny them their right to compensation. Women and girls still do not know much about the laws and the Constitution despite the fact that Article 18 of the CURT obliges the state to promote such awareness.

Once the Judiciary effectively utilizes this section it will be of great help to victims of rape since they will be able to use the compensation they receive to cover the economic loss they suffer. This leads us into the discussion in the next chapter which looks at the information knowledge gap between what the law is and the ignorance about it and how to fill the literacy gap suffered by rape victims in relation to their right to receive compensation.

CHAPTER FOUR

4.0 THE MISSING LINKS: How to fill the literacy gap on the right to compensation for victims of rape

'Legal literacy is that mere knowledge of the law is sufficient to ensure enjoyment of rights and citizen participation. It gives women knowledge about laws, rights and obligations, or the functioning of the legal system in such a context'

(Schuler, 1991:22).

'Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked'

(Commission on Human Right Resolution, 1995).

4.1 INTRODUCTION

The concept of popularizing the law to the masses has become an important mission for many Africans non-governmental organizations (NGOs). Some were set up specifically for this purpose while other existing ones redefined their focus to take into account dominant concerns with making justice accessible to ordinary people (Tsanga, 2007: 437). It was their intention to prevent the lack of legal knowledge from curtailing a victim's fundamental right to know. This chapter analyses the missing links in legal information dissemination in relation to the right to compensation.

4.2 LEGAL INFORMATION KNOWLEDGE GAP IN RELATION TO THE RIGHT TO COMPENSATION FOR VICTIMS OF RAPE

4.2.1 Right to information as provided by the Constitution

While article 18(b) and (d) of the Constitution of the United Republic of Tanzania (CURT), article 19 of ICCPR, article 5(b) of DEVAW all impose an obligation on the state to ensure that people have the right to seek, receive, and disseminate information, the research shows that that right is contravened because women, girls, men and boys are unaware of the right of rape victims to receive compensation from rapists. This right is embedded in the duty of every judicial officer presiding over rape trials to order that the convicted rapist pay his victim compensation for the injuries she has suffered as a result of the crime. Such lack of

awareness leads directly to an infringement of a victim's right to receive justice, because a victim who has been made ignorant of their right, fails to enforce that right and does not, therefore, receive justice.

Even though the right of rape victims to receive compensation under section of 131(1) of the Penal Code has been in existence since 1998 (i.e., for over 17 years), the unfortunate truth is that people still do not know that the right exists. This is in clear breach of article 18 of the CURT which makes it an obligation of the state to make sure that people are informed of important events, including changes in the law, such as the coming into force of this right to compensation.

The government has a duty to inform their citizens of this positive reform to the law because it is of paramount importance to them. A victim's right to compensation fundamentally improves both the rights of victims of rape (so that they may actively enforce that right during the trial of their alleged rapist) and the public at large (who need to know that such a right exists in case they fall victim to rape).

While the CURT provides for equality before the law (which means that a victim's right to compensation should be observed and enforced by judicial officers who preside over rape trials), the research shows that it is not taking place because victims and even the majority of judicial officers do not know that such a right exists.

The Tanzania government took a very positive step when it made changes to the laws by protecting women's dignity, right and liberty when they introduced the Sexual Offence Special Provision Act, No 4 of 1998 and amended the Penal Code by recognizing the right of raped women and girls to receive compensation from their rapists. But the problem is that the government failed to put initiatives in place to create awareness among the people that such an important improvement to their rights was taking place within the law. Fanon captured the danger of failing to keep the majority of people informed of important social or legal reforms which raise their political consciousness. He says:

'The nation may well have a reasonable or even progressive head to it: its body will remain weak, stubborn and even unco-operative' (Fanon, 1965:53).

This, sadly, is what is happening between the state and the people in Lindi. The state is failing in its Constitutional duty to inform its citizens of important improvements to the human rights laws which protect them.

Generally, most victims of rape suffer from a lack of legal literacy in that they do not possess the legal information or knowledge about their Constitutional right to be informed of their rights, i.e., they do not know of the state's duty to inform them of their right to receive compensation. Also, as citizens, they do not know how to legally enforce their right to compensation.

Unfortunately, the research showed that those who have a small amount of legal knowledge only know that a convicted rapist could serve a 30 year term of imprisonment. While they know this much about section 131 of the Penal Code (although they may not know about the exact piece of legislation itself), they know nothing more about it, i.e., that it also provides for a mandatory order of compensation to victims of rape.

People in Lindi do not have access to the Constitution or other pieces of legislation. If they need to access them they are forced to go and buy the legislation from an official government shop which is 624 kilometres away, as such legislation is not available free of charge and is not accessible to people in the region.

A further problem is that most people have a tendency not to buy such legislation because they are of the view that its language is so difficult and that they would not be able to understand it, even if they did buy it. They believe that unless a person is a lawyer, they cannot understand legislation. Therefore, they feel that there is no point in buying such legislation. The end result is that they lack knowledge of their legal rights and remain legally illiterate.

The key objective of creating legal literacy in a community is to create awareness and promote positive behavioural change in society. A paralegal is a community-based person who possesses a basic knowledge of law and its procedures and who has the necessary motivation and skills to raise people's awareness of their rights (Tsanga and Ige, 1994: 14).

Unfortunately, most of the voluntary paralegals I interviewed lacked what I consider to be a minimum or basic level of adequate comprehensive legal knowledge and such lack of legal literacy, in turn, raises a barrier to their efforts to improve the legal literacy of the community they serve.

There is also a lack of knowledge, skill and training on the part of media practitioners in the investigation, reporting and dissemination of legal information concerning judicial proceedings. Since the public have a legitimate expectation to rely on the media for accurate and informed reporting to improve their legal literacy, this failure by the media also thwarts the rights of victims of rape in particular, and the public, in general.

There is lack of or poor strategies by the government and NGOs in relation to the dissemination of legal information among people with disabilities, including those with hearing and/or visual impairments. During my interviews with people with disabilities, I found that they were totally unaware of laws which were relevant to their condition and situation and which they should have known about since neither the government nor any NGOs had made any effort to give them such knowledge. As a result of their ignorance of their rights, they felt disempowered.

Radio could be a good medium through which to disseminate legal knowledge by airing programmes about people's legal rights (e.g., victims of rape need to know that they have the right to be compensated by convicted rapists) but the challenge in this area appears to be that radio presenters are not aware of the need for such a service and, so far, lawyers have not come forward to suggest such programmes or to share their knowledge on air.

Women and girls, who are the most vulnerable to sexual violence, tend not to challenge their status, nor actively seek knowledge about their legal rights. As observed by De Beauvoir, if a woman seems to be inessential and never capable of becoming essential this is because she herself fails to bring about that change (De Beauvoir, 1997). This means that if women do not break the tradition of taking their own initiative to find out about the law and know their legal rights they will remain legally illiterate.

4.2.2 Non-implementation of the law

Section 131(1) of the Penal Code is silent on the issue of the rapist failing to comply with a mandatory order to pay his victim compensation. Also, there is no mention of any guidelines or procedures that should be followed in determining the appropriate amount of compensation a victim of rape should receive, i.e., what circumstances, factors, injuries or consequences of injuries as a result of a rape which would assist a court in quantifying the amount due to a victim in compensation.

There is also a lack of continuous legal education and training for judicial officers so that they can keep up to date with and inform the public they serve about material changes to the law such as the duty of such an officer to make a mandatory order against a rapist to pay his victim compensation. Because of this lack of continuous legal training and education, judicial officers are currently failing to fulfil this roll, in general, and to implement section 131(1) of the Penal Code, in particular.

There is a lack of proper written procedures to be followed in determining the appropriate amount of compensation that convicted rapists should pay their victims. Such a procedure is likely to take into account the circumstances of the case, the situation of the accused and the effects of the rape on the victim.

Government officials do not receive any training on how to implement or enforce the compensation provision in section 131(1) of the Penal Code. This is because they are not aware of the law. As a result, they fail to inform the women and girls about their rights to be compensated. The situation was informed by my findings when government officials said that they had attended training but had not received any training about how to implement a victim's right to compensation.

4.2.3 Non-compliance by the law enforcers

The findings have revealed that almost all actors within the government, police, judicial system and NGO community are unaware of a rape victim's right to compensation under section 131(1) of the Penal Code and those who are aware of it are not implementing it, although in their work they deal with victims of rape on a daily basis.

Magistrates are involved in disseminating legal knowledge when they preside over cases and in this is especially the case when they hand down their judgments. Unfortunately, because some magistrates do not follow the law (e.g., do not make mandatory orders that convicted rapists pay compensation to their victims), this form of dissemination of legal knowledge may not be successful. Also, victims are not always present in court when magistrates deliver their judgments. In that event, no dissemination of legal knowledge (even if it is knowledge that magistrates are not following the law) takes place.

There is no co-operation between the Judiciary and the cell phone service providers who between them could make telecommunication packages affordable to members of the public and enable the Judiciary to disseminate basic yet valuable legal information. The Judiciary could link up with vulnerable groups (like victims of rape) who are likely to own a cell phone and need cheap and easy access to legal knowledge about their basic human rights (e.g., the right to compensation) and how the institutions that are dealing with their cases operate (e.g., how the rape trial is progressing, when judgment is being handed down, whether the accused has appealed, when the appeal is to be heard, whether the accused is on bail, etc). This type of service would be vital to many vulnerable groups of people and could be adapted to the specific needs of each group because most people own cell phones in Tanzania.

During my interviews I found that there is a lack of a gender mainstreaming in the police which could assist staff in having, e.g., instruments such as gender sensitive policies, guidelines etc., which would assist them in creating a gender conducive environment within the communities they serve, especially in rural areas. As a result of this gap, rural women are thrown back on relying on paralegals or NGOs, such as LIWOPAC, Care International and Save the Children, whose own focus and agendas limit their ability to help such rural women. The fact is that such organizations also are failing to disseminate legal knowledge, especially in regard to the right to compensation and other important aspects of law which affect women in their daily lives.

4.3 CONCLUSION

The law is deemed to be only one of the tools which gives legitimacy to people's claims to their rights and is used in conjunction with other techniques (Dais, 1981:337-361). Creating legal awareness of their rights among victims of rape and applying the law effectively is the

best approach to ensuring that victims of rape know that they have the right to be compensated and how to take steps to enforce that right during rape trials. Consequently, freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislature and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions (Mendely, 2003). Although this is the ideal, the research has shown that the government has failed to provide the people in Lindi with the legal knowledge they need and ought to have concerning the right of a rape victim to receive compensation from a convicted rapist in the form of a mandatory order which must be awarded by the officer presiding over the rape trial. This finding now takes us to the discussion in the next chapter on what has to be done so that recommended interventions may be implemented to create the kind of effective legal literacy for victims of rape, in particular, and the public, in general.

CHAPTER FIVE

5.0 CONCLUSION, RECOMMENDATIONS AND PREMEDITATED INTERCESSIONS

‘The important point is that neither society nor culture actually does anything, for both are abstractions. It is people who act and, by acting, create and perpetuate their culture and its society’
(Hewitt, 1976).

5.1 Introduction

Everything has an end and this chapter gives the concluding remarks of the entire research along with short and long term recommendations and interventions with a view to facilitating the proper enforcement of the compensation provision of section 131(1) of the Penal Code in a practical and effective way by disseminating legal information to the community. George W. Bush reminds us that we must always remain sensitive to the rights of victims when he says, ‘As we protect the rights of those accused of crimes, we must take equal care to protect the rights of victims’.

5.2 Conclusion

The following conclusions are drawn from the research:

5.2.1 That section 131(1) of the Penal Code which provides for a mandatory order for compensation to the victims of rape will assist them to recover from the injuries obtained as a result of the crime. The section has great potential to assist victims of rape. The law provides for a mandatory order that once the magistrate is in the process of sentencing the accused he/she must also make an order for compensation in favour of the victim. If the law is properly implemented to compensate victims, it will go a long way to help them to recover from the injuries they have suffered and expenses they have incurred caused by the crime of rape. For example, in a case involving a victim who is a student, compensation could help her transfer to another school where nobody knows that she has been raped and such an environment would give her an opportunity to re-start her life and studies and help build her up emotionally and psychologically. Compensation paid to an adult rape victim could help her to move and re-establish her business somewhere else and/or help her to pay other costs

incurred as a result of the crime committed against her. But, unfortunately, there is a lack of knowledge of the law on the part of the law enforcers and the law is not effectively implemented nor applied by the Judiciary and this all serves to undermine victims' rights.

5.2.2 That victims of rape are not aware of their right to be compensated by their rapist for the injuries sustained as a result of the crime being perpetuated against them. Article 18 of the Constitution provides for the right of citizens to receive information and, in this case the government is duty bound to make sure that victims are made and kept aware of their right to be compensated and that is mandatory.

The findings revealed that during the amendment of the Penal Code, specifically section 131, the public was not effectively made or kept aware of the mandatory order for compensation to victims of rape. This is because today victims are still unaware of the provision and the same is true for the law enforcers and the community at large.

Despite the existence of this beneficial statutory law of compensation for rape victims, the fact is that the law enforcers who attend on victims of rape almost every day, staff of supportive NGOs and media personnel do not know about this right to compensation and, therefore, do not educate rape victims or members of the public about it.

This shows that there is very poor knowledge about the right to compensation within the community. So, despite the fact that the compensation law is beneficial to rape victims, it is not implemented due to the lack of legal knowledge about it. Victims are not kept aware of their rights and this comes as no surprise because the government representatives/duty bearers, who have the duty to create such legal awareness, are not aware of the law themselves. In fact the people do not even know that they have a constitutional right to be informed of such a right.

5.2.3 That victims of rape suffer economic loss as a result of the crime because they have to pay for medical bills and other related expenses caused by the crime. The finding reveals that the victims of rape do not only suffer economic loss but also psychological trauma and social stigma because of the offence of rape committed against them.

Victims suffer economic loss because from the first moment that they report the crime to the police station up to the finalization of the rape trial, they need to pay for transport, food and medical treatment. Such expenses are not free. Victims have to pay for them. Some victims may be admitted to hospital up to a week and a bed costs Tsh10,000 (about US\$4.34) per day which means a cost of at least Tsh70,000 (about US\$30) per week. Paying such large expenses over an extensive period can cause the economic ruin of many rape victims who literally live from hand to mouth every day. Therefore, payment of compensation can at least reimburse rape victims for these expenses and begin to restore their dignity.

5.2.4 That there is a general lack or poor implementation of the existing law on compensation to victims of rape by judges and magistrates. The law provides for a mandatory order for compensation which means the judges and magistrate are duty bound to comply with this provision of the law and also create awareness of this right in the mind of the public. The findings revealed that very few magistrates have implemented this provision and even when they have given such an order, the problem arises that the rapist only has to pay compensation to victim after he has served his very lengthy prison sentence, i.e. after 30 years' imprisonment.

Sometimes victims do not report the matter or drop their complaints at some point before or during the trial because of the long process of pursuing it. During this period they often find that they eventually exhaust all their money in constantly following up on the progress of the case and therefore, they finally end up solving the matter at home. Most magistrates tend to omit giving compensation orders against rapists and instead suggest rape victims file a separate civil suit for compensation and this occurred in the case of *Leonard Jonathan v Republic*.²¹

Others judicial officers deliberately fail to award orders for compensation simply because the state attorney does not apply/pray for such order during the hearing on behalf of the victim. In other words, the victim suffers because of the Judiciary's poor implementation of the section. Judges are also failing to correct lower court magistrate's judgments on review for failing to award mandatory compensation orders in favour of rape victims. They should do so as this will allow magistrates to learn from their error.

²¹ Criminal Appeal No 225/2007 CAT, Arusha (unreported).

5.2.5 That the utilization of section 131(1) of the Penal Code by the Judiciary will go a long way in compensating victims for the economic loss they suffered as a result of the crime. Although the payment of compensation will not stop the commission of the crime, it may help to reduce the rate at which rape cases occur in the community. In order for section 131(1) of the Penal Code to be fully realized, law enforcers need to create legal awareness among the victims of their right to compensation from the day of reporting the matter at the police station. State attorneys also need to raise and investigate in detail the victim's injuries and their effects. Also orders of compensation must be paid to victims at the beginning of a rapist's jail sentence. The rapist's failure to pay this amount should lead to the attachment and sale of his property in order to satisfy the rapist's debt to the victim.

5.3 Recommendations

Some of the following recommendations have been proposed by the respondents I interviewed, including victims of rape, members of their family and government officials. Almost every respondent had a proposal as to the best way to advocate and implement the right of victims to receive compensation from their rapists.

5.3.1 *The Judiciary*

There is a need for continuous education of all service providers, like magistrates, police, and state attorneys on the right to compensation and how they should handle sexual offence cases. They need to have this knowledge and understanding of the damage and harm suffered by the victims of such crimes so that they can raise the issue of compensation during the investigating, prosecuting and determination stages of a case.

The Judiciary and the Attorney General's office/chambers should set up stands at the trade exhibition which is very well attended by many residents of the Lindi region. It would be an idea to provide a general legal help desk where people can seek general and specific legal assistance. In this way, these service providers will increase and improve the legal literacy of a much wider sector of the community than that of the few people they come into contact with in the course of their regular court work.

It is recommended that victims or victims' family members should be present at the time of the delivery of any judgment involving a mandatory compensation order in favour of a rape

victim. This is because they can witness how such compensation may have been determined and then they can return home and share such legal knowledge with others in their community. This will be one of the best ways for the community to gain such knowledge.

Judges can use the power they have to make changes to certain problematic situations. For example, in the area of making mandatory orders for compensation against rapists in favour of their victims, judges could review all or as many judgments as possible on the subject and then clarify matters by either writing how to do so in one of their own judgments or by issuing a directive and/or guidelines as to how compensation is to be calculated. This will be of great assistance to all judicial officers, especially magistrates. Although the quantifying of such compensation is discretionary, such judgments, guidelines or directive will need to specify what circumstances, factors and, possibly, what procedures need to be followed in determining the amount of compensation.

The law must be amended to provide that payment of compensation needs to be done immediately upon the accused starting to serve his sentence. Clear guidance must be given if the accused fails to pay compensation. It is suggested that the order should allow for the attachment and sale in execution of his property in order to compensate the victim. It is hoped that such an order will deter rapists from committing rape for fear of the possibility of making his family homeless should he fail to pay victim compensation.

There is a need for the Ministry of Justice and Constitutional Affairs, the Judiciary and cell phone service providers to co-operate in the dissemination of legal information through the use of cell phone technology since most people in Tanzania own cell phones. Between them they could make telecommunication packages affordable to members of the public. This would enable the Judiciary to disseminate basic, yet valuable, legal information about the rights of vulnerable groups (like victims of rape) who need cheap and easy access to legal knowledge about their basic human rights (e.g., the right to compensation) and how the institutions that are dealing with their cases work (e.g., how the rape trial is progressing, when judgment is being handed down, whether the accused has appealed, when the appeal is to be heard, whether the accused is on bail, etc.). This type of service would be vital to many vulnerable groups of people because most people in Tanzania own cell phones.

5.3.2 *The police and state attorneys*

There is a need to put in place a gender mainstreaming budget in order to empower the police gender desk unit to carry out their daily basis tasks in the creation of legal awareness among members of the community. What is good about these gender desks is that they are located in every police station which means that they can reach every community in which they exist and inform rape victims of their right to compensation at the time they report the crime. They can also inform the public of this right in their general legal literacy work with the public.

There is a need for the police to create awareness among victims and their family members about the rights and the laws governing the protection of a victim's right to compensation by the police at the time they receive a rape victim's complaint. This approach will help build victims' trust in the police and encourage them to co-operate with the police. In such a supportive atmosphere between the victim and such an important and long-term service provider it is more likely that victim's rights will be respected and enforced by all other subsequent service providers.

In rape trials state prosecutors must clearly establish throughout their conduct of the prosecution of a rape case a clear link between the types of injuries suffered by a victim and the likely amount of compensation linked to such injuries which will help presiding magistrates and judges in determining the final amount of compensation to be paid by the rapist to the victim.

5.3.3 *NGOs*

In the pluralist legal setting of Tanzania, NGOs should certainly not be that of disseminating just the ABCs of the law (Schuler, 1992:44-93) but more appropriately should use people's lived experiences to inform the law they disseminate which should improve the legal literacy of the community and build up the capacity of its structures (Tsanga, 2007:499). For example, in regard to a rape victim's right to compensation, such legal information dissemination would include sharing knowledge with the community as to how to implement the right.

There is a need for NGOs, the Judiciary, the police and state attorneys to conduct public education by creating awareness within the community as to what is provided under the Penal Code concerning the crime of rape, how it is punished and how victims can claim their rights,

e.g., to compensation from convicted rapists. Also, they need to create much greater awareness about the Constitution and relevant international human right instruments since the research revealed that many members of the public do not even know what the Constitution contains.

5.3.4 Establishment of the traditional dispute resolutions

By the establishment of traditional dispute resolution mechanisms within villages, the Ward Executive Officers (WEOs) and Village Executive Officers (VEOs) who are the community leaders need to be empowered by informing them so that they can in turn inform their communities about rape victim's right to compensation from a convicted rapist. Such legal knowledge will help traditional authorities, victims and perpetrators to solve disputes without incurring the cost of travelling to and from court and will also save time in that compensation may be determined and paid, the rapist punished and the matter resolved at the community level.

Since traditional structures have the advantage of solving disputes at the community level, their powers, which are a unique blend of the law and morality, should not be overlooked for their model is definitely one to build upon (Bidaguren, 2002). Against this backdrop, the carrying out of widespread legal literacy programmes is likely to benefit communities a great deal because cases could be solved quickly and locally and the right of victims to compensation respected throughout the entire process.

5.3.5 Advocates

The Tanganyika Law Society should make it compulsory for all advocates to attend a Legal Aid Day and provide to the public free legal assistance, advice, and create awareness about various laws. This currently only takes place once a year in December, but it should occur three times a year in order to assist the community to increase their legal knowledge. Also failure to attend such a programme should attract some kind of penalty, such as suspension from practice, so that all advocates will actively participate in the dissemination of important legal knowledge which is so vital to the welfare of their community.

5.3.6 Ministry of Education

The Ministry of Education should include in its syllabus the subject of law at secondary and primary school level so that students will have some knowledge of the law in regard to

different rights and this will increase their own knowledge of the law, help them to prosecute their own rights or to defend themselves, as well as share their legal knowledge with each other, their families and communities.

5.3.7 Ministry of Justice and Constitutional Affairs

The Ministry of Justice and Constitutional Affairs should have a budget to supply copies of the Constitution to all schools to ensure that teachers and students know and have access to their fundamental human rights. This is because not all people have access to the internet.

There should be the establishment of an institutional assistance fund to pay compensation to a victim in a situation where the accused cannot afford to pay compensation. The government will need to find a way to recover from the convict money it pays on his behalf to the victim.

5.3.8 Ministry of Health

The Ministry of Health should have a budget which allows it to provide free medical treatment to victims of rape. This service should be promoted in the community so that victims can benefit from the health service. At the moment victims must pay for medical treatment and this may be why they sometimes decide not to report the fact that they have been raped. Also, the Ministry should provide special care units in order to counsel victims of rape since this service is not currently available in many rural and urban dispensaries.

5.3.9 The media

Local radio stations should run programmes like '*ijue sheria*' ('know the law') or '*zijue haki zako*' ('know your rights') inviting guests on the shows who are legal experts to discuss important aspects of the law with each other and members of the public and create awareness in the community about the law.

5.3.10 Cell phone service providers

Since almost every person in Tanzania has access to a cell phone, service providers like Vodacom, Tigo, Airtel, Zantel, Halotel can use the short messaging service (SMS) to disseminate legal information on the right to compensation to victims of rape to the public. Such services are already being offered to the public in relation to current information like weather, bank accounts and agriculture. During an interview with a member of staff of Airtel service provider he said:

‘The statistics shows how people have access to cell phones; like AIRTEL has 10,000,000 subscribers, VODACOM has 13,000,000 subscribers and TIGO has 8,500,000 subscribers. This shows that the number of people who are using cell phones is huge hence using cell phone to disseminate legal knowledge will help a lot in creating awareness about people’s rights.’²²

5.4 Premeditated intercessions

‘Human beings are not just governed by social and cultural norms but use the intelligence they have gained as members of the society to solve the problems that confront them’
(Hewitt, 1976:133-178).

I discovered from the interviews I conducted that the government and the Judiciary have failed to educate rape victims and the community of Lindi about the right to compensation if a woman or a girl is raped. There is an urgent need for a strategic intervention in the area of legal information dissemination.

My supervisor once asked me whether people read the materials supplied to them during training sessions and when I said no, she told me to come up with a suitable intervention on how one could disseminate vital information to victims of rape.

Having realized that most people do not own televisions or have access to the internet, I concluded that most of them have cell phones. And that short message services (SMSs) could be a very effective tool. Use could also be made of Law Days and leaflets.

Cell phones and SMSs

During the interviews I conducted and in my own experience I noticed over and over again that that whenever a person receives a SMS on his or her cell phone they usually stop what they are doing to read the message even if they are very busy.

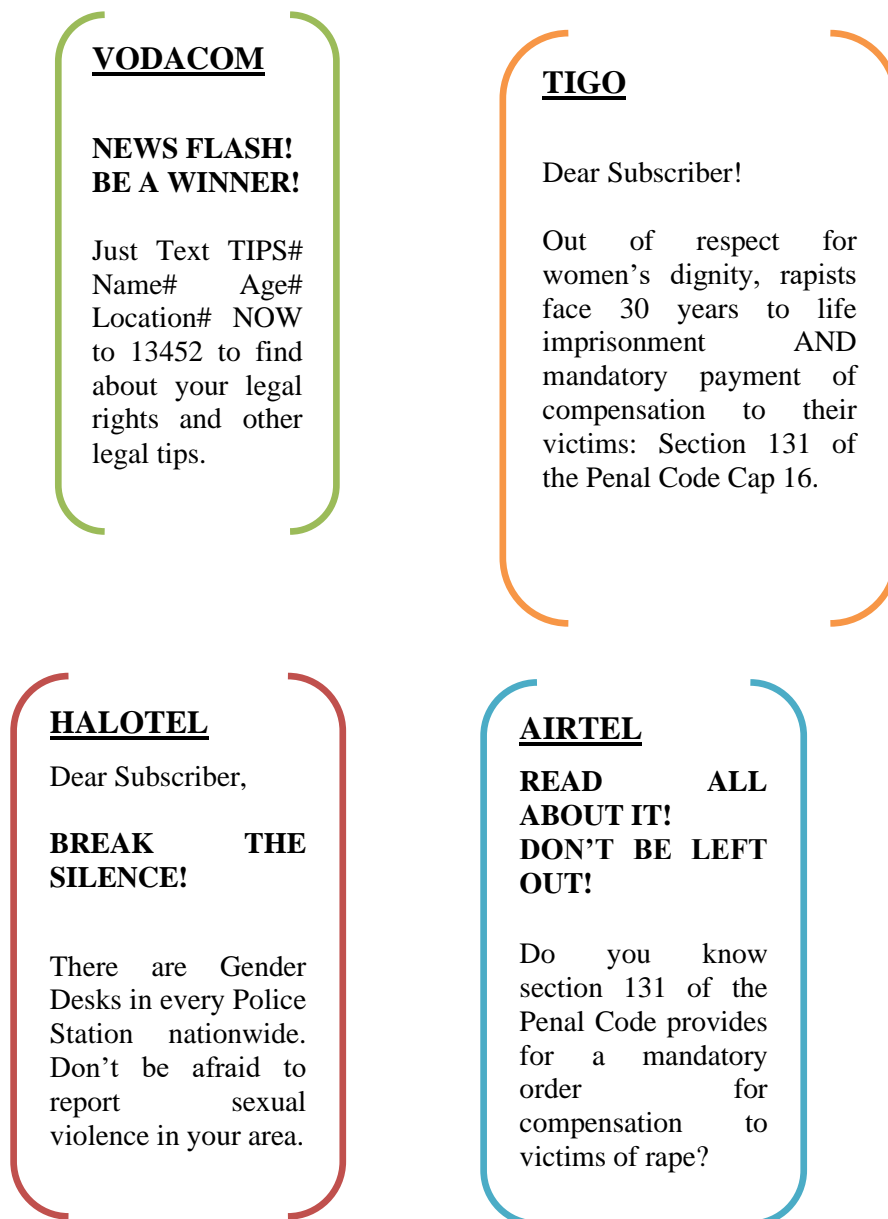
This simple and easy technology may be used in the following way. The Judiciary could buy a SMS package to disseminate legal information using certain digits. The cell phone service provider can also disseminate the legal knowledge through SMSs since cell phones are cheap to use and do not need airtime to send or access such messages. The SMS will reach people directly. Messages may be written in English or Swahili or any other vernacular language and

²² Interview with Juma Kazala at Airtel Offices on 14 December 2015.

the language will be determined by the demographics of the group of people who are targeted and intended to benefit from the information.

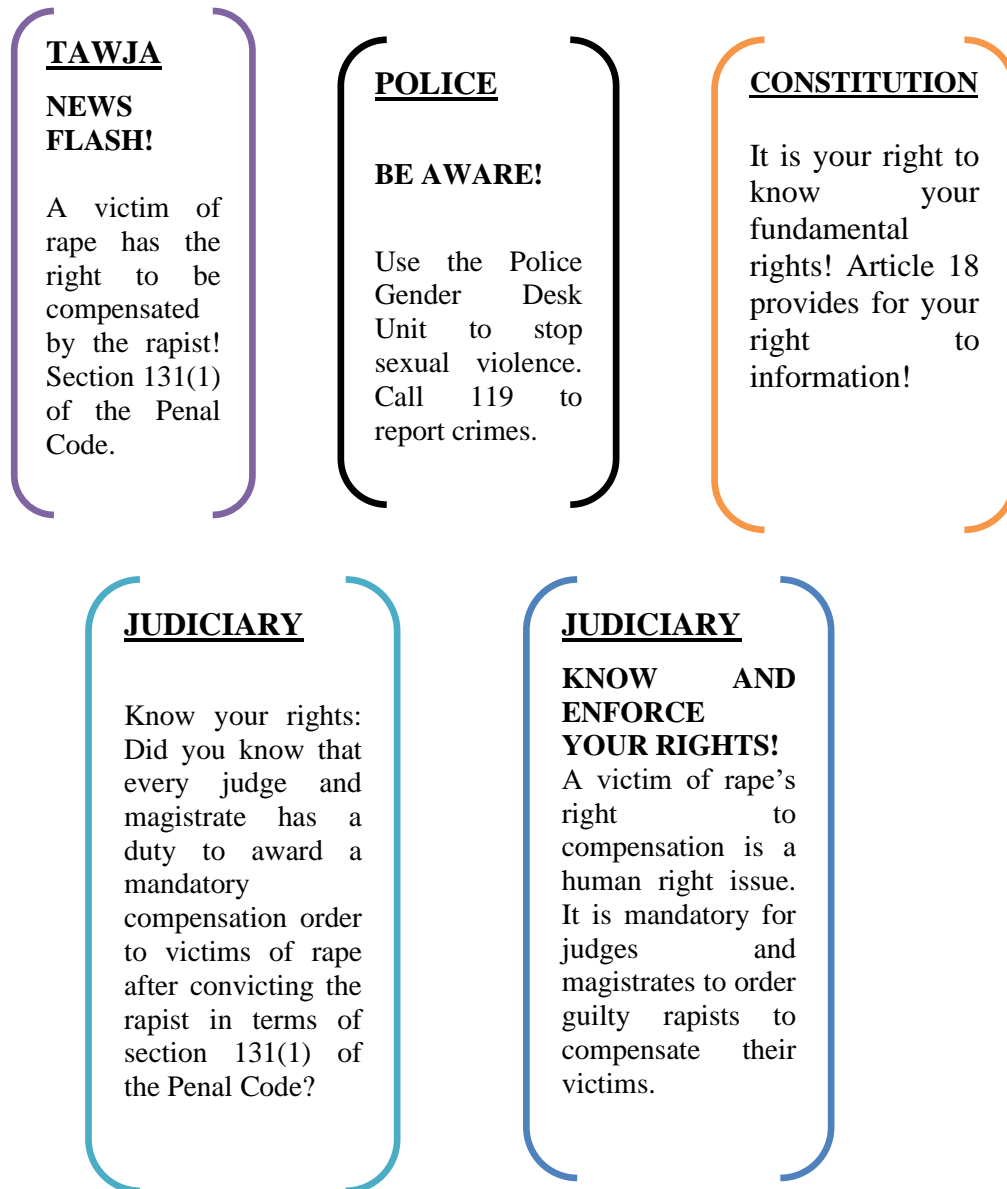
Below are examples of samples of SMSs on the right of victims of rape to compensation which can be used to disseminate legal information by cell phone service providers, i.e., Airtel, Vodacom, Tigo, Halotel, Zantel.

Figure 5: Samples of smss of cell phone providers which could be used to help disseminate important legal information



The following are samples of SMSs which could be used to disseminate legal information by the government and non-governmental organisations:

Figure 6: Samples of smss which could be used by GOs and NGOs to help disseminate important legal information

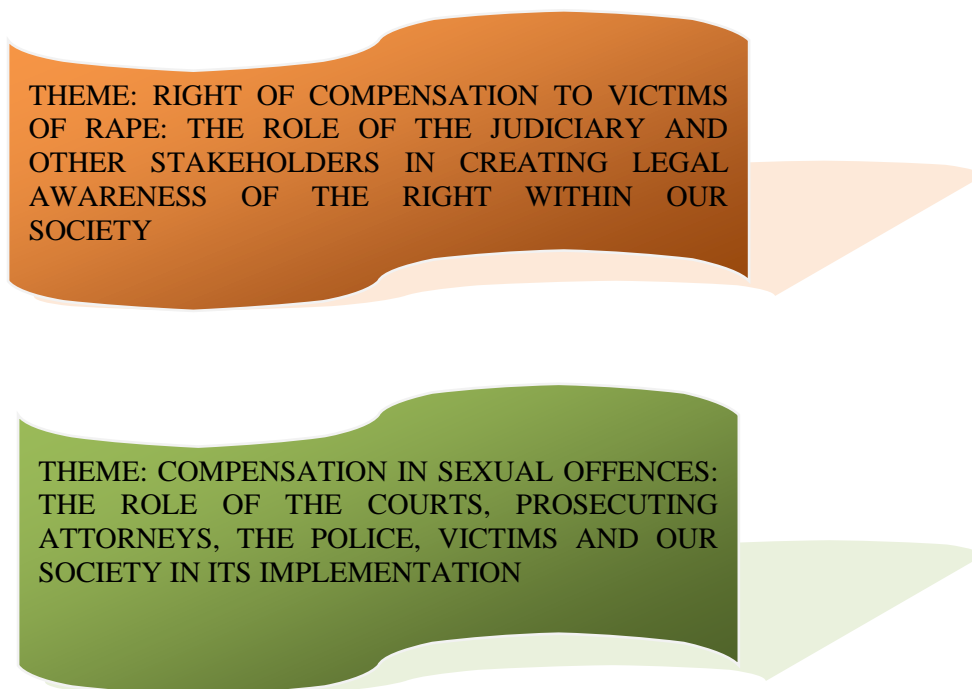


Law Days in Law Week

During Law Week judges, magistrates, and many other law enforcers meet and interact with each other and provide the public with legal aid, educational materials and generally create awareness in the community about their legal rights. This is usually organized around important legal issues and the judges and resident and district magistrates in-charge give

speeches, share their views, advice and tips which are disseminated through the whole country via radio and television. In other words, they constitute a platform which further expands the network for disseminating legal information to the public. Below are some themes relevant to compensation for rape which I suggest could be discussed by members of the Judiciary during Law Week.

Figure 7: Samples of themes for Law Week



Leaflets/Brochures


Distributing free attractive leaflets with pictures and short messages (in several languages) are also a good way to disseminate information about compensation for rape since people are attracted to colourful literature with easy to read and understand messages containing information that is important to them and their welfare as well as their fellow citizens, especially women and girls. Printing and strategically distributing such leaflets is a better option than publishing adverts in newspapers which most economically challenged women and other people cannot afford to buy.

Below is a sample of leaflets which could be used to disseminate legal knowledge to the community. Instead of handing these out randomly to all members of the public who could so easily discard them and turn them into litter, they could rather be placed at strategic points

such as reception desks in Court buildings, police stations, WEOs' offices, gender desk units, the receptions of non-governmental organizations, social welfare offices and hospitals. Some of these leaflets could be modified and enlarged and made into posters which could also be strategically displayed at the aforementioned places.

Figure 8: Samples of brochures, leaflets and posters







Did you know that the Judiciary has a primary objective to protect victims of rape right to compensation?

Ensure that women and girls' rights & dignity are protected by the law. It is a fundamental right to be compensated for your violated rights

Women and girls, Stand up, We are here to protect you! Let's join together to fight against sexual violence!



Article 18 of the Constitution provides for the right to information .Why don't I know my rights? I need to know because it is my right to be kept aware of my rights.



Section 131 of the Penal Code provides for an order of compensation for victims of rape. Why am I not compensated for my violated rights? I want my rights to be implemented because it is a mandatory order.

a woman,
girl child,
wife,
mother,
sister, a victim of rape, so I must be protected by the law and know my rights so I can claim them. I AM A HUMAN BEING

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