

THE REPORTING OF RAPE CASES TO THE POLICE:

An investigation on how rape victims are handled at the reporting stage at the police station and the bureaucratic procedure of getting the medical report and its impact on the victims of rape in Uganda: Kampala as a case study

Abstract

Using several modern methodologies, in particular, the Women's Law Approach, and suitable data collection methods, this study reveals the undignified and unjust ordeal women rape victims are forced to endure at the initial reporting stage of the crime. At the mercy of an under-resourced criminal justice system, manned by poorly-trained and often gender-insensitive police officers, most victims refuse to report the crime or give up pursuing a complaint after they have made one. In the hope of realizing and protecting rape victims' rights in accordance with binding/persuasive local and international HR instruments, the writer finally suggests sound recommendations for overhauling this part of the criminal justice system in co-operation with significant stakeholders, especially NGOs, who are currently at the forefront of assisting rape victims.

BY

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Dedication

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1.0 CHAPTER ONE.

1.1 Introduction

This study focuses on the problems encountered by rape victims while reporting rape cases at the police station in Uganda. Kampala is used as the case study area. It is an investigation into what laws and procedures rape victims encounter while seeking redress. It also seeks to find out whether they report, where they report and how the protracted procedure and issue of payment for the medical report affects them.

The research comprises of four chapters, chapter one give the background of the study , statement of the problem, justification of the study, objectives of the research, demarcation of the study, the law and practice on reporting and handling of rape cases at the police stations, Human Rights Implications and limitations of the study.

Chapter two discusses the various research methodologies and methods employed to conduct this research and their implications.

Chapter three focuses on the findings analysis and discussion while drawing examples from other jurisdictions on how rape victims are handled at the reporting stage.

Chapter four discusses viable solutions that may assist victims of rape get the justice they need, and the conclusions.

1.2 Background

I was once a defense counsel and I happened to defend some alleged rapists but I had never thought about or even imagined the ordeal the rape victims go through. What I cared about was to gain victory and this gave me the courage to defend my clients aggressively with out considering the state of the victim. “Rape is easy to allege but difficult to refute” as I was told at the school of law were the words that would play over in my head which motivated me to go an extra mile in defending my client and proving that he was innocent.

At a rape trial, I used to focus more on the punishment which was death as per the Uganda Penal Code Act Cap. 120 and I would convince myself that my client was innocent. This would motivate me more to defend the accused in order to avoid false incrimination that would translate to the incarceration of an innocent man irrespective of what it would do to the victim.

I later became affiliated to the NGO's¹ especially those that deal with women who have undergone the agony of rape and other sexual related abuses. I witnessed the way rape victims are affected by the criminal justice system beginning with reporting of the rape cases at the police station and I developed a need to assist them but I did not know how I could do it.

When I joined this programme I learnt that a problem cannot be solved unless you attempt to deal with it and before this is done, the root cause must be established, which could only be done by carrying out research, getting to know exactly what happens on the ground and how it affects the people. It became evident that something has to be done to assist women who have faced challenges of rape.

From the discussions we had had in class, I took an interest in carrying out research on rape but what I had in mind was to look at the trial process and the evidentiary rules on rape. When I came up with the topic and consulted my supervisor, she said that the topic was good but advised me to talk to Prof Lillian Tibatemwa.² During the consultations I discovered that some people had carried out similar studies in Uganda.

I took Prof. Tibatemwa's advice and came up with this topic with the aim of looking at exactly what the rape victim goes through before going to court. Since the police service is a starting point in the criminal justice system, I found it vital to investigate how the police handle rape victims and other steps the victims go through before trial if any.

¹ Non Governmental Organizations that were established to assist vulnerable people especially women and children to access legal and counseling services.

² One of the visiting lecturers from Uganda (my home country) who was handling criminal procedure and my former lecturer at Makerere University (Uganda) who is currently a deputy Vice Chancellor at Makerere University Kampala-Uganda.

1.3. Problem statement

The International Instruments and the Ugandan Constitution provides that every individual has a right to life/health and all human beings should be fairly treated. The law on rape is clearly stipulated in the Ugandan statute books and attracts a very grave punishment. However, despite the law and the punishment, cases of rape are rampant ranging from family circles, work, school and prison, though not necessarily reported to the police

Rape cases are very sensitive and once reported, they require quick and serious attention or else the required evidence may be lost and, or destroyed. When investigating such cases, the focus is placed on whether the intercourse took place and if truly the victim did not consent.

It should be mentioned that currently, few members of the public are satisfied with the way the police handle such cases. Some police officers treat rape as private wrongs which may result in failure to bring the perpetrator before the law.

As already mentioned above, in the criminal justice system, the police are a starting point thus the onus is on them to ensure that justice is done. The procedure that the victims of rape go through from the time they report the matter to police till they go for trial if they ever do is quite long and cumbersome as the study will reveal in detail in chapter four.

The legal onus in criminal offences is always on the prosecution to prove beyond reasonable doubt and the burden never shifts to the accused *Rex V Kipkering Arap Koske & Kimure Arap Mutatu (1949) EACA 135*. The victim is therefore put to task in proving that she was sexually assaulted with out her consent and by the attacker. This starts with the police at the reporting stage, at the police surgeon and up to where the case ends. One of my respondents expressed his opinion on this issue;

“Once a woman says that she has been raped, every one questions her statement including her own friends and family then what about other institutions like police? She must show that she was forced to have sex because some women want to use it in order to punish their lovers for having cheated on them. They do it as a way of revenge.”

1.4. Justification of the study

Rape is an offence that can only be committed by men³ and it's a grave offence that can result in death or total damage of a woman's life. Rape is a traumatic experience and this is further escalated by the procedure that the victim is required to go through before trial.

At the police station, the rape victim who reports immediately after the commission of the offence is likely to be taken to be truthful and in such a case, it is claimed that evidence may be expeditiously obtained unlike the person who reports after sometime when there is a likelihood of evidence either being inadvertently or knowingly tampered with.

I found it important to investigate on how rape victims are handled at the police at the reporting stage because many previous studies in Uganda are on rape victims and the court procedure, yet before going to court the police take the first step and they play a big role since they have the first discretion of deciding whether to prosecute the case or not.

It has been established that many rape victims undergo trauma as an after effect of rape (Flowers 1987.) This starts from the time the offence is committed up to the end of the trial. If trauma is to be dealt with, it's vital to interrogate the system starting with where the problem begins; who is affected and how that person is affected then suggest solutions/way forward/recommendations.

1.5 Objectives of the research

The aims of this study were to look at the following:-

Critical analysis of the reporting process of rape cases at the police station and how the process impacts on the victims of rape.

How the issue of paying for the medical report affects the victims.

³ Studies have shown that there are some few cases of male victims of sexual violence especially by fellow men (sodomy) which may be more traumatic compared to what rape victims go through. However male victims are reluctant to report and this may be attributed socialization. (Men feel that sexual victimization undermines their masculine identity. Hoyle and Young 2002) and also to the fact that while at least some legal and social networks often exist for women and girls who have been sexually attacked, there is rarely anything comparable for male victims.

How the system can be improved to create an enabling environment for the victims to report and proceed with the matter.

How to ensure that victims of rape get the necessary treatment and justice.

1.6 Demarcation of the study

The decision on where to research was carefully considered basing on two main perspectives, which are along geographical and content lines.

Geographically, the study was confined to Kampala⁴, this was chosen because it is where I have worked and lived for many years so it was an area that I knew well. It's also where many NGO's that work with victims of rape who were my major respondents are located. Being a member of FIDA (U)⁵ I was affiliated to most of the organizations in question which gave me a chance of gaining entry in these organizations so easily.

The study was carried out within six months, both for data collection and the write up hence it was impractical to extend the research any further given its allocated time and any delays in securing permission from any other area would have resulted in late start.

In Uganda as per Article 31(1) of the constitution⁶, the age of consent is 18 years. This research was limited to women/girls of 18 years and above because a study on defilement which is below 18 years had been carried out by several researchers in Uganda.

As already noted above, the reason I preferred looking at the reporting stage is because it's the area that had been neglected by researchers yet it is crucial being the starting point in criminal matters. This study looked at a small section of the country therefore; it is a baseline study on which future work may be undertaken more deeply and at length in respect of what I found on the ground.

⁴ The capital city of Uganda which is comprised of eight police stations.

⁵ Non Governmental Organization for Women Lawyers formed with the aim to assist vulnerable people especially women and children.

⁶ The Constitution of the Republic of Uganda[as at 15th February 2006]

In relation to the above, given the limited scope of the study it is designed to demonstrate the views of the small sample of respondents that was used this cannot fully represent the views of the people from unresearched sites.

1.7 The Law and Practice on reporting and handling of rape cases at the police stations

“Rape, battery and death threats are routine facts in the lives of many women. Every time women go to the police looking for support and protection, they suffer another type of violence. This is the violence of refusing to register their complaints, the suspicion cast upon them making them responsible for the crimes they suffered, such behavior of the authorities reinforces and legitimizes impunity for violence against women and makes them hesitate to fight for their rights. (Davies, M 1994)

A 1983 follow-up study in Minas Gerais by the Centre for the Defense of Women’s Rights found that the police often turned female victims away on the grounds that domestic violence which in most cases includes rape was a private problem⁷. When police did register domestic abuse crimes, they frequently failed to follow standard procedures leaving out pertinent information about the circumstances of the abuse, In addition they often subject the victims to abusive treatment aimed at implicating her in the crime.⁸

Rape is a serious violent crime yet many rape victims have a very difficult time deciding whether or not to report the rape to the police. Studies have shown that in United States less than one out of six rape victims report the rape to police and very few of these victims report the rape right away.⁹

Today, way too many rape victims continue to encounter the old sexist responses to rape from family, friends, acquaintances and authorities. Only a generation ago, as recently as

⁷ Rape becomes an act of domestic violence where the victim is sexually assaulted by a person from her home for example a step father to the step daughter or daughter, employer sexually assaulting a housemaid etc.

⁸ Crimes contra A mulher, Introduction: Letter sent to the secretary of public security by the SOS Mulher Chapter in Belo Horizonte, oct 1982

⁹ http://www.justicewomen.com/help-know_your_rights.html retrieved on 22-feb-2008.

1970, police rarely took reports, rape victims rarely got justice and a rape was almost always considered the fault of the victims.¹⁰

Though our society today is in the midst of making great changes in its understanding of the injuries and injustices of rape, some agents of the criminal justice system are still hanging on to 16th century beliefs that women are liars and they should not be trusted when they make rape complaints as noted in (*R v Manning*, 1968, 53 Cr. App. R at 153)

“Human [sic] experience has shown that girls and women do sometimes tell an entirely false story which is very easy to fabricate but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all.”

1.7.1 Definition of rape.

There is no universally accepted distinction between rape and other forms of assault involving one or both participant's sexual organs. Some criminal codes explicitly consider all kinds of forced sexual activity to be rape, whereas in others only acts involving the penis penetrating the vagina are classified as rape.

Many jurisdictions restrict rape to instances where a woman is forced to have sexual intercourse by a man. In recent years some women have been convicted of raping men; this is classed as either rape or sexual assault...but studies still shows that majority of the victims of rape are women.(Tibatemwa 2005)

In some jurisdictions rape may also be committed by assailants using objects, rather than their own body parts, against the sexual organs of their target.¹¹

The rape of women by men is the most frequent form of rape, with an estimated over 90%-91% of rape victims being female¹² Male-male rape is less common, with less than

¹⁰ *ibid*

¹¹ <http://www2.ucsc.edu/rape.prevention-statistics.html>

¹² <http://www2.ucsc.edu/rape.prevention-statistics.html>

9%-10% of victims being male, primarily in correctional facilities. An estimated 99% of rape offenders are male.¹³

Definition of rape in Uganda Penal Code:

Section 123 of the Uganda Penal code Act provides that;

Any person who has carnal knowledge of a woman or girl, without her consent, or with her consent, if obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm or by means of false representation as to the nature of the act, or in the case of a married woman, by personating her husband is guilty of the felony termed rape.

Section 124 of the Penal Code Act provides for the rape punishment. It states that *a* person convicted of rape is liable to suffer death.¹⁴

Under the law of rape in Uganda, it is only a male person who can be guilty as a direct participant in rape cases. This definition is based on the phrase 'carnal knowledge' that is penetration of the female organ by the male organ. But although it is only a male person who can be guilty of directly participating in a rape, a female who aids a male person in penetrating another female can be guilty of rape under the general rule of principal offenders which covers not only a person who actually does the act which constitutes the offence, but also those who help that person in engaging in the unlawful behavior.¹⁵

Throughout parts of ancient history, the crime of rape was viewed less as a variety of assault on a female's autonomy, but rather a serious property crime against the man to whom she "belonged." This was especially true in the case of betrothed virgins, as the

¹³ *ibid*

¹⁴ I was informed that the definition of rape has been amended to be more gender neutral and that the punishment is no longer death but life imprisonment, I have not had the opportunity to check it out, all the attempts to get the amendments were futile.

¹⁵ Section 19(1) of the Uganda Penal Code Act: When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say a) every person who actually does the act or makes the omission which constitutes the offence, b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence, c) every person who aids or abets another person in committing the offence.

loss of chastity was perceived as severely depreciating her value to her husband. The law, in such cases, would void the betrothal and demand financial compensation from the rapist, payable to the woman's household, whose "goods" were "damaged"¹⁶ Armstrong in her study carried in Zimbabwe on rape and customary law, noted that,

“Rape, seduction and adultery were all sexual offences under the customary law of the Mashona and Matabele. All three were punished by the payment of compensation, in the case of an unmarried woman (for rape or seduction) to her father, and in case of a married woman (for rape or seduction) to her husband.” (Armstrong 1991)

The victim was required to prove a continued state of physical resistance if rape was to be proved, and Consent was conclusively presumed when a man had intercourse with his wife.

"One of the most oft-quoted passages in our jurisprudence" on the subject of rape is by Lord Chief Justice Sir Matthew Hale (Kings Bench England) from the 17th century, "rape...is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent."¹⁷

The English common law defined rape as "the carnal knowledge¹⁸ of a woman forcibly and against her will."¹⁹ The common law defined carnal knowledge as the penetration of the female sex organ by the male sex organ.

The literature on rape worldwide and Uganda in particular is marked by wide range of estimates regarding the number of rape cases which remain unreported. Failure to report the crime of rape may be attributed to the victims' perceptions of the harshness and mistreatment the victims anticipate receiving from the family, the community and the police.

Deciding to report a case of rape is a step many victims never take. If they do it is only the first step. There is a long road to conviction and sentencing (Estrich, 1987:15)

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ *Rape - Overview; Act and Mental State*, Wayne R. LaFave Professor of Law, University of Illinois, "Substantive Criminal Law" 752-756 (3d ed. 2000)

¹⁹ *ibid*

because of the very nature of rape cases, victims take a second thought of whether to report or not and not only to the police but also to their close associates like family members and friends. Victims always tend to blame themselves for the ordeal they went through and also wonder what response they would get if they had to tell somebody. (Estrich, 1987:15).

There is no formal procedure in handling rape cases at the police stations in Uganda but there are guidelines provided during training that police officers are supposed to follow while handling rape cases. Whether they follow such procedures or not was a question to be determined. Below is the procedure to be followed in handling sexual offences at the police station. This procedure is laid down in the police operation procedure (investigation skills in sexual offences) which I only got from Kibuli training school. Though I was told that every gender desk at each police station must have a copy of the same, this was not the case because even the gender desks were unheard of at the police stations I visited.

All cases reported at the police station or post must be registered in the Station Diary (SD) and given a reference number

All cases reported at the police station or post should be considered serious and as a matter of urgency

Victims should not be interviewed at the counter. The investigating officer should try and get a quiet place where the victims' statement can be recorded and confidentiality is needed.

Full interview of the victim/statement recording should be done after medical examination.

A victim should be informed of the reasons for medical examination.

The officer in-charge of the case has the responsibility to go with the victim to see the police surgeon to get medical report.

The Investigating officer should advise police surgeon to examine the victim's vagina and anus as well.

A victim should not be blamed for what happened.

Victims should be handled by female police officers in order to avoid further conflict and fear and the possibility of increased trauma.

If this procedure was to be strictly followed, there would be few complaints from the rape victims but the findings from the study reveals so many contradictions when the real lived realities of rape victims were uncovered. Failure to follow the procedure for instance results to none reporting of rape cases at the police station or withdrawal of the ones already reported as the discussion reveals later.

1.8 Human rights implications.

CEDAW²⁰ which is perhaps the most inclusive UN regime for the protection of women's right appears to have been prompted by the fact of the existing and continuing inequalities between women and men, their effect on world development generally, and on women and the realization of their rights in particular. This development could have stemmed from the need and desire to (re)integrate women's issues and needs into mainstream human rights (Naggita E.D 2000)

In spite of the various regional and international instruments advancing human rights and advocating the equality of both women and men as persons before the law, and owing to the need for non-discrimination on grounds of sex, women continued and still continue to be relegated to the lower ranks of humanity, this is evident in how victims of rape are treated at the police and other institutions in their quest for justice.

CEDAW Article 5(a) provides for the elimination of prejudices and all other practices which are based on the idea of the inferiority or superiority of either of the sexes. There are many prejudices involved in rape cases, some police officers disbelieve the victim's

²⁰ The Convention on the Elimination of All Forms of discrimination Against Women.

story and ask them questions which suggest that they are telling lies. Some statutory requirements also show traces of prejudices for instance consent, corroboration and intention. In her study, Carol Smart stated that,

“We know that a woman’s account of her abuse is always filtered through a mesh of legal relevancies about for example, consent, corroboration, intention and so on. Her story is reconstructed into a standard form of sexual fantasy in which she becomes the slut who turns men on and indicates her availability through every fiber of her clothing and demeanour” (Smart 1995)

The fact that such prejudices are still found in statutes, shows that the state has not only failed to fulfill its obligation to take appropriate measures to address such issues but it has not started on it at all and this contravenes Article 21 (1) of the Constitution of Uganda which provides that;

All persons are equal before and under the law in all spheres of life and shall enjoy equal protection of the law. The question here is whether all persons enjoy equal protection of the law when some victims of rape opt not to report because of the prejudices at police stations.

Article 12 of CEDAW requires states parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services. The study revealed that rape victims pay for the medical examination while others fail to raise the payments. Failure to provide medical services to rape victims’ violets this right.

Further Article 15 (1) of CEDAW requires state parties to accord to women equality with men before the law. This provision looks good on paper but what is on ground is different. The study revealed that there are few rape victims who succeed in going to court not because their cases are bad or they lack sufficient evidence but because of the strict requirements in rape cases for instance the issue of corroboration. This promotes indirect discrimination since the victims of rape are only women.

Protocol Article 3(1): Every woman shall have a right to dignity and protection of her human and legal rights. This provision recognizes that a woman needs care and protection and her legal rights should not be sabotaged. This was also emphasized by Armstrong when she said;

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

Article 4(1) Protocol, Article 3(h) of DEVAW²¹ and Article 24 of the Constitution of the Republic of Uganda provides that every woman shall be entitled to her life and integrity of her person. All forms of cruel, inhuman or degrading treatment shall be prohibited. These provisions indicate that women are not treated humanly and they are degraded. The question here is by whom? And since it was a practice for some time, has such a provision and many others in consonance created a difference? This will be discussed further. Failure to have a friendly environment where victims of rape can feel free to report, coupled with delays at the police station given the nature of the offence could amount to cruel and inhuman treatment.

Protocol Article 8(d): Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States parties shall take all appropriate measures to ensure that law enforcement organs are equipped to effectively interpret and enforce gender equal rights. This provision seems to recognize women’s rights as well despite cultural and customary beliefs²² because it talks about equal rights with men but why should the rights be measured against men? Why should men be the yardstick? It is important to put into consideration that we live under different circumstances and so the rights should be accorded to men and women depending on one’s situation but not on an insensitive equal footing as the law provides.

Protocol Article 3(3)

States parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women. The provision seems to recognize that there are

²¹ Declaration on the Elimination of Violence against Women.

²² Belief that men cannot be on equal footing with women.

still traces of ill-treatment of women and the states are obliged to combat this by putting in place measures to prevent any form of the degrading or exploitation of women. Failure to put this in practice violets the International Human Rights.

Article 3(4) of the Protocol: States parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual violence.

The study revealed that many of the police officers are biased; they believe that a woman won't be raped unless she calls for it or agrees and alleges rape when things get out of hand. This was stated by three police officers from different police stations. Then one wonders how the police officers will be able to protect these women if they find it hard to believe their story.

Protocol Article 8(e): States parties shall take all appropriate measures to ensure that women are represented equally in law enforcement organs. There are generally few female police officers in the police service. And because of this, not all rape cases are handled by female police officers as the procedure emulated above suggests. The onus is therefore on the state to ensure that the stereotypes that women may not manage such jobs be done away with and encourage women to participate and also create a favorable working environment for them.

Protocol Article 4(2) (c) State parties required to take appropriate/effective measures to identify the causes/consequences of violence against women and take appropriate measures to prevent and eliminate such. For this provision to be effective the police must be equipped with all necessary training on how to help victims of rape access justice and be treated fairly.

Articles 5(c) Protocol provides for necessary support to victim of harmful practices through basic services such as health and legal. Rape is one form of harmful practices and the state is obliged to ensure that such victims are protected and provided with necessary services including health and legal services. Failure to provide the same amounts to violation of International Human Rights.

It's a person's inherent right to access justice, therefore, the laws and practices that are in place should be able to work for everyone in search for justice. The study revealed that the bad experience that some of the rape victims met while searching for justice deterred other women from reporting rape cases to the police. They in most cases use their local leaders²³ to reach a compromise. This is not deterrent and may not be the best solution in this era of HIV and AIDS.

1.9 Limitations of the study

The study like any other research met with different challenges depending on the respondents and the situation on the ground. The following are some of the challenges that were faced by the researcher.

1.9.0 Time

The time allocated to the study was not enough to allow me carry out a comprehensive research especially in follow-ups and getting many case studies. Because of the time limit, I was unable to meet the Government officials who kept on postponing the appointments because they were "getting ready for CHOGM"²⁴. An interview with them would have given me a clear insight for example on who is supposed to meet the costs for the medical examination and who is to conduct it. This issue will be discussed further in chapter three.

In as far as my research was concerned; it was pertinent to have more than one case study for rape victims from different locality or backgrounds in order to make a comparison on how they were handled by the police and how they were affected by the bureaucratic procedure of getting the medical report but because of limited time I was only able to get one full case study.

²³ These local leaders have no jurisdiction to preside over criminal offences. They are guided by the Executive Committees (judicial powers) Act Cap. 8 they can only preside over cases of civil nature governed by customary law-trialable by executive committee courts second schedule of the the (Judicial Powers) Act. Their jurisdiction is also limited to issues of impregnating of a girl of less than 18 years of age and elopement with a girl of less than 18 years of age.

²⁴ Common heads of Government meeting that took place in Uganda during the month of November 2007.

1.9.1 Sensitive nature of the study

The research touched a very sensitive area. Some rape survivors often broke down into tears as they narrated their story/lived realities. In such a case I would stop and make arrangements for the interview to continue some other time. This however also had a limitation of not being able to get the victim at a later time but it worked in a few cases.

1.9.2 Non disclosure of the information required.

Some police officers were reluctant to point out the weaknesses of the system and as such they tended to give biased data especially on a matter that touched them directly. For example a few of the police officers felt that some of their colleagues were sensitive in handling rape cases while majority of other informants like the NGO's representative were convinced that the attitude of police officers towards rape victims leaves a lot to be desired and contributes to non reporting of rape cases.

1.9.3 Limitations on application of the methods intended to use.

Before I started the study, I found it vital to use the observation method especially at the police station in order to witness how rape victims were treated /handled by the police. However this was so limited since there were few rape cases that were being reported and I only managed to get one case study where the method above was applied.

CHAPTER TWO RESEARCH METHODOLOGY AND METHODS.

Briefly this chapter focuses on ways in which data was collected. This falls into three major categories that is listening to informants and respondents, observing behavior or examining records. The chapter discusses the methodological questions in relation to this research study that is the analysis of how the research was carried out, my point of departure was women's law a methodology developed by Norwegian women's law scholars.

2.1 Research Methods and Methodologies

2.1.0 Introduction

This deals with different ways how research is conducted from the time of formulating the research topic, assumptions, objectives and the actual field study. Before I went to the field, I made sure that the ground work had been done and I took the initiative of securing permission from responsible authorities to allow me access the research sites. I had already theorized about what I perceived to be a challenge within the area which I was seeking data on. I came up with around eight assumptions which I discussed with my supervisor and ended up settling with only six assumptions and the research questions there from.

What is Methodology?

In simple terms, methodology is a theory and analysis of how research should proceed; it includes accounts of how the general structure of theory finds its application in particular scientific disciplines (Harding.S.1987.) Professor Anne Hellum also stated that, methodology is a theory and analysis of how research is done or should proceed (Hellum .A. 1990: 121)

2.1.1 Assumptions

There are six detailed assumptions and they were derived from my experience of work prior to this course back in Uganda, as member of FIDA (U) and through interaction with other members of NGO's that assist vulnerable people especially women and children.

1. There's no favorable environment available at the police stations where the rape victims can freely report the rape cases.
 - (a) The environment for reporting and its adverse effects to the rape victim.
 - (b) Victims of rape are not given special attention they need because of their vulnerability.

2. Police officers are not gender sensitive and their attitude in handling rape victims at the reporting stage impacts on the victims.
 - (a) They disbelieve the victim's story and
 - (b) Interrogate the victims as if they are offenders.

3. There are few suitably trained police officers available for handling rape cases at the reporting stage.
 - (a) There are few officers who are able to appreciate the vulnerability of the victims of rape and treat them with sympathy and
 - (b) Elicit necessary information from the rape victims with out necessarily increasing their trauma.

4. There are few female police officers available for handling rape cases yet they may be the most preferred by victims of rape especially at the reporting stage (Women preferring Women).
 - (a) Female police officers may be preferred because of the assumption that they are more sympathetic than male police officers.
 - (b) The victim may not wish to talk to a male figure because of having been raped by a male person (constant reminder of the act)
 - (c) Some victims may not be free to talk about sexual issues with a male person (police officer)

5. The bureaucratic process in obtaining a medical report by rape victims and the costs involved may deter them from pursuing the matter thus resulting in failure to get justice and violation of their right to medical care.

- (a) The type of medical report required-form 3 and its effect on the rape victims.
- (b) Payments for the medical examination by the Victim.
- (c) Time taken from the period the offence was committed to the point of getting the medical report.
- (d) Obtaining the medical report and taking it back at the police station where they had earlier reported.

6. Women's experiences with the police may deter other women from reporting rape cases to the police thus hindering the victim's quest for justice, based on;

- (a) How they were treated by the police.
- (b) How they were affected by the procedure.

2.1.2 Research Questions

1) Is there a friendly/favorable environment available at the police stations where the rape victims can freely report cases of rape?

- (a) Does the environment for reporting of rape cases have adverse effects to the rape victim?
- (b) Are the victims of rape given special attention they need because of their vulnerability at the reporting stage?

2) Are the police officers gender sensitive in handling rape victims at the reporting stage?

- (a) Do police officers disbelieve the victim's story?
- (b) Do the police officers interrogate rape victims' as if they are offenders?

3) Are there suitably trained police officers available for handling rape cases?

- (a) Are there police officers who are able to appreciate the vulnerability of the victims of rape and treat them with sympathy and elicit necessary information from rape victims without necessarily increasing their trauma?

4) Are there female police officers available for handling rape case?

(a) Are the female police officers the most preferred by the rape victims in handling their cases?

(b) Do the victims of rape prefer talking to women because male police officers may constantly remind them of the act (having been raped by a male person)?

(c) Are some victims of rape not free to talk about sexual issues with male police officers?

5) Does the bureaucratic process of obtaining medical report by rape victims and the costs involved deter rape victims from pursuing the matter/case?

(a) Does the type of medical report required on form 3 impacts on a rape victim?

(b) Do payments for the medical examination by the victims affect them?

(c) How long does it take for the victim to get the medical report and taking the medical report to the police station where she had earlier reported from the time the offence was committed?

6) Do some women opt not to report rape cases because of other women's experiences with the police at the reporting stage on how they were treated by the police and how they were affected by the procedure?

2.2 Research Methodology and challenges/limitations

Complainants in rape cases encounter problems with the police while at the reporting stage at the police stations. It is necessary to embark on the study which aims at investigating how rape complainants interact with the police.

It became inevitable to have a woman centered perspective that explores the lived reality of rape victims in order to “actualize the supposedly women friendly human rights agendas that are contained in a variety of different national and international instruments (Stewart 1992:63)

Though Uganda like many other countries has adopted the protocol and gone ahead to embed the equality clause in its constitution, it remains a paper guarantee of equality before the law, the study aims at exposing what a victim of rape goes through in her quest for justice starting with police.

2.2.0 Women's Law approach

This approach is based on the lived realities of human life using women as a starting point. It involves building up legal and social science knowledge and encompasses the practices and perceptions of women and men. (Bentzon, et al (1998.) The application of this approach is meant to engage with women at the grassroots in order to achieve a holistic picture on the rape victims' experiences/realities

The Women's law approach was found the most appropriate since it takes the women's lived experiences as a starting point when determining women's legal needs and aspirations. It has been argued in women's law that when examining the complicated interplay between law and life in relation to women, one has to take the starting point in life rather than in law. There is a presumption that the legal system historically is made by men and for men, reflecting the opinion of men, creating solutions to conflicts of men and responding to the needs of men. (WLSA 1990:117) Therefore it was important in my research to take a starting point in women's lives and realities and look at the law to examine how it corresponds to women's needs or women's concerns.

The perspective is grounded in what women themselves perceive as their needs in order of priority and preferences. For example using this method, I was able to get the actual picture of how the victims were handled by the police, what they liked and what they considered to be "harsh treatment" as will be discussed in the findings chapter and how they should have wanted to be treated.

It is the women's law approach that guided me to capture stories of the rape victims from the victims themselves and it gave me the requisite skills to observe, listen and later interpret what I saw and heard in order to make a sense of it with in the meaning and context of my research assumptions.

This methodology is advantageous because it helped to unearth a variety of conflicts that women experienced plus those that were not considered as legal problems and this assisted me in identifying possible solutions from an informed point of view.

On the other hand in using this methodology, some limitations were noticed for example some rape victims were not comfortable to talk about their experiences and since I was aware of the sensitive nature of the study I could not probe for answers.

This methodology was not easy to use without compromising ethical issues. Identifying rape victims was a hassle itself and getting their full attention was another inquiry. At one time for instance I had to pose as a rape victim in order to get to know the actual lived realities of the rape victims and to get the information I needed from them.

2.2.1 Human Rights approach

Human rights are a set of universal entitlements that individuals enjoy irrespective of their sex, gender, age, nationality, religion, culture or status that are inherent to human beings and that are proclaimed and protected by international law.

While carrying out the research, it was pertinent to interrogate the information I was getting from a human rights perspective to find out whether the reality on the ground was in conformity to human rights and I was constantly linking the emerging issues with human rights instruments. For instance, the fact that rape victims are not provided with privacy where they could be interviewed freely and give their side of the story not only violates the right to be treated humanly but also prevents them from giving the full facts that may be pertinent to the case and for investigation purposes. This contravenes the following provisions of both International and National Legislation.

Protocol Article 3(1) provides that;

Every woman shall have a right to dignity and protection of her human and legal rights. This is also reflected in 1995 Ugandan Constitution Article 24: No person shall be subjected to any form of cruel, inhuman or degrading treatment

The methodology further gave me a clear understanding of the contextual framework which enabled me to view the above practice vis-à-vis the various human rights

instruments to identify which ones are violated and the possible available remedies to address the violations.

2.2.2 Grounded theory

The grounded theory methodology is one of the tools of collecting data employed in this study. It is a model for analysis of empirical data with the aim of generating theory (Glaser and Struss 1967:187) this methodology complemented the Women's law approach and indeed it proved to be very useful. It enabled me to probe for more and relevant empirical data. The data constantly unfolded reflecting lived realities of rape survivors interacting with the procedure in quest for justice.

Before I began the field study, I thought that there was formal law or procedure that informed police officers on how to handle rape victims especially at the reporting stage, but from several respondents (police officers) it was revealed that they only followed the procedure that they were taught at Kibuli police training school²⁵. This also necessitated me to go to the training school and find out from the trainer and the trainees exactly what the training school offered in terms of handling rape victims.

This methodology was vital taking into account the fact that the issues under discussion were not confined to one group of people or ideas. The broad nature of issues necessitated me to get wide knowledge on different issues and from different sources. I started with the police intending to know how police officers handled rape victims at the police station and the first respondent at the police intimated that some victims either withdrew cases after they had been reported to police or they report to local council leaders in order to get compensation from the offender. This resulted in my interview with the local council leaders to get their side of the story yet at first they were not targeted.

This in the end guided me on the questions to put forward to the victims in as far the reporting process was concerned because a clearer picture of what to expect at the police station had been uncovered from different areas.

²⁵ Where all CID officers are trained from on how to carry out investigations in criminal offences.

The methodology helped me to uncover data from different angles because the outcome from one area of study pushed me to get more information on the new issues that arose. I kept on getting data from one end and going back to the other sources to clarify the new issues arising. This resulted in using the dung beetle approach described by Bentzon et al in Pursuing Grounded theory.

“The dung beetle method... is grounded research process in which the researcher collects data, sifts and analyses it, considers the implications of her findings, determines what to collect next to meet her needs, and continues the collection and analysis cycle. Through this process, new methodologies, perspectives are hatched”.

This is what occurred in this field study and the methodology gave me an opportunity to assess the extent of the problems from various perspectives which resulted in finding remedies from different angles.

In using this methodology I was faced with the challenge of breaking the chain of data collection where some of the respondents were unreachable. For example my effort to interview Government officials were futile yet it was vital to get their side of the story on who is supposed to meet the costs for the medical report and on whether its only authorized medical practitioners (police surgeons) who are supposed to examine rape victims. Though the information I got from the police officers on this matter was similar with the one I got from the police surgeon, I needed to triangulate it with one from the ministry, unfortunately this never happened, and therefore, more investigations are required.

2.2.3 Actors and structures

In order to fully explore the effects of the interaction between women complainants in cases of rape and police attitudes I employed an actors and structures analysis.

The approach enabled me to focus on the rape victim, her relationship with police officers and other actors with in the criminal justice system.

I took cognizance that both actors and structures exist within a given society and they tend to influence one another. The study was going to uncover how and when and for what reasons. It was important to establish how rape victims navigate through the maze of reporting rape cases, being medically examined, their experience at each stage and how they are affected.

I further explored how some victims of rape approached the police officer handling the case or the local council courts to seek for compensation. This revealed that there are many structures in the society that may influence the reporting or failure to report cases of rape.

The actors and structures approach as a methodological tool of analysis helped me to study deeper the interplay between actors and structures in rape case. This method was however limiting because of failure to get in contact with some of the structures that were vital in as far as the study was concerned.

2.3 Methods of collecting data and their limitations

Primary sources.

Having constructed the foregoing general theoretical framework and methodologies, I then proceeded to use them in guiding the actual process of collecting the evidence from diverse groups of respondents and informants among others. I divided the method into two categories that is primary sources which encompass interviews, group discussion and observation as well as secondary sources which involved perusal of records like books, internet, and use of prior case studies where applicable.

2.3.0 Individual in depth interviews

Most of the data collected in the study was from both in-depth interviews and group discussions. The in-depth interviews were mostly carried out with police officers and rape victims who were directly involved in the study as main respondents. A total of ten rape victims were interviewed and police officers totaling to nine five being male and four female.

This method was also used to conduct interviews with police surgeons who were responsible for examining the victims and giving the medical report for the same. Other people I had individual interviews with were two prosecutors (2), defense counsel (2), Parliamentarians (2), NGO's representatives (4), local council leader(1), employers of one of the rape victims(2) and the general public (5).

This method was exclusively oral and all the answers were orally given by all the respondents because I needed to observe my respondents and relate my observations to my study. Since the topic was very sensitive I also thought that using written questions would not bring out the lived realities of my respondents like the rape victims, and I was convinced that some selected respondents would have ignored the written questions.

The women's law researcher focusing on women's lived reality and how events shaped their lives is more likely to find rich seams of data by using the open interviews and discussions than by proceeding from predetermined assumptions addressed in closed interview schedules. (Bentzon 1998:197)

Defense counsel and the prosecutors I had studied with, and one of the prosecutors is married to one of the defense counsel, so I invited them for lunch at my home and we were able to discuss my research questions. The other defense counsel and the prosecutor were found at their place of work. Since I had studied with them also, it was easy for me because we made appointments on telephone and fixed a date for interviews which they honored.

The parliamentarians were spotted at a workshop and after the workshop I approached them individually and asked for a minute with them, though at first the male parliamentarian seemed hesitant, he afterwards agreed to talk to me but he did not have a lot to offer.

The female parliamentarian was keener to discuss the topic and she talked to me for over five minutes and gave me her contact to go and see her anytime I feel like talking to her.

The employers of one of the rape victims were found at their home in Nalya estates when I was with my supervisor following up the case study. The local council leader was also found at his small office in Makindye and members of the general public were found in different places which included village meetings, church meetings and places of work.

Rape victims were involved in a comprehensive discussion on the topic thereby confirming some of the assumptions I had developed before going to the field as stated above. It's important to note that the study was gender sensitive therefore from all the research sites, I carried out an in-depth interview with male respondents apart from the rape victims who were automatically women since the law did not recognize rape committed by women and other factors. As such there were no cases of rape reported by men identified.

2.3.1 Identifying rape victims: “Lucky” researcher²⁶

I must confess that before I went to the field I had doubts on whether I would get rape victims since they were my main targets and I was worried as to how I would interview them with out putting them through a third trauma.

I had to devise means of getting the victims, I first went to the police stations that I had identified already as my research sites and talked to CID officers who had handled sexual offences before and agreed that if they saw any rape victims they would inform me I then gave them my telephone contact and took theirs as well. The onus was on me to keep on calling and checking whether they had received any rape cases.

Through my engagement with the CID police officers I was able to get contacts for the rape victims they had handled before and went ahead to pursue them using their telephone contacts and their physical addressees. I followed up the case of the

²⁶ I consider myself a lucky researcher because I got a fresh full case study where the rape victim had come to report at the police station and I was able to follow it up using the observation method especially at the reporting stage was vital to my study yet I was about to give up because it had become little bit difficult to get a rape victim reporting the rape case at the police station. I was also lucky to have gotten that case study because it gave a good comparison between what other rape victims who have no backing go through before getting the medical report. The victim in this case study was assisted by her employer who was also a senior police officer and thus well abreast with the law and the procedure, also by virtue of his position in police he did not incur any costs for the medical report.

complainant who had withdrawn the case yet she had gone ahead to get the medical examination and brought the report back to the police.

I must say I was so lucky to get a fresh case of a rape victim that I was able to follow from the time she was reporting the case up to the time of getting the medical report. This became my “**classic**” **case study** and its details will be illustrated later.

I was also able to get in touch with two rape victims through police officer’s contact because many of the victims that had their cases reported at the police stations did not have a fixed place of abode so it was not easy to identify them.

My other way of getting the rape victims was through the NGO’s that are involved in handling Women’s issues which included Hope After Rape(HAR), Refugee Law Project (RLP), FIDA(U) and Legal Aid Project(LAP)

I was lucky to be affiliated to most of these NGO’s and some of the employees were my former classmates therefore it was easy for me to have entry to the organizations and also get an opportunity of meeting the victims of rape.

2.3.2 Avoiding third trauma.

As already noted above, one of my biggest worries was on how to get the victim’s story without getting her going through third if not fourth trauma, I had to plan and devise means of handling it. What I did was to first build rapport with my respondents and I avoided asking question that would trigger their trauma we would discuss general questions and they would find themselves narrating their ordeal during the conversation without noticing it.

I also promised them that I would treat our conversations as very confidential and for that matter; I avoided writing down anything while conducting interviews. I would thereafter get a place to sit and do a write up before forgetting the narrations made during the interviews.

The third trauma was also avoided because I was interviewing victims that were undergoing counseling process they had learnt how to handle the trauma and their counselors would first talk to them and advise them to talk to me like any other counselor so I was looked at as an “insider”. This helped me to get the information I wanted without raising the victims’ trauma so much.

It should be noted that, though I considered myself a lucky researcher there are some instances where I had to let go especially where I realized that the victim was not comfortable to talk about her life experience. And at one stage I had to pose as one of the victims who was trying to help out so that the experience” we” had gone through should not be repeated. I used this trick in order to get the attention of one of the victims that had withdrawn the case after she had reported and even got the examination report that confirmed rape.

This method was advantageous because it gave me an opportunity to build rapport which in return motivated the respondents to answer questions. Where there were inadequate or vague responses, I could easily seek clarity and through this method meaningful data was collected but ethically problematic.

On the other hand, the in-depth interviews were more involving and consumed more time. It would take me almost an hour for introduction, interviewing and recording responses from a single respondent or sometimes more than an hour depending on the situation of the respondent in question.

2.4 Group/Discussion interviews

Group discussions were held in three different areas: Kawempe, Makindye with the local council leaders and two group discussions at old Kampala²⁷ with Women NGO’s members. All the groups consisted of both women and men as the table below indicates. I led the discussions by asking questions in relation to the study and responses given by the interviewees would be jotted down. This method was good because I was able to elicit

²⁷ Kawempe, Makindye and old Kampala are all Kampala suburbs located in Central Uganda and they are all attached to police stations.

information which was supported by most of the group members and this avoided getting inaccurate or biased views.

The group interviews were conducted purposefully to get the general views on how the people envisaged the criminal justice system while dealing with rape specifically at the police station, what their views were concerning the payment for the medical report/examination by the rape victim and also to find out whether the experience of some women with the police deterred others from reporting rape cases.

The discussions were successful and its where most of the emerging issues came from, the first group discussion I held in Kawempe was interactive, it was legal education on the topic of rape in general which I introduced and we discussed generally then questions were put forward and from the questions put forward, some of my assumptions were directly answered and I also got a chance of asking questions of the group members where I felt that some of my assumptions had not been tackled Or where clarifications were needed.

This method was advantageous because of flexibility, unstructured interviews helps to bring out the effective and value-laden aspects of respondents' responses to determine personal significance of their attitudes. People's responses were spontaneous and self revealing and not superficial and the information elicited was personal and social context of beliefs and feelings.

The group members were also able to suggest some recommendations they felt would improve the system which will be considered in the last chapter.

2.5 Key informants interviews

My key informants were NGO's representatives I was able to interview three female Representatives from three different NGO's that is Hope After Rape, the Legal Aid Clinic, the Refugee Law Project.

These NGO's receive victims with fresh cases and old cases as well. Some victims go

there after they have been to the police others go there before going to the police.

Those who report to the NGO's before going to the police stand a better chance of being helped by the NGO's representatives through the procedure of reporting and acquiring the medical report from the police surgeon.

I found it imperative to engage with these NGO's because they were directly dealing with Rape victims in terms of offering counseling services so they were able to emulate the Mishaps these victims had gone through especially dealing with the police.

The interview guide was used in interviewing these people. The guide contained Questions to probe information on how these NGO's handle the rape victims' problems at whatever stage they reach out to them for assistance and their relationship with other service providers like the police and other relevant institutions while dealing with rape victims.

The table of interviewee highlighting key informants and key respondents interviews and discussion groups-Kampala

	Individual interviews		Group interviews		Key informants		Total
	Male	Female	Male	Female	Male	Female	
Police officers	5	4	-	-	-	-	9
Rape victims	-	10	-	-	-	-	10
Police surgeons	2	-	-	-	-	-	2
NGO's	1	3	4	6	2	4	20
Parliamentarians	1	1	-	-	-	-	2
Local council leaders	1	-	11	7	-	-	19
Prosecutors	1	1	-	-	-	-	2
Defense counsel	1	1	-	-	-	-	2
Victim's employer	1	-	-	-	-	-	1
General public	3	2	12	9	-	-	26
Total	15	19	27	22	2	4	93

2.6 Case study

I realized that by the nature of this study, it was important to ascertain not only the lived realities of rape victims interacting with police officers as complaints but also how they use or decide not to use the law after an incident of rape.

Yin defines a case study:

“A case study is an empirical inquiry that investigates a contemporary phenomenon within its real life context when boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used.” (Yin 1984:2)

As already noted above, I was lucky to get one case study which was a fresh case of rape details of which will be emulated in the proceeding chapter. This case study was imperative because it gave me a clear picture of what a rape victim goes through from the time of reporting up to the time she is examined.

This type of method was used to understand and explain the position of rape victims as they interact with the police and other agents in their road to acquiring justice. It was further considered as an in-depth investigation into how rape complainants are viewed by police officers and other agents of law and also how rape victims on their part interact with law enforcement agents. This helped me to make a critical analysis of both actors and structures especially it helped me to discover how various structures impact on a rape victim.

2.6.0 Identification of the case study.

The case study was identified after I had tried several times to wait at different police stations for any report of the rape case in vain and after I was told by different police officers that there were no “fast track cases”²⁸ and I had checked with the High court clerk there was no rape case trial about to take place. I did not give up so I kept in touch with at least one of the police officers from the police stations I had decided to use as my research sites and we agreed that they contact me in case they got any victim.

²⁸ Cases referred to court by police officers ready for trial without going through the process of remand. These cases are usually less than two days old.

I was lucky that the police officer that had interacted with me more from Kira Police Station happened to be the one that got the complainant first and he gave me a call and told me about the case. I was about fifty kilometers off town but I had to go back because I never wanted to miss an opportunity I was all along waiting for.

This case formed the focal point of analysis of empirical data gathered. It clearly revealed the lived realities of the rape victim while interacting with the police and how she went through the maze of the law. It gave me a clear insight on why some complainants preferred to abandon the cases already reported.

The only challenge was that I did not get another case study for comparison purposes but this could still be done using the stories that I got from other rape victims whom I interviewed.

2.7 Observation.

During the study observation was one of the methods employed and many observations were made at research sites. Non-participatory observation was the most used throughout the study because I was not involved in the events under scrutiny. I was just observing and listening using eyes and ears not asking any questions. I was able to use this method at the police stations where rape victims reported rape case, at the clinic where they go for medical examination and I was able to come up with different observations.

At different police stations, I observed that the procedure of handling rape victims was more or less the same only that some officers/offices looked more organized. I observed that all victims are received at the desk near the reception where their statements are recorded and then sent to another open office to be interviewed by a CID officer to whom the file is assigned.

I was also able to observe that a complaint may be handled by any police officer who is at the reception desk and during the day on many police stations there are two officers at the

reception a male and a female officer but this is not necessarily the same at night. This I was able to observe when I went to three Police stations past 10: pm.

Using the **case study**, I was able to observe that rape victims while being interviewed at the police station do not feel comfortable and safe to give a clear narration of their story because the environment is not friendly.

I further observed that when it was so clear that there was a study carried out on how rape victims are handled at the police stations, some changes started to be made an example of this is when I went to see the police officer who was handling sexual offences at the police station where I had been before, I was told that she had escorted the rape victim to the clinic for the purpose of getting the medical report. This was either done to create a good scene or they wanted to show that if it's within their means they follow the right procedure like I was later informed by another officer.

The attitude of the police officers in handling rape cases with their biased mind was noted and the effect it had on the victims.

This method clearly brought out the impact of the lengthy procedure of reporting and getting the medical report on a victim of rape because the researcher was able to follow all the events without any influence.

At the clinic where rape victims get examined, I was able to make the following Observations;

He does not examine only rape cases but also cases like assault and physical Injury

The police surgeon only sees the patients in the afternoon

The police surgeon is overwhelmed by a number of patients and this result to much pressure on him in terms of time and congestion at the clinic.

No medical treatment is offered to the patients by Police surgeon.

The physical address of the Police Surgeon's Clinic is not well known even to the some of the Police officers at the Police stations they just generally know that the Clinic is found on Bombo Road .

The sign post at the very building where the clinic is located is very small and obscure.

3.0 CHAPTER THREE: A LONG AND WINDING ROAD TO “JUSTICE”

3.1 Introduction.

This chapter will discuss the findings from the study. It will show what the rape victim goes through from the time the offence is committed, to reporting and the interaction with the doctor for the purpose of getting medical evidence. At each stage, I will endeavor to bring out how the rape victim is affected by the law, procedure or the practice employed in the quest for justice.

The discussion will bring out views of different respondents who have interacted with the victims of rape in one way or another as well as views of the general public on the research topic. It will show the lived realities of the rape victims captured from their own voices using the women’s law approach as discussed in the methodology chapter.

I bring out a case study which I call “**classic case**” that captures all the stages above which I was lucky to come across, and then discuss other issues bringing out examples from the study in juxtaposition to my “**classic case**” on how rape victims are handled at the reporting stage at the police station, the bureaucratic procedure of getting the medical report and its impact on rape victims.

My “**classic case**”: Case study.

“I take care of the baby girl about one year and half and I always stay at home with her while mummy²⁹ and daddy³⁰ go to work (her employers) they all go to work everyday and mummy comes back but daddy does not most of the time.

I was at home yesterday with Junior my boss’s son who had come from school for a short break when we saw John outside the house along the Main Road and we asked him what he was doing there, he told us that he was waiting for his visitors who were coming from Masaka³¹ to attend a certain function at his place. He stayed there seated under the shade.

²⁹ She was referring to her female employer

³⁰ Her male employer who is a senior police officer and who helped her go through the cumbersome procedure of reporting the rape case and acquiring the medical report.

³¹ Another District around 230 kilo meters from Kampala.

Later on Junior left the home to go and inform his friend's parents about their end of term period such that they could go and pick their children. Soon after he left the house, John came inside the house and started telling me how he loved me, how he wanted to marry me and start for me a business in town. I told him that I came all the way from my home to work but not to get involved with married men.

He tried to convince me to kiss him but I refused and told him that I will report him to his friend (my boss) and by saying that I thought that he would leave me alone and go but instead he got hold of me, pushed me and the baby and we fell down.

He squeezed me and put me in the sofa(big chair) that was in the sitting room, he pulled my knickers down and I tried to make an alarm but he covered my lips with his big ones as he was forcing himself on me, he managed to come on top of me properly despite my struggle. He is a very huge man and he overpowered me I could not help myself.

He raped me, he hurt me it was very painful and I bled and was bruised. He only got off me when I managed to bite him on the chest. He asked me not to tell anyone and ran away. After he had left, I stayed there crying and was confused that's when Junior came back and found both me and the baby crying but I could not tell him what had happened.

Mummy came back after a few minutes and I told her what had happened then she took me to the police post in Nalya³². I made a statement at the police post, we came home afterwards and found daddy already home. The police officer that we found at the police post proceeded to John's place but he was not there.

Daddy took me to the clinic near our home but there was no doctor and he refused that the nurse should not work on me. We jumped on a boda boda (motor cycle) went to Ntinda Kyosiima Clinic³³ which is far from home. At the clinic, I was given first aid and the pill to prevent the pregnancy and daddy paid them. Earlier at the police post I was told not to tamper with the evidence so I was asked not to take a bath so I didn't.

Today morning, daddy brought me here;³⁴ we were given the forms to go to the doctor and get the medical report then bring it back here. We went to Nsambya police clinic³⁵ with daddy I saw the doctor who sent us back to town Ebenezer laboratory clinic for tests and after we got the results, we took them to the

³² A sub set of police stations that are established small towns, residents and sometimes villages. They are more accessible in terms of geographical location but they have no jurisdiction to handle sexual offences.

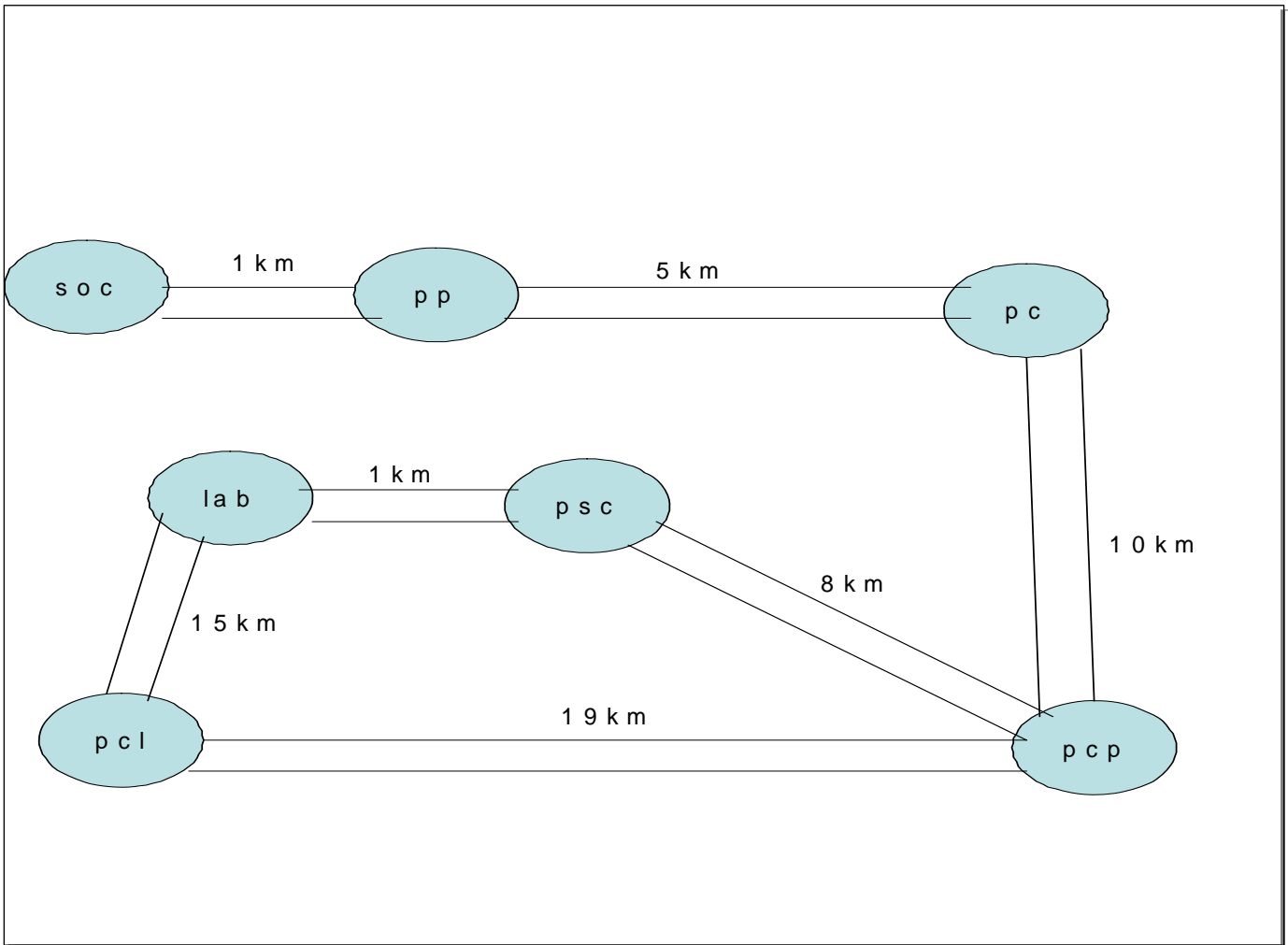
³³ Private clinic where payments are borne by the patient.

³⁴ Kira Road Police station where I met the victim.

³⁵ Clinic where victims of rape are supposed to be examined at no cost.

doctor's clinic, he made a report , it was sealed and we were told to bring the report here at the police station.

The long road to acquiring medical report.



Key to the illustration

Soc: Scene of the crime

pp: Police Post

Pc: Private clinic

PCP: Police Station

Pcl: Police Clinic

Lab: Laboratory

Psc: Police Surgeon's Clinic

The above illustration shows the stages that one of the rape victims went through from the time the offence was committed up to the time she got the medical report from the police surgeon. It took her almost 60 kilometers to get to the point of getting the medical report.

It should be noted that unlike in other cases that will be discussed later, this particular victim was “lucky” to have been an employee of the senior police officer who was so protective of her and helped her go through the procedure and being a police officer, he also admitted that the procedure was not too cumbersome but he observed that it may not be easy to any other victim of rape.

It took this particular victim twenty hours to get the medical report because she told me that she was raped at around 14:00 and I got to talk to her the following day at around 17:00 hours after she had brought the medical report to the police station.

It should also be mentioned that when I was measuring this distance, I was using private means yet the victim used public means which involved the hassles of boarding taxis, traffic jams and many other inconveniences. I was informed that at one point they (she and her employee) had to jump on a “boda boda” (motor cycle) because of a traffic jam and it was getting late yet it was important to preserve evidence. Her journey could have been more than seventy kilometers. The big question here is “how many rape victims can manage to go through all this process on their own considering the kind of shock and trauma they go through”? What about the cost?

Rape victims do not go straight to the hospital. It was established from the study that where they have had several or grave injuries, they are advised to get “first aid” from any clinic or hospital³⁶ at a cost and at the same time to go and get the medical report from the police surgeon at a cost also yet this is supposed to be done as soon as possible to avoid the possibility of tampering with the evidence. This puts the rape victim in a tight position. Victims of assaults like accidents go straight to hospital and why not victims of

³⁶ The police officer from Nalya police post where the victim in the main case study reported first told me that where the victim has had severe injuries, she is advised to go and get treatment first from any clinic on her own and then go to the police surgeon for the medical report.

rape? The state should put into consideration the fact that these victims are vulnerable and they need special medical attention. They should get treatment for the physical injury at the same time with the medical report at no cost.

3.2 Law, practice Vs reality (real life experience)

I found it very important to get first hand information from the rape victims on how the law treats them and what exactly happens on the ground. (Their real life experience.) Women's law approach was fully employed to make a comparison of what the law says and how it's applied to the real life of rape victims.

3.2.0 Victims of rape and their journey to acquiring justice,

How do they get there?

The victims first come into contact with the police procedures at the inquiries office which is an open office where reports are made and interviews are conducted pertaining to the alleged crime. The main problem at the inquiries office is that a victim may be interviewed by more than one officer or even in the presence of other complainants lodging different complaints

3.2.1 Reporting at the police station and the victims' experience.

Reporting of the rape case is not something that someone is comfortable with. Rape is not a subject one is free to talk about, privacy especially at the reporting stage is needed. Being in a place where other people walk in and out may be unnerving to a victim who is relating such a sensitive matter.

Seven police officers out of nine interviewed agreed that the environment at the stations did not favor rape victims while reporting their cases but they blamed it on the Government for having failed to offer any solution. One of the police officers said:-

“Our system is so lacking, we do not have enough facilities to allow us handle these cases properly. Look at some of the police stations in Kampala some police officers have no offices where to sit and I believe its worse upcountry. Surely do you think there could be a provision for a special room where victims could easily be interviewed without any interruptions?”

All the ten victims interviewed were of the view that victims do not freely report rape cases at the police station. Those who had reported did not find it friendly to them and those who had not reported had heard other people talk about the way statements are made at the police. Seven of the rape victims interviewed intimated that police officers were not gender sensitive in handling rape cases while all the nine police officers denied not being gender sensitive in handling these issues. One of the victims who did not report had this to say:-

“I did not report to the police because I thought they would ask me shameful questions which I knew I would not answer, even I had heard that in court you must say everything the way it is in front of many people I decided not to do anything about it”.

The experience the rape victims go through at the police station leaves a lot to be desired. I was able to observe activities that take place at different police stations where I conducted my study. The five police stations I visited in Kampala did not have a favorable environment where the rape survivors could comfortably report. The place where the victims are interviewed is a big office shared by many police officers handling different cases. As already mentioned in the methodology and methods chapter, the victim I observed being interviewed though being a “daughter” of the senior police officer was not given any special treatment in as far as interview was concerned.

It was a male police officer who interviewed her and my first observation was that the officer and the victim didn't speak the same language and I happened to know both the police officer and the victim's language so I could easily detect where the police officer could not pick up or misunderstood what the victim was saying.

In the office where the victim was being interviewed, there were three other police officers taking evidence from three other complainants and I realized that at some point all the officers and the complainants were diverted by the statement given by the rape victim and it was obvious that she became uncomfortable. Unfortunately the police officer who was interviewing her did not either realize it or he did and just ignored it. However I must say that the complainant was such a brave girl.

Other police officers kept on entering and asking the Criminal Investigation Department (CID) officer³⁷ that was conducting the interview for his assistance and it was very clear that the interruptions affected the flow of the interview because he would resume the interview by asking questions like Where were are we?, he would read through the statement again to get back on track.

After the interview with the police officer, I asked the victim to talk to me and she responded positively. From our discussion and in comparison with what I had heard her tell the police officer, I found out that she could not mention some words to the police officer probably because it was a man and the fact that she was speaking vernacular it made it worse.

Another victim that I managed to interview on the issue of the environment at the police station held the same view because the trend is the same if not worse to some people.

The victim recounted her experience:-

“When I was reporting the case at the police station, what I did not like was the place, it was so crowded by the officers and other complainants giving their statements, at first I was received at the inquiry desk where the officer asked me few questions but still it was an open place where any one could hear what I was being asked. I was later taken upstairs in another room and I felt some relief but unfortunately it did not make any difference because I was never comfortable to talk freely since the room was full of people and talking about these issues was a night mare in front of many strangers”.

It should be noted that, its not only the victims and the police officers who felt that the environment at the police stations was not favorable for reporting rape cases, but it was a general out cry this is evidenced from views I got from the discussion groups I held and from the table at the end of this chapter. About 88% of my respondents were of the view that victims of rape do not freely report cases of rape at the police station. One of the group members expressed this in the following words:-

“There are many reasons that deter women from reporting rape cases to the police. How do you expect a victim to narrate her story in front of whoever is at

³⁷ Police officers who are trained to handle all criminal matters. They carry out investigations and prosecute criminal cases as well as testifying as witnesses in courts of law,

the inquiries desk? You all know that these issues are not easily discussed in public. The police attitude sometimes is really bad it's scary. They don't want to know that the victim of rape is already going through a traumatic moment and so they can ask anything anywhere in the name of looking for sufficient evidence yet their way of asking suggest that the woman is not being truthful. They ask questions like Are sure he raped you? Were you not involved with him before? Did you scream? Did you try to struggle? Did you enjoy?"

It's not by coincidence that majority of the respondents held the same view on the environment at the police station not being friendly to the rape victims. Rape is not a simple offence because one of its long term effects may be death especially in the era of HIV and AIDS therefore it should be treated as such. Victims of rape are vulnerable by the very nature of the offence therefore they are supposed to be handled with care and the police stations being the starting point in criminal matters in order to encourage reporting of these cases, the environment must be friendly to avoid increase of the victim' trauma.

3.2.2 Who conducts the interviews?

The study revealed that though it's a requirement that rape cases be conducted by female police officers the reality is different. Among the ten victims of rape interviewed, only seven had reported to police and only two were handled by female police officers.

All the nine police officers interviewed were of the view that there are few female police officers available for handling rape cases yet they may be the most preferred as per my fourth assumption.

From my observations, at all the police stations I went to there were two police officers at the reception desk one being a woman and I was informed by most of the officers that women were there purposefully to handle sexual offences. However this only applied effectively during the day because when I decided to "storm" the police stations from 22:30 hours, I managed to see only two "sleepy" female officers at two different police stations.

My observation was further confirmed by the statement made by one of the police male officer that I interviewed at Central police Station (CPS) who stated that:-

“Generally there are few female police officers and this definitely means that they can’t be enough to be the ones to handle sexual offences though its one of the requirements. There are very few female police officers who work till late so when sexual offence is reported at night, it’s unlikely to be handled by a woman. They are few may be because this has always been known as men’s job. Haven’t you had people call female officers policemen?”

The above statement is not different from the study carried out in England which revealed that Women’s employment in the police was closely linked to traditional stereotypes of women (Sulton and Towmsey, 1981)

It’s important to point out that though it’s a requirement that rape victims be handled by female police officers which was based on the assumption that female police officers are more sympathetic to female victims they may be the most preferred and the fact that victims may not be comfortable to talk about the incident with a male officer. The study revealed that some rape victim did not mind male police officers.

Out of 10 victims interviewed, only two were handled by female police officers. And among the eight, three did not mind male police officers but the other five were bothered they preferred female. One of the rape victims told me that the male police officer was good and this encouraged her to narrate her painful story to him with ease.

“The officer was good to me because narrating the story to him was not easy. He was patient he even asked me whether I preferred a female officer to handle my case but I told him that I didn’t have any problem with him.”

The victim above did not hold a different view from what the victim in my “classic “case had. She informed me that she did not have a problem with being interviewed by the male police officer because she needed help and she could only get it from the police.

The training of police officers on how to handle sexual offences is only done at the training school and there is no formal procedure in handling sexual offences but the

procedure/guidelines at Kibuli training school³⁸ is that sexual offences should be handled with care in order to avoid increasing the victim's trauma. About 61% of the 42 people interviewed on this matter were of the view that there are few suitably police officers available. All the police officers I talked to assured me that the training they got from Kibuli training school was enough to equip them with the skills of handling sexual matters. However some of them intimated that it was necessary to have a continuous training.

“Training of the police officers on specifically how to handle sexual offences cases is very necessary since the only training is done generally at the police training school. Refresher courses are needed”. (Female officer from CPS)

Another police officer from Wandegeya police station (male) appreciated the fact that training or no training attitude change is paramount:

“We have not had any special form of training on how to handle sexual offences but at Kibuli police training we were taught how we should deal with such issues. I can assure you anyone who has undergone the police training has the skills of handling these issues. However training is different from attitude change because even when we were still training we used to have stubborn colleagues that had their own beliefs. We were created differently so even if we had such a training like I have said, I cant deny the fact that from the stories I have heard, some of our colleagues don't give a dam on victims of rape, they don't handle them with due regard to their vulnerability”.

3.2.3 How and where are the interviews conducted?

The police officers interviewed were able to give me the details of how the interviews are conducted at the police stations and some of the rape victims that were able to report the case gave their side of the story. I was also able to observe how the interviews are conducted using the case study.

Rape cases like any other criminal offences are reported first at the counter by the complainant. After the statement has been given, the next step is to visit the police surgeon for medical report, which he gives on police form 3 together with his remarks.

³⁸ Where all CID officers are trained.

These cases are supposed to be handled by female police officers but the practice is different; any one who is available handles them. When i asked whether there was a special/private room/place where interviews are conducted, this is what the female police officer from CPS said:-

“There is no special room where the victims are interviewed from as you can see we don’t have enough space ourselves where do you think we get such special rooms this is Africa my dear”.

After it has been established that there is a possibility of rape, a file is opened with a Criminal Registration Book (CRB) number and is then sent to the records, from the records to the Officer in Charge Criminal Investigation Department (O/C CID) who reads and allocates it to a CID officer and in most cases it is allocated to women. But a file may be handled by 10 people depending on how complicated the evidence is.

An officer handling the case at any stage may seek for advice and then send it to the O/C CID again and at any stage the O/C CID may contact the victim for clarification.

Depending on the availability of the officers, once the case is reported, the officers then visit the scene of the crime to gather any evidence and they go ahead and arrest the suspect. The evidence may include the witnesses who may have, for example, seen the suspect in the company of the complainant before the commission of the offence, whether at the scene there is any sign of the struggle etc. However this is mostly done after the doctor has confirmed that rape took place.

On the issue of arresting the suspects before or after acquiring the medical report, the police officers from different police stations had divergent views. Others said that the suspect is arrested immediately after the case has been reported while others were of the view that the suspect is arrested after establishing from the doctor that rape has taken place. Those who followed the former their main reason was to avoid giving the suspect a chance to escape and those who followed the later advanced the following reasons:-

It’s wastage of scarce resources to proceed and arrest the suspect where rape has not taken place because some women and girls allege rape as a means of revenge.

Some victims report rape cases with the view of getting compensated from their supposedly attackers and this is normally established at this stage.

However, it is a statutory requirement that the suspect be arrested immediately after the statement is made. This applies in all criminal cases, and then one wonders why in rape cases there is a pause, delay and reluctance. This shows that police officers still believe that women are potential liars.

The study revealed that some female police officers are not sympathetic in handling rape cases as I had theorized. One of the respondents narrated her experience with the female police officer at the police station as follows:-

It's the male officer that took my statement from the desk where all other people were bringing their complaints. He later took the statement and I was called by two officers male and female, they asked me to narrate the story again, I did and I was so shocked when the policewoman asked me whether I had had any sexual relationship with that man. While they were still talking to me other police officers came in and asked what had happened to me, they were told and one of them said;

“Do you believe this strong woman was raped? How could she be raped in her own house? I bet they even used her marital bed?? My body became ice cold and I was full of rage, I hated myself “

I was asked to go and get the medical examination from the doctor and was given the directions but I didn't even get the directions properly because at the point I just wanted to disappear from that place.

The above discussion shows that good laws and policies do not work in a vacuum and whether female police officers are the only ones employed to handle cases of rape or not the most important point to consider first is attitude change because a biased mind is the last thing needed in handling sexual offences.

It is not about the law for there is no law which condones this treatment but it is about attitude as stated by the officer. There is nothing friendly about a system which has victims regretting over reporting. These experiences confirm Carol Smart's observation that:-

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

3.2.4 Where does she go next? It's not the end of the road yet.

The victim is supposed to get medical report after having been examined by the authorized medical personnel. This evidence is of paramount importance in sexual offences because it is corroborative evidence.

Under common law the evidence of a complainant in a sexual offence³⁹ must be corroborated with either direct or indirect circumstantial evidence. Every judge must warn herself/himself and the assessors of the danger of convicting an accused person on the uncorroborated evidence of the complainant in a sexual offence.

This rule has been abolished in several jurisdictions. (Coomaraswamy and Kois1999)⁴⁰ In England the Criminal Justice and the Public Order Act (1994) which redefined sexual intercourse in rape as including both vaginal and anal penetration abolished the “corroboration rule” which required trial judges to warn the jury of the dangers of convicting the accused solely on the evidence of a woman who complains of a sexual assault.

In Uganda, the rule of corroboration is applied as a common law practice but not a statutory requirement, judges and assessors to warn themselves when convicting on un corroborated evidence in sexual offences. This rule however has been condemned by human rights activists and there is evidence that judges too in Uganda have started questioning the desirability of the rule on corroboration.

³⁹ The rule is applicable to all sexual offences and not just rape

⁴⁰ “Violence against Women”, i (Red) Askin, Kelly & Koenig, Dorean M. Women and international Human Rights Law Transnational Publishers, inc 1999 ss. 177-217

In *Uganda v Peter Matovu*⁴¹ Justice E.S Lugayizi condemned the rule to be unconstitutional because it promotes indirect discrimination against women who are the most frequent victims of sexual offences and it is therefore, inconsistent with Uganda's international obligation under various conventions and the Constitution.

Further, the judge is of opinion that the rule is in conflict with section 133 of the Evidence Act Cap. 6 which provides as follows,

“Subject to the provisions of any other law in force, no particular number of witnesses shall in any case be required for the proof of any fact”

In essence, the above provision lays down a general rule and an exception, the general rule is that the evidence of one person (witness) is enough to prove the fact in a case and the exception to the rule is that where “any other law in force” provides so, the evidence of more than one witness may be required. This does not cover a mere rule of practice it must be a creature of legislation. Therefore dwelling on such a practice which promotes discrimination against women takes us back to 17th century where women's rights were unheard of.

Studies have shown that even in those jurisdictions where the rule has been abolished, in practice rape victims are put on trial because they are perceived as “suspect” witnesses. Human experience has shown that in the courts girls and women do sometimes tell an entirely false story which is very easy to fabricate but extremely difficult to refute. Such stories are fabricated for all sorts of reasons and sometimes have no reason at all” (Andrew and Hirst: 205)

It is from this background that police officers insist on sending the victims of rape for a medical report before the matter is taken to court. However insisting on the medical report only which is one piece of evidence may not help the victim who has not reported immediately yet some victims may not report to police immediately because of trauma given the nature of the offence. This is how the police office responded

⁴¹ Criminal session Case no. 146/2001

“Before we decide to draft a charge sheet to take the suspect to court we must establish that there is sufficient evidence to support the case in question that’s why we have the police form 3 because in such cases where there are no eye witnesses relying on the statement of the complainant only is problematic. A medical report is a must in order to confirm rape or defilement where there isn’t a medical report; it may not be easy to prosecute a rape case. Proof may be difficult because evidence from other people is rare.”

Given the nature of the offence, corroboration may not be easy to find. It’s unlikely that a rapist will commit the offence in the presence of witnesses. The victim may be too traumatized to report the assault immediately after it has occurred. She may also not be in a position to collect and preserve evidence and exhibits that could be used in the event of a prosecution. (Tibatemwa-Ekirikubinza 2005)

Another police officer emphasized that there is need for corroboration and it’s by law that medical evidence be obtained in order to corroborate the victims’ story.

“In rape cases, corroboration is a must that’s why the medical examination and the report thereof are necessary. The doctor must in fill these forms and once the case is prosecuted, the doctor must testify in court to support the medical report. This is what we call expert evidence.”

Further a biased mind on rape cases that are not reported immediately, was expressed by another police officer, he associated delay to lies with out due regard to the nature of the offence and the vulnerability of the victim.

“We get rape cases reported after days or months but such cases are bound to fail because how do you get the medical evidence where it has been tampered with already. You know it creates a lot of doubt where a rape case is not reported immediately, it’s actually treated as the after thought and it creates a biased mind. You can also imagine the effect of that situation.”

3.3 Another traumatic experience!

Police officers have been taught that in rape cases, it’s very easy for a person to bring a charge on another person, but very difficult to prove that the suspected person is actually the one who committed the offence. At times, out of revenge some women have lied that they were raped. (Daka 2003). This calls for the medical report which also takes another procedure that is not friendly to a rape victim.

3.3.0 Acquiring the medical report.

Medical examination can be used to corroborate the allegation that the complainant had sexual intercourse, that the intercourse was without her consent and that it was the accused person who had intercourse with the complainant.

3.3.1 Analysis of the medical form 3 /Report

In most jurisdictions Uganda included, the prosecution must prove that the complainant did not consent to sexual contact to establish the crime of sexual assault. In the absence of fairly severe injury, this may be difficult, and in most jurisdictions is virtually impossible if the complainant knew, or had a past with the offender in some way.

In some cases, the victim is not taken seriously unless she is injured/bruised and beaten, and some rape victims feel compelled to resist a rapist regardless of the threat. For some victims, their active resistance meant death or at least serious injury. Although women may realize that to resist a rapist with a weapon or to fight back against an angry rapist who has threatened to kill them is suicidal, they may find that unless they fight their attacker and possibly provoke him into harming them, they will not be believed. This may result to very serious injury or even death. (Weisheit R 1988)

Case law reveals what is usually taken as circumstantial evidence for purposes of proving the fact of penetration, the identity of the assaulter as well as the absence of consent. The statutory questions asked in Police Form 3 and cited below reflect preconceived ideas about rape. I will consider some of the pertinent question for discussion purposes and a copy of the form and its appendix is annexed and marked as “A” and “B” respectively.

Question 3: is the hymen ruptured?

Question 4: if the hymen ruptured how long ago?

The above questions seem to suggest that for the offence to be regarded as rape, the victim should be a virgin and this has affected the understanding of many police officers because it was revealed from the study that where a victim intimated that the attacker was well known to her or they had been intimate they do not “waste time” in taking up the case.

One of my respondents that took a victim, who was her student from Makerere University to report the rape case at one of the police stations in Kampala, told me that,

The “sleepy” female police officer who was at the reception desk asked whether the victim knew the offender and when she answered in affirmative, the police officer told the victim not to waste their time.

When she further revealed that it was at 3:00am when she had escorted the man to his hotel room, the police woman’s attitude changed to “you deserve what happened to you”. A person with such an attitude is likely not to bother carrying out investigations especially where the police form shows that “the hymen was ruptured long ago”

Later when they knew who the lecturer was⁴², they became extremely cooperative and even apprehended the suspect a few days later. The question here is does it mean that if a rape victim has no backing she does not get assistance at the police?

It should be noted that, though such questions are asked in the police form, case law has made it clear that some women are not expected to still be virgins at the time of the offence. Therefore this makes the question irrelevant. (My emphasis) In *Ndaula John v Uganda Criminal Appeal No. 19/99*. It was noted by the Court of Appeal upholding the decision of the High Court commenting on the submission of the defense counsel that there was no rape because the hymen had been ruptured long ago. Observed that;

“No one could reasonably expect that an old woman, a widow and thus once married could still be having her hymen intact or still be a virgin!!”

In my view, the question of any signs of any form of penetration however slight is more relevant because penetration however slight is one of the elements of rape and it must be proved for the case of rape to stand.

Question 7: Are there any injuries or bruises on the thighs, legs, arms, elbows and back?

⁴² The lecturer is a vocal women’s rights activist in Uganda and a senior lecturer at Makerere University-Kampala. There is a possibility that the police officer had read about her in news papers and knew her as a woman’s rights activist.

Question 8: are the injuries or bruises in 7 above consistent with her putting up some form of resistance?

These questions also seem to suggest that the victim must fight the attacker to the extent of getting injured or bruised and that those injuries be traced on specific parts of the victims body. In essence this shows that the rapists must be on top of the victim and from probably a hard surface. The study revealed that not in all cases does the rapist go on top of the victim because he uses any opportunity he gets to penetrate. For instance in my case study the victim was raped in a sitting position from the Sofa (soft big chair) so there is little likelihood she would have gotten injuries on her back or her elbows.

It should further be noted that, these types of questions rules out the fact that a woman may consent to sexual intercourse due to threats, fear of bodily harm, or intimidation of any kind as the definition indicates.

During my study, I was concerned when several police officers told me that they consider the victim to be truthful where she shows that she struggled and got injuries. One of the police officers told me that when he asked the rape victim whether the attacker used the condom what came to my mind was that he wanted to establish whether there was a possibility of being infected or becoming pregnant. I was also concerned when he said that as in such a case, the attacker won't get the time to put on a condom.

The above statement totally contravenes the definition of rape especially where consent is obtained by use of threats or intimidation and Section 21(1) (l) Police Act which provides that a police officer shall in the performance of the functions of his/her offices detect and bring offenders to justice.

Question 9: is the female strong and capable of putting up some form of resistance?

This question is irrelevant because the doctor will not have seen the attacker in order to determine whether with his physical make up the victim would still be able to put up some resistance. It also disregards the fact that the offence of rape may still take place even if the female is strong enough where consent is obtained by use of threats or

intimidation. For instance, the rapist may use a gun to intimidate the victim and as a result the victim just gives in with out any form physical of resistance.

It is clear that the police form 3 and its appendix were formulated some years ago and they do not conform to the current events for instance, they have nothing to do with HIV and AIDS as was also noted by the police surgeons. The police officers informed me that these forms were formulated around 60's and the particulars have never changed. This calls for their amendments in order to capture the current events because they could have been formulated in relation to the happenings at a time.

3.3.2 The procedure of getting the medical report

Once the victim has reported the rape case and the statement is made, the next step is to go for medical examination, this should be the right procedure but from the study, it was revealed that out of the seven victims that reported to the police, only one was interviewed after she had gone for medical examination. This is not because the police officers had been reminded of the procedure but because this was one of the “lucky victims” who was protected by her employer who is a senior police officer, this they had to do it the right way.

It was revealed from the study that some victims spent more than five hours at the police station waiting to be told what to do next and many more hours at the doctor's place.

I visited one of the clinics that the rape victims are sent to from different police stations for medical examination and I was able to talk to some victims, the staff and the doctor himself.

Bookings to see the police surgeon are made during morning hours. From the Police a patient is sent with a request form to take to the police surgeon requesting the surgeons to examine the patient. On arrival at the Police surgeon's premises clinic, the patient is told to pay UGX 5000 (Five thousand shillings only about 3 US dollars for medical examination. If he/she has the money she /he pays and is recorded on the list of the patients to be seen by the doctor /surgeon on that day a receipt is issued acknowledging a

receipt of the money, then the patient is told to go back and then come back in the afternoon at 2:30 pm when the surgeon starts seeing the patients.

While at the clinic the following were my observations:-

The first one is the Lady who receives the patients, gives them appointment numbers; she also stamps and hands over the surgeons medical report form to the patient after the surgeon has recorded his observations and remarks thereon. There's also a gentle man who helps this lady in carrying out some of these administrative tasks. There was also another lady attendant who calls patients to the surgeon's examination room among other duties

By the time I arrived there were about 32 people waiting for the police surgeon. There were about 15 people standing in the corridor leading to the surgeons premises waiting to be examined, for the surgeon's waiting room was full to capacity.

More people /patients continued to come in as others left after finishing the medical examination.

3.3.3 How the procedure impacts on a rape victim?

The procedure as described above is not friendly at all to the rape victim who is walking around with the man's semen in her body and the smell of a rapist all over her. It is clear that the police surgeon does not work the whole day, so it's obvious that the rape victim is not attended to immediately and this makes the victim anxious and increases her trauma.

The system operates on at first come basis which I called "first pay" because what happens is that consultation fee amounts to a booking and this means that those who have not paid are not attended to. What this implies is that for this system to work for the rape victim "she must be raped ready with the money in her pocket" to help her go through this cumbersome procedure.

From the main case study, it's very clear that the victim managed to go through the procedure because she was shielded by her employer who was willing and able to render help. One wonders then what could have happened if the employer had not helped or if he was the culprit. The whole process is fraught with unpleasant hurdles for the victim and it contravenes several human rights. For instance Article 3(e) and 4(g) of the Declaration of Violence against Women which provides for the right to the highest standard of physical and mental health and the right to specialized assistance which includes treatment, health and social services

3.3.4 Who is the doctor?

The study revealed that rape victims are sent to the police surgeons for medical examination. From the interviews with the police officers, they were of the view that the medical examination for the purpose of medical evidence cannot be given by an un authorized person but they could not tell who the authorized person was or who made the authorization.

When I further probed for answers, I found out from one of the police officers that any doctor employed by Government may be authorized to give the report but the challenge is that they may not be available to give evidence in case they are called upon to do so due to the fact that they keep on changing from one hospital to the other. This is what she said;

“The rationale of using police surgeons not any other medical officer from any Government hospital is that these other doctors may not be willing to testify when the case is on trial or they may have been transferred to other hospitals outside Kampala and when the case is called for hearing there will be other expenses occurred in bring back such a witness.”

Another reason was that these doctors are not compelled witnesses, they are not motivated and their salaries are not “huge” to encourage them work effectively so they may not be willing to testify and this also affects the victim since their evidence is vital in sexual offences.

Case law has emphasized the fact that medical evidence is provided by a qualified medical practitioner. *Abasi Kibazo V Uganda* [1965] EA 507. Where the prosecution

relied on the evidence of medical assistant who stated that he had found bruises in the complainant's vagina. The trial court accepted the opinion of this witness. On appeal the court of Appeal held, inter alia, that the medical assistant, who was not a qualified doctor, should not have been allowed to express an opinion without laying down a foundation of sufficient experience enabling him to speak with authority on the subject. It was highly desirable that such evidence as he gave should come from a qualified medical practitioner. The accused was acquitted.

What happens is that, the police surgeons who at the same time employed by the Government are the ones that give medical reports to not only victims of sexual offences but to all victims who have been injured for example those that are physically assaulted and those injured in car accidents. This was confirmed when I went to the surgeon's clinic and got a chance of talking to the patients I found there.

Among patients I talked to were those of the following particulars.

Name	Sex	Location	Nature of a Problem
X	M	Kasubi	Car accident
Y	F	Bweyogere	Child assault
Z	M	Kasubi	Assaulted
K	F	Kamwokya	Assaulted

3.3.5 How does she get to the doctor?

The procedure that guides the police officers on how to handle cases of rape as already indicated provides that rape victims should be escorted by the police officer to the doctor to get the medical examination. But what happens is that they are only directed and one of the clinics that I visited is not located in a conspicuous place where it can be easily traced. One of the rape victims told me that it took her almost two hours to find the clinic because the directions she was given at the police station were not very clear.

“I was given the police form to take to the doctor surgeon at Bombo road getting there was another problem because the clinic is not in a place where it can be

located easily. Nevertheless I reached and was told to book with 5000 shillings and then see the doctor in the afternoon.”

This victim and many other victims were unfortunate in not having some one beside them to assist them to go through the bureaucratic procedure in getting a medical report like the victim in the classic case whose employer did all he could to see her through these requirements.

It was evident that considering the vulnerability of the victims, it's important to have someone on their side at every stage and that person should be able to understand and appreciate the situation of the victim like what happened in my classic case. The employer of the victim told me that he had an exam to do the following day but he found this case more important because according to him it amounts to murder. How many people are willing to make such a sacrifice?

3.3.6 Payments for the medical report

It was revealed from the study that payments for the medical report are made by the victim; this was stated by the police officers, the victims, the general public and NGO's representatives and throughout my research, this was a crucial issue that every one was concerned about, even the police surgeons were concerned since they had seen victims go un examined due to failure to raise money for the examination.

“I am not paid by the police in respect of this service; rather I charge the patients /clients a specific examination fee. Those who can't raise the fee don't get our services because we also incur costs for the clinic to operate. It's absurd that some patients go un attended to but our hands are tied.” Said by one of the police surgeons

The above statement was further confirmed by the police officers from different police stations as well as the second police surgeon interviewed. The police surgeon indicated that the rape victims have a choice to go to Nsambya police clinic and don't pay any money or find them at their private clinics and pay some “affordable” fee. The affordable fee he meant is equivalent to thirty three US dollars though he did not disclose the amount. I got to know from the rape victims that had paid it. This is what he stated;

“I don’t presume that everyone can afford it because sometimes we do not attend to those that have failed to pay consultation fee. Before the doctor sees them they must have paid consultation fee because this is a private clinic on a rented premises so we cannot provide services free of charge.”

How many people can afford that amount? Failure by the state to provide such services to the victim expresses failure to comply with international instruments. Article 5 (c) of the Protocol requires state parties to provide necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling. The state should therefore leave up to these standards in order to provide safe haven to vulnerable people like victims of rape.

Two of the victims⁴³ interviewed from Hope after Rape who had gone for counseling in January 2008, confirmed that they did not have money to pay for the medical report and yet they had gone through the stage of reporting to the police, they pleaded with the nurse at the surgeon’s clinic only to be told that they were not offering free services because they also want to get paid at the end of the month.

Five other victims interviewed had gone through the whole process, they paid for the medical report and went back to the police station as requested at the time of reporting but they expressed their anguish on the way the criminal system treats them;

“It’s not fair for us, why should we be treated like we do wrong to report cases of rape? Sometimes people do not have money to treat malaria and how do you expect them to be able to pay for the medical report? It’s too absurd that the rapists are not charged but the victims are.”

The above statement was uttered by one of the victims of rape and I had already raised the same concern to the officers and the surgeons who responded that since the attacker is not an interested party he cannot incur the costs that’s why the Government pays. I then wondered whether the Government is not entirely interest or responsible in criminal matters!

⁴³ The two victims were undergoing counseling at Hope after Rape. One had been raped eleven months before the interview while the other had been raped only eight months prior to the interview. They went to get the medical report at different times but they were handled in a similar manner because they did not have money to pay for the medical report.

The study further revealed that sometimes police officers ask for some money from the victims before giving out police form three to take to the doctor. This would mean that the victim has to pay for the form at the police station and again to the doctor for medical examination before taking the form back to the police.

This issue was raised by the group at the Refugee Law Project and also a group at Kawempe. And it was confirmed by one of the NGO's representatives who indicated that they were getting information from their clients/victims that police officers ask for the same and when they followed the matter, they were informed that it was a misunderstanding.

An interview with one of the senior police officers on the same matter revealed that the police form 3 is the property of the Government and it's not supposed to be "sold" and it's only given to the victim for medical examination, selling it amounts to corruption.

3.3.7 What does the doctor do for her? Does he administer any treatment?

The victims that had acquired a medical examination, the police officers and the police surgeons interviewed agreed that the police surgeon does not administer any treatment to the victim. What they are interested in is to give their opinion by filling in the forms forwarded to them in relation to their findings. But is this the right way to go especially in the era of HIV and AIDS?

In order to prevent the possibility of being infected with HIV and AIDS rape victims who present within 48 hours of rape should receive prophylaxis (PEP)⁴⁴ treatment. Their physical health is compromised when they are not treated but only examined for evidentiary purposes. This brings a doubt whether the Government embraces the International Human Rights or it's a matter of having the same on paper.

⁴⁴ Post exposure prophylaxis is a short term antiretroviral treatment to reduce the likelihood of HIV infection after potential exposure, either occupationally or through sexual intercourse. <http://www.who.int/hiv/topics/prpphylaxis/en/ accessed 2/9/2008>.

The doctors (police surgeons) told me that when the victims are badly hurt they are supposed to be sent to the hospital first for treatment before he examines them. One of the police surgeons said that sometimes he is called upon to find the victims where they are admitted and gets the medical evidence but it must be at the request of the patient who foots the bill. This is what he said;

“I may also visit some patients who are already admitted in hospitals and examine them from there , but in this case those concerned (the people looking after such patients) Have to provide me with transport to move to such locations (hospitals)”

He further said that he advises the rape victims to go for counseling, and check up from other clinics/hospitals because his task is to examine and write the report but not to offer any kind of treatment. One of the victims confirmed what police surgeon had said in the following words;

“The doctor did not administer any treatment but he advised me to visit the hospital for medical treatment and to test for HIV and AIDS.’

Indeed from the case study, the surgeon only examined the victim and gave his findings but the victim had gotten first aid from Kyosiima clinic which is marked as pc from the illustration with the help of her employer who met the costs.

3.3.8 The time taken to get the medical report

The time taken to get the medical report is determined by many factors and these include the time when the offence was committed, the time taken at the police while reporting, the attitude of the police officer whom the file is assigned, availability of transport, and the queue found at the clinic.

It should be noted that, rape by its nature requires immediate attention; this is recognized in the guidelines of the procedure that police officers are bound to follow while handling rape cases as elucidated above but it’s so unfortunate that what happens on the ground is different.

The women’s Law approach assisted me to clearly unearth what the victim takes to get to the doctor. Out of ten (10) victims of rape interviewed, only four (4) managed to make

it to the surgeon's clinic but the one that took less time spent about nineteen hours going over the hurdles of the whole process. Below are the steps that one of the rape victims went through before she got the medical report.

She was raped at around 10: pm while coming from work, she reported at the police station which was near her place of residence and by the time the OC CID at the police post completed taking the statement from her it was passed mid night yet she was told to go and report again at the police station and get the police medical form to get the medical examination.

It was already late and she did not have any means of transport apart from using a taxi. She was advised to go home and report the following day since it was very late. She went home and then went to report at the police station early in the morning. She was not attended to until 9:30am, she went through the procedure at the police station and she was given the form at around mid day to go to the clinic. She boarded another taxi to take her to the clinic. She was at the clinic around half past mid day because it's not far from the police station.

She was told that the doctor will only be available at around half past two. She paid the booking fee (consultation) and waited for the doctor. When the doctor came he attended to people who had booked before her and then at around quarter to five the nurse announced that the doctor would see others the following day.

She was so disappointed but pleaded to her to allow her see the doctor. The nurse then went and talked to the doctor then she was called in at five thirty. She was examined, given the results and she went back to the police post with the medical report at around seven o'clock (7:00pm)

This is a long time for the victim to take before being examined due to the fact that she has to make sure that the evidence is preserved. Though the procedure the police officers have to follow while handling these cases is to the effect that these cases should be

urgently handled, the reality is different and this results to increased trauma and losing interest in pursuing the matter. This means that if at all the nurse had refused to intercede, probably the victim would have gone back home, destroyed the evidence and abandoned the matter.

3.3.9 The effect of not getting the medical report

The major effect of failure to get the medical report is failure to proceed with the matter which results in failure to pursue a prosecution.. 94% of the people interviewed were of the opinion that the bureaucratic process in obtaining medical report and the costs involved may deter the rape victims from pursuing the matter which confirmed my fifth assumption.

The study revealed that some victims fail to get the money to pay for the medical report yet the police officers consider it the most important evidence before investigations go on. The NGO's representatives I interviewed told me that they have had many cases where rape victims have failed to pay and as a result abandon the matter⁴⁵. They have also had to pay for the medical report on behalf of the victims who report to them before reporting to the police and the NGO's assist in pursuing the matter. A legal officer from Hope After Rape informed me as follows:

“When we refer cases of rape to the police, we take the initiative of following up such cases and make sure that our clients get justice. We have not had any case of frustration where we get involved from the start. We get so involved sometimes to the extent of taking the victims for the medical examination and pay for the medical report; we also take them for treatment where necessary and pay all the bills.”

The police surgeons also intimated that sometimes the victims are sent back to look for the money for the medical report because they operate in private clinics and they also incur different costs so they cannot render those services free of charge.

⁴⁵ These were some of the rape victims who abandoned the case because of failure to meet the costs for the medical report but they later went to these NGO's for counseling services after a considerable time.

It is not therefore a mere allegation from the rape victims but it was triangulated with different respondents and it yielded the same results.

3.3.4 Women's experience with the police and its effect on reporting of rape cases.

This is a statement that was made by one of the group members among the group discussions that I held.

“Victims of rape/sexual assault are usually ashamed, guilty and afraid of how people will react to them. Many are humiliated, ridiculed, scorned and stigmatized by police and the community. So because of that experience, other victims may not easily come up in open”

As indicated above, rape victims go through difficult moments at the police stations. Their stories are not easily believed and this puts them to the task of explaining and showing that despite the struggle and resistance they were overpowered and finally forced to have sex.

This belief as already stated has its origin in the seventeenth-century statement by Sir Mathew Hale⁴⁶ “It is an accusation easily to be made and hard to be proved and harder to be defended by the party accused though never so innocent” (Brownmiller, 1975:413) such warnings are still commonly found in discussion of police practice. One of the police officers interviewed said:-

“We have had few cases of rape because now consent is almost compulsory. Why should women say no to sex? When two old people consent and go ahead to do their stuff. Who are we to interfere? The few cases we have had involved allegations of Congolese women (refugees) who wanted to use rape as an excuse to change their status.”

This is not any different from what another police officer from England is quoted to have said:-

“It should be borne in mind that except in the case of a very young child, the offence of rape is extremely unlikely to have been committed against a woman who does not immediately show signs of violence... watch out for the girl who is pregnant or late getting home one night; such persons are notorious for alleging rape or indecent assault. Do not give her sympathy”. (Klein 1975:1507)

⁴⁶ (Kings Bench England) (1969) 53 Criminal Appeal Rep. 150,153

An officer with such an attitude and a biased mind is highly unlikely to be sympathetic. For example, seven of those victims interviewed made negative comments about CID officers. These focused on their manner of questioning, the police officers' evident disbelief of the victim and the attribution of blame to the complainant.

This way of treatment did not only increase the victim' trauma but scared them away from continuing with the matter because of anticipating more difficult in the proceeding stages. 91% of the respondents were of the view that women's experience with the police may deter other women from reporting rape cases. Police officers did not confirm this statement but from the testimonies I got, it was clear that it is one of the reasons why rape cases are not reported among others.

The three rape victims who never reported to police had different reasons one told me that its because she was scared of what people would think of her (stigmatization) then the two others said that they knew the police officers would not believe them because they had heard that they are too harsh when they are handling rape cases and they hardly believe the victims' stories. This is what one of them said:-

“I never reported the matter to the police because when I told my sister she advised me not to because no one would believe my story especially that my attacker was my boyfriend. I did not intend to report also because I had heard from people that when you report such a case to the police you are asked many embarrassing questions because they think you are not being truthful. My friend had also told me that in a court trial you must say exactly what happened in front of the rapists and other people. I opted not to report instead of going through all that.”

Other victims who reported also said that you can't rule out the fact that police officers don't believe your story because some make it very obvious. One of them had abandoned the matter at that stage because of the way she was grilled at the police station and she told me that she would not advise any one to report a rape case at the police station after what she had gone through.

Others were of the view that the procedure is tough but as women who are fighting such a vice you must overcome it and make sure that the culprits face the long arm of the law. One of them said that her experience might have been bad may be because she landed on officers who were so insensitive, it may not mean that all rape victims who go to report are not treated well. When I asked the victim who felt that justice was not met during her struggle whether she would encourage other women to report given her experience with the police. This is what she said;

“I believe that other women may be discouraged by the strict procedure of getting the medical report and decide to die in silence but I was determined to get to the bottom of all this though only disappointed by few officers .I would not discourage anyone who would wish to report a rape case because I know the feeling, you just want that person punished, you want to see justice done and we all have different opportunities, may be it was just bad luck that befell on me.”

I put the same question to different groups and many of them were in agreement and they were of the view that police officers should be trained and even compelled to handle these cases in a very careful manner in order to avoid causing more harm. One of the group members asserted the point in these words:-

“There are many reasons that deter women from reporting rape cases to the police. Sometimes you wonder how these police officers were created, why should they think that a woman out of nowhere would wish to embarrass her self by alleging rape? Why would they ask embarrassing questions? It is important that these officers get well trained on how to deal with some of these matters because sometimes they act like animals”

However, the study revealed that it's not only women's experience with the police that deter other women from reporting rape cases but other reasons like stigma, trauma and fear of risking their marriage in case of a married woman all contributed to failure to report. Below are the voices from two police officers from two different police stations.

A male police officer from Kira road Police station said:-

“Rape cases are rarely reported we could receive four to five cases of rape in a year. Some of the reasons I would imagine is stigmatization, others may not know that it's a crime for example some cultures sort of condone rape because they

encourage sexual violence like our friends from Northern Uganda so they think that the only crime is defilement because there has been a lot of sensitization of defilement cases not rape.”

Another male police officer from Katwe police station also informed me that;

“Rape cases may not be reported because of different reasons stigmatization, failure to have evidence because of the nature of the offence not committed in public. It also depends on the relationship the offender and the victim have for example husband and wife, boy friend and girl friend. They may not report because of not wanting their beloved ones to be punished and or because their story may be easily doubted.”

3.4 Emerging Issues.

There are situations where complainants have asked for withdrawal of the cases already filed with police claiming that they have reconciled with the attacker. Police officers told me that they have had many cases where victims come to withdraw cases and they were attributing it to the local leaders who exceed their jurisdictions to preside over such cases.

When I engaged with the local leaders to get their story, I was informed that some victims and their family members together with the family members of the attacker insist on settling the matter at their local leaders even if they are told that rape is a police case and the reasons given were not different from what other respondents had given. One of the local leaders interviewed had this to say;

“I sometimes settle criminal matters I know, that Local Councils (LC’s)⁴⁷ have no jurisdiction to such cases but we are trusted by our people and it does not help one to report a case at the police and it’s not followed up. You know trusting a system is very important; we receive cases like rape and defilement but in most cases, parents or guardians of both sides come when they have already agreed to settle the matter amicably and you can’t force them to go to police. Sometimes the crime is committed by a family friend or relative and therefore they don’t want to embarrass them.”

Its not only the experience of women with the police that deter other women from reporting rape cases but there are many other influences like family and community influences. One of the victims never reported because her sister advised her not to

⁴⁷ These are the local council leaders who preside over matters of civil nature governed by customary law at a village, parish and sub county level. They include LC1, LC11 and LC111. LC1 is the court of first instance; they are guided by the Executive Committees (Judicial powers) Act cap. 8

because they would not have believed her. Another one was stopped by her uncle and aunt from pursuing the case because it would bring division and hatred in the family. (She had been raped by her cousin.)

The study revealed that sometimes where the victims have already reported to the local leaders and the case is to be forwarded to police; the local leaders also ask the victims to pay some fee for the service rendered. In such a situation, a complainant who has started at the LC's may end up paying thrice especially where at the police she is asked to pay for the police form like it was pointed out by some respondents. Where does this leave a victim who cannot afford any of these costs?

The practice above is not only unacceptable but it conflicts with most of the provisions of the international and national laws. For instance Banjul charter provides under the following articles that all people, women inclusive be equally protected by the law and their cases be heard.

Article 3 (1): Every individual shall be equal before the law.

Article 3 (2): Every individual shall be entitled to equal protection of the law.

Article 7: Every individual shall have the right to have her cause heard.

DEVAW Article 3. Women entitled to equal enjoyment and protection of all human rights-right to equal protection under the law.

Where victims of rape fail to pursue their cases because of failure to raise the money that different organs keeps on demanding yet it's not a statutory requirement amounts to violation of their right to justice.

The table below indicates the status of my assumptions, it shows responses on each assumption and how they were sustained. In essence it summarizes the respondents' responses on every assumption which emphasizes what has already been discussed above.

AN OVERVIEW OF THE ASSUMPTIONS AND THE RESPONSES FROM THE RESPONDENTS AND INFORMANTS.

Assumptions	Victims	Police officers	NGO's officials	LC Leaders	Defense counsel	prosecutors	General public.	Total	%ge
1.Victims do not freely report rape cases at the police station	10/10	7/9	16/16	15/19	2/2	2/2	22/26	74/84	88%
2.Police officers are not gender sensitive in handling rape cases	7/10	0/9	13/16	10/19	2/2	2/2	5/7	39/65	60%
3.There are few suitably trained police officers available for handling rape cases	6/10	0/9	14/16	11/19	1/1	1/1	9/13	42/69	61%
4.There are few female police officers available for handling rape cases	8/10	9/9	16/16	18/19	1/2	1/2	3/4	56/62	90%
5.Bureaucratic process in obtaining medical report and costs involved may deter them from pursuing the matter	10/10	9/9	16/16	12/14	1/1	1/1	18/20	67/71	94%
6. Women's experience with the police may deter other women from reporting.	8/10	-	14/16	12/14	2/2	2/2	20/22	58/64	91%

In reference to the above table, all my research questions were sustained though on a particular assumption some people had different views which were detected by applying the grounded theory.

Its clear from the table above that majority of the people were more concerned with the bureaucratic process in obtaining the medical report, the costs involved and how the rape victims are treated by the police officers which are the major in the way of proceeding to a prosecution..

The percentage shown is for the particular assumption across a number of interviewees; it does not therefore represent the total number of people interviewed in the field study.

4.0 CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion.

The provisions of the Ugandan constitution seem to address effectively issues concerning women but the study proves otherwise. Generally the criminal justice system has not done a lot for vulnerable women in the search for justice. There are so many loopholes in the system which disfavor women as illustrated above and as a result, women's quest for justice fails

In order for any system to work for the people, people should have confidence and trust in that system. The study revealed that the police officers who are supposed to encourage reporting of offences to bring the offender before the law, they indirectly discourage it because of their attitude, the way they treat rape victims and the way they handle rape case.

Though it was indicated from the table above that police officers are not sensitive in handling rape cases, it was not the main concern like I had theorized before going to the field. This in essence means that even if the rape victims are treated well at the police station, they may still fail to acquire justice because of other difficulties they may meet on the way. Therefore, it is imperative for all the loopholes to be identified and addressed in order to avoid violations of women's right to access justice.

4.2 Recommendations.

Dissemination of information using this report to the Government, NGO's and other stake holders. Since the gaps have been identified from the criminal justice system while dealing with rape victims, improvement may easily be done.

Formulating standing orders to direct police officers on how they should handle sexual offences at the police station. Since the procedure being followed by police officers while handling rape case is what they were taught at the training school, there is a need to enact specific procedures to guide the officers in handling and

investigating sexual offences since these offences are different from others. Special attention should be given to them in order to avoid the possibility of increasing the victims' trauma.

Drafting of new police medical forms to accommodate the current issues like HIV and AIDS. The medical forms were drawn up many years ago and as such they do not capture some of the important elements like the issue of HIV and AIDS. It is therefore important to adjust them accordingly and also remove the sex elements which are no longer relevant for instance determining whether the hymen was ruptured and how long ago, injuries on particular parts of the body, whether there was any struggle, whether the woman was capable of resisting which are all problematic criteria in confirming rape.

I recommend that an Appendix to Police form 3 (Annexure B) be revised as below:

1. How old is the Victim?.....
2. Are there any signs of any form, however slight of penetration?.....
3. What is the physical condition of the Victim?.....
4. What is the mental state of the Victim?.....
5. Are there injuries around the vagina?.....
6. Are there injuries on any other part of the victim's body?.....
7. Is there any semen from the victim's vagina surrounding area?.....
8. Any possibility of having acquired STD and or HIV infection?.....
9. Any other findings you consider important for the purpose of prosecuting this case.....
.....
.....
.....

Questions 1, 3, 4, 5 and 6 are regarded relevant to determine the gravity of the matter which in return determines the punishment and compensation in case the matter goes to court.⁴⁸

Question 2 is the core of the matter because penetration however slight is one of the ingredients of rape.⁴⁹ In *Uganda V Stephen Mulenga* (1994-95) HCB 28. It was held that: There is no need for rupture of the hymen; the slightest penetration is enough.

Question 7 is relevant for identification purposes by comparing the semen got from the victims' vagina to that of the attacker⁵⁰

Question 8 is relevant because in rape cases, there is a high possibility of acquiring HIV or any other sexual transmitted disease and or even getting pregnant. All these should be determined and treatment be given to the victim as well as administering the emergency pill to avoid possibility of getting pregnant and PEP which is only useful within 72 hours of acquiring the infection.⁵¹

Question 9: It's also important to give the police surgeon (medical personnel) a chance of putting down the additional findings that may be relevant to the case in question. This is based on a belief that these doctors are well versed with the evidence required in rape cases.

Continuous training for all key players especially police officers and attitude change. Since the law, procedures and policies cannot work in a vacuum, it's important that

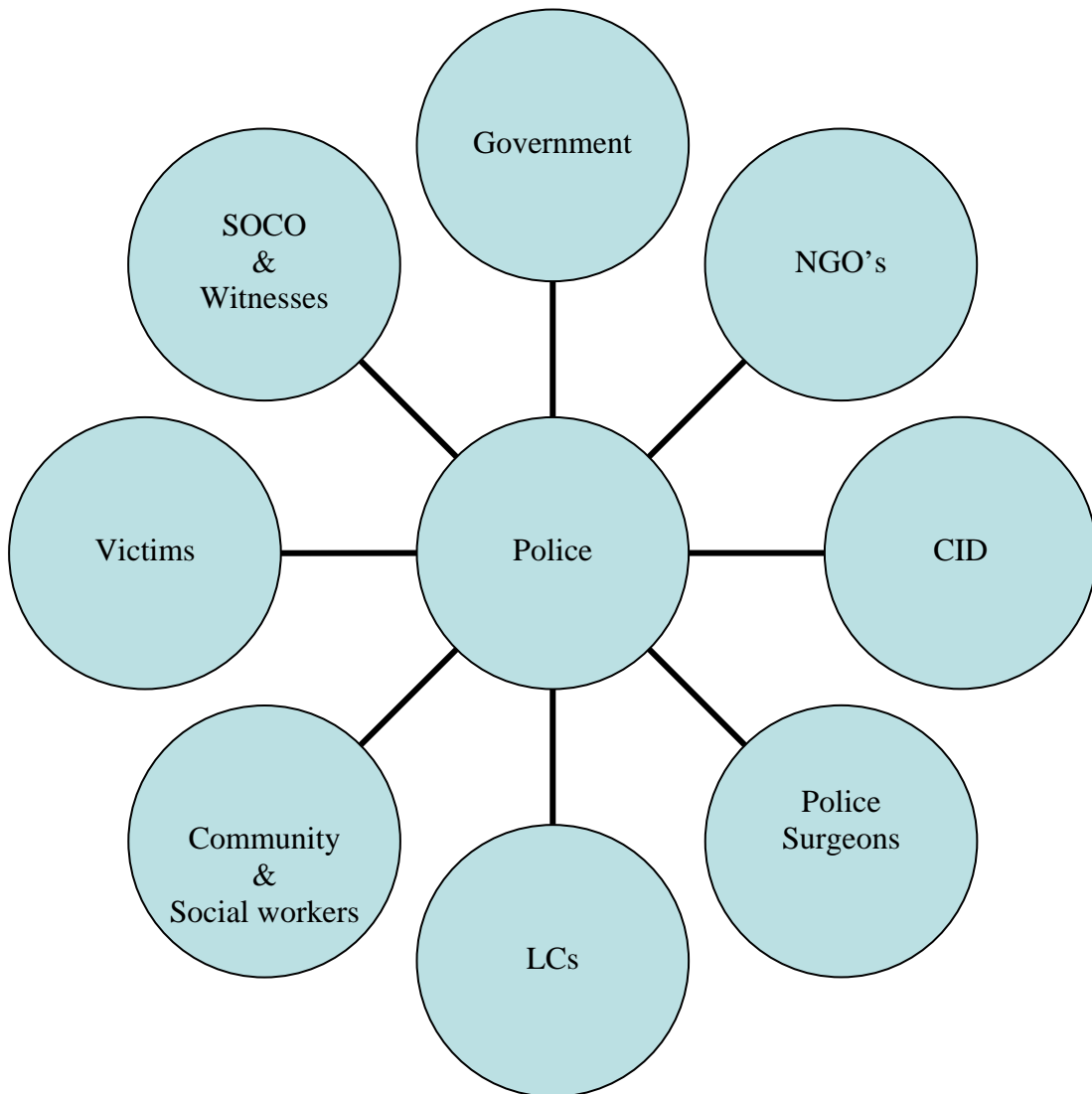
⁴⁸ Section 129B. (1) of the Penal Code (Amendment) Act stipulates that the victim by the order of the court may be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offender. (2) the amount of compensation shall be determined by the court and the court shall take into account the extent of harm suffered by the victim of the offence. The degree of the force used by the offender and the medical and other expenses incurred by the victim as a result of the offence.

⁴⁹ Several cases have clearly established that in sexual offences based on sexual intercourse, the slightest penetration of the woman's vagina by the male organ is enough to constitute the offence and that emission of seed is not necessary.

⁵⁰ The third ingredient which the prosecution must prove in a rape case is that the person accused was the one who actually committed the crime. This may be established by medical evidence, eg fluids of the man found in the woman's body.

⁵¹ Module 8, post exposure prophylaxis after sexual assault, Management of antiretroviral therapy. A reference manual for health workers, November 2004 edition.

the police officers have a continuous training and have refresher courses in order to remain up to date with the changes of circumstances and law. Attitude change is vital and this may be attained through training and sensitization. The purpose of training police is to improve their skills in handling cases of sexual violence against women and girls. In handling a case of sexual violence is two way traffic, police must network with other stakeholders for the success of that case, below is the illustration



NGO's: Non Governmental Organizations

CID: Criminal Investigation Department

LCs: Local council Leader

SOCO: Scene of the crime officer

For the success of handling sexual violence, police must network with various stakeholders as indicated above. It was revealed from the study that, police officers are not the only ones that receive the first report of the rape cases other stakeholders such as NGO's and Local council leaders have been instrumental in dealing with such cases. Since the police is the starting point in prosecuting rape, its therefore important that they link with other people that receive complaints of rape and work hand in hand for the purpose of delivering justice to the people.

Where there is networking between all the stakeholders for example, the information available on cases may be exchanged in order to avoid retraumatizing the victim by asking her to repeat her story.

Police officers are not the only group that needs to be educated in the dynamics of sexual assault because they are not the only ones that deal with the victims. Prosecutors, judges, defenders, local leaders and the public at large require such training. Uganda should therefore emulate from countries that have benefited in conducting specialized training in sexual assault. This area is not yet as developed and it requires serious attention.

Allocation of funds to ensure easy facilitation of police duties. The state should in its budget consider the necessary needs for the institution of police to ensure easy and smooth running of their work. It was found out that there are many facilities lacking at the police station for them to offer adequate services to the people and this was attributed to the state. For instance, failure to escort the rape victim to the doctor to get the medical report was condemned on the state. It was also held accountable by all the nine officers interviewed for failure to provide transport facilities.

The state should devise means of making sure that the victims do not have to go through the cumbersome procedure of getting the medical report and paying for the same. For instance, the police surgeons or other recognized doctors should be attached to each police station and be paid a salary for that service in order to avoid

situations of where the victims fail to raise money for the medical report or even fail to locate the clinic of the police surgeon. These doctors should be specifically for giving medical reports and treatment to victims of sexual offences in order to avoid tampering with evidence because of waiting for longer hours. This should be treated as a matter of urgency.

Gender awareness and sensitization programmes need to be designed to train all key players to treat the matters from a gender sensitive and human rights perspectives and to encourage people to report rape cases to police because its the criminal justice system that has the power and authority to do a criminal investigation of rape, to arrest, punish and remove the offender from the society and this starts with the police. This is important because it's not only police officers who are not gender sensitive in handling rape cases but many other people who reason like Judge Wild quoted in Patullo who said;

“Women who say no do not always mean no. It is not just a question of saying no, it is a question of how she says it, how she shows and makes it clear. If she doesn't want it she only has to keep her legs shut and she would not get it without force and there would be marks of force being used.” (Patullo 1982)

There is a need for policies to be drafted which stipulate that such cases take precedence over all other cases for the sake of getting medical evidence considering their nature-feeling dirty, man's semen in the body of the victim. etc (one of my respondents, a police officer informed me that rape cases are not sensitive like murder and robbery. Once there is such a policy, many people will be able to appreciate the nature of rape cases and need for their immediate attention.

As put forward in (Ncube and Stewart, 1994). Women need to be specifically empowered to attain equity with men without losing sight of the fact that men and women have at times different life needs. Such a process requires the recognition that the needs and the protection that a rape victim requires are absolutely different from

the requirements of the person that has been robbed. Thus each situation should be handled differently depending on dangers, risks and vulnerability.

According to statistics from Rape Crisis⁵², 59% of all rape victims do not want the police involved. The police believe that only one woman in 35 reports a rape to the police. Only the really bad cases, the obvious assaults or the worst rapes of younger victims are reported to the police. However the majority of all rapists are people associated with the victim: friends, acquaintances, or family members, on whom they are also partially financially dependent. (Carlen and Worrall 1987)

Silence about incidents of rape has intensified the problem because it provides the perpetrators with opportunities to continue with the habit and or even identify new victims (Muwanga and Oguli 2004)⁵³. Victims of rape and the general public should be encouraged to report rape cases to the police and or to any person that can assist them take the matter to police.

The state should in conjunction with the already established NGO's and the police work hand in hand to form other rape crisis centers that have proved to work for a rape victim in countries like U.S.A and South Africa. As these centers provide safe haven for rape victims, the Government should endeavor to provide a favorable political environment for such organizations.

⁵² http://www.justicewonem.com/help-know_your_rights.html retrieved on 22.feb.2008

⁵³ Weekly observer news paper of December 2004 in an Article Act now: Say no to violence against women.

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ANNEXURE "A"

ORIGINAL

UGANDA POLICE

POLICE FORM 3

MEDICAL EXAMINATION REPORT

TO:

C.F.No. _____

THE MEDICAL OFFICER,

_____ Police Station

_____ 20 _____

Please examine _____

Who is the accused/complaint *in a _____ case and has been

Sent to you on the _____, 20____ please furnish a report as soon as possible
Using the reverse side of this form. The duplicate should be retained.

It is particularly requested that you should distinguish between the degrees of injury which are quoted from the Penal Code (Cap. 22 Section 4) as a footnote overleaf. A note as to the kind of weapon by which any injury (or injuries) may have been inflicted should be made; in the case of suspected alcoholism reasons for the conclusions reached should also be given under "Remarks".

Signature _____

Rank _____

Date _____ Time _____

*Delete whichever is not applicable.

(P.T.O.)

Nature of each injury, whether cut, wound or bruise	On what part of the body inflicted	Size of each injury in inches (length, breadth and depth)	Classification

REMARKS:

Date _____

Signature _____

Designation _____

Notes—“Harm” means any bodily hurt, disease or disorder, whether Permanent or temporary.
“Grievous Harm” means any harm which amounts to a main or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement or to any permanent injury to any internal or external organ, membrane or sense.
“Dangerous Harm” means harm endangering life.
“Maim” means the destruction or permanent disabling of any external organ, membrane or sense.

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ANNEXURE "B"

(Appendix to Annexure "A")

**UGANDA POLICE
APPENDIX TO POLICE FORM 3.**

The Medical Officer, please answer the questionnaire below:

1. How old is the female?.....
2. Are there any signs of any form, however slight of penetration
.....
3. Is the hymen ruptured?
4. If the hymen is ruptured, how long ago?
5. Are there any injuries if any inflammations around the private parts?
.....
6. Are there any injuries in (5) consistent with force having been used
sexually?
7. Are there any injuries or bruises on the thighs, legs, elbows and back?
.....
.....
8. Are injuries in (7) consistent with her putting any form of resistance?
.....
9. Is the female strong and capable of putting someone of resistance?
.....
.....
10. How old are the injuries in (5) and (7) above?
11. Are there any signs of V.D.?

NAME.....

SIGNATURE.....

MEDICAL OFFICER

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