

**WHO IS FOOLING WHO?**  
**WOMEN AND THE (NON) MANAGEMENT OF MENSTRUATION**  
**IN**  
**POLICE AND COURT CELLS**  
**IN**  
**MALAWI**

**Abstract**

**Written by an experienced judge at the forefront of prison reform, this long-overdue study highlights the humiliation suffered by poor, illiterate, menstruating female prisoners from the moment of their arrest and throughout their detention in custody pending the finalization of their trial. Appreciating that the right to menstruate with dignity and in private is a human right, protected, though only implicitly, by both local and international binding/persuasive HR instruments, the writer captures material evidence which is relevant to making the urgent and necessary reforms which will realize this right. From, inter alia, in-depth interviews ranging from the silent, ignorant victims themselves all the way up to the apparently uninitiated Government law and policy makers, comprehensively presented through the perspective of modern methodologies (including the Women's Law Approach), she reveals a silent conspiracy of shame and taboo which must be eliminated.**

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**A Dissertation submitted in partial fulfillment of Masters' Degree in Women's Law, Southern and Eastern African Regional Centre for Women's Law, Faculty of Law, University of Zimbabwe**

**2008**

## DEDICATION

THIS RESEARCH IS DEDICATED TO:

**My God, the Lord Jesus Christ, who has seen me through the many mountain climbing experiences of trying to understand the purpose for undertaking these studies.**

Two men who have had the greatest impact in my life;

My father, who toiled and gave up so much to enable all his children to go to school and continued to encourage each one of us to 'look up and aim high' but who unfortunately, has been robbed by death of the opportunity of witnessing yet another milestone in my life;

My dear friend and husband, who has openly and constructively encouraged me to achieve my highest potential; Daniel, without your support it would not have been possible to undertake these studies I always thank God for you - releasing me to be a woman of virtue.

To my children and friends– Jack and Kate

and

the children given to us as special gifts  
Matsidiso, John, Daniel, Joshua and Samuel

To my sisters and brothers,  
in particular, and for special encouragement

Florence and Maundi

and,

friends, too many to name,

## ACKNOWLEDGEMENTS

*Many thanks to Professor Julie Stewart, my research supervisor, for the many hours of shaping and reshaping the work from its inception, for the comments and helpful hints without which I would not have been able to come this far. This is the beginning of a page in my life.*

*I am so very grateful to the women of Mzimba and Maula Prisons and Lilongwe Model Police Station who shared with me their experiences in the holding cells that helped me to gain deeper insight into the challenges of managing menstruation when one is most vulnerable. It is my earnest prayer that their experiences will pioneer change in the way menstruation will be managed in the criminal justice delivery system.*

*Many thanks also go to all the interviewees for their valuable time in sharing with me their views and perceptions on this not-so-easy topic, otherwise called ‘women’s issue’.*

*My special thanks also go to all the staff at the Women’s Law Centre and Basil Fletcher Court; my memories of Zimbabwe will not be complete without the input that each one of you made into my life.*

*The ‘Special Class’ of 2007-2008, President Olivia and the whole team, may you continue the journey that you have undertaken, fighting for the rights of the voiceless, celebrating each step taken, not being discouraged by barriers and hurdles, “for the journey of a thousand miles starts with one step.” And, to NOROD, thank you for the funding.*

*Lastly but in no way least my appreciation go to the Ambassador and Deputy Ambassador, Embassy of Malawi in Harare.*

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## List of International and Regional Conventions, Treaties and Declarations

Universal Declaration of Human Rights

Declaration on the Elimination of all Forms of Discrimination against Women

United Nations Minimum Standards Rules

The International Covenant on Civil and Political Rights

Protocol to African Charter on the Rights of Women in Africa of

United Nations Minimum Standard Rules

General Recommendation 24 – under CEDAW

The Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment  
The Kampala Declaration on Prison Conditions in Africa

The United Nations Charter

## National Legislation, Malawi

Penal Code Cap: 7:01 of the Laws of Malawi 1974

Prison Act Cap: 9:02 of the Laws of Malawi 1967

The Constitution of Malawi 1994

## List of Cases

*Unity Dow Case* Court of Appeal of Botswana, Civil Appeal No. 4/91 (unreported 1992)

## List of Terms

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Declaration of Elimination of all forms of Discrimination against Women
Chitenje/zitenje	Singular and plural for piece of cloth forming traditional dress
DFID	Department For International Funding
GAIA	Global AIDS Interfaith Alliance
HIV	Human Immunodeficiency Virus
MHRC	Malawi Human Rights Commission
MHRRC	Malawi Human Rights Resource Centre
MK	Malawi Kwacha – local currency
Nankungwi	Counselor for different initiation ceremonies
PSI	Population Services International
SEARCWL	Southern, Eastern African Regional Centre for Women’s Law
UN	United Nations

# CHAPTER ONE

## INTRODUCTION

### 1.0. Introduction and Background to the Research

As I considered the area of research, a supposedly forgotten childhood experience about my first menstruation, which made me feel like a caged bird, suddenly resurfaced and it continued to haunt me until I reflected on it and related it to women in custody. I have been a magistrate and a judge for more than eighteen years. During all that time it had never dawned on me that management of menstruation in police and court cells had its challenges for the women. And, during police and prison visits it never occurred to me to ask the women how they were managing their menstruation. It is therefore not the intention of this study to put blame on anybody who has been to the police and prison cells and they have failed to ask the women about the challenges of managing menstruation and physically visiting the cells. Coupled with this oversight was the complete silence on the issue by the women and service providers within the criminal justice system. In court men were free to ask for adjournments for any reason, including issues related with sexually transmitted infections, but never had I had a woman talk about issues of or related to the management of menstruation. The Women's Law Course, coupled with the personal experience, to a great extent, influenced the choice of the topic. Exposure to the course made me wonder how the liberal application of the law affected issues of menstruation, which are considered private issues of women and are so shrouded with taboos and very little is said about them. Further, immediately prior to my joining the course in Harare early 2007, I was appointed Chairperson of the Prison Service Committee, by virtue of which position I also sit on the Prison Inspectorate Committee. I was therefore persuaded that I could use these opportunities to bring value to the lives of women within the criminal justice system. Although menstruation is as old as Adam and Eve there has been a deliberate denial, purposeful neglect or planned systematic punishment of women about its management within the criminal justice system. My curiosity was aroused and I wanted to find out the lived realities of the women in the police and court cells and see what could be done to address any imbalances that would be unearthed during the research.

It became immediately clear that to know how women manage their menstruation in police and court cells it would be imperative to get testimonies from the women themselves. The women then became the focal point of the research. This mode of approach analyzes female life-situations and values and reveals issues and dynamics that are seldom evident in the male dominated legal culture. (Bentzon, 1998:93) This is called the bottom-up approach and it is located within the women's law approach.

### **1.1 Statement of the Problem**

Menstruation in almost all societies is considered a 'women's' issue and is not supposed to be brought in the open. However, as observed by Samakayi-Makarati (2001:1), because women's law and the management of menstruation have a direct bearing on public institutions menstruation ceases to be a private matter.

Rarely do people prepare for an arrest. Most arrests would be rightly compared to the Bible parable of the anticipated second coming of the Lord Jesus that He shall come like a thief in the night.<sup>1</sup> One woman informed me that she was arrested whilst having a bath and she was taken to police even before the water on her back could dry. Many of the women interviewed in this research were pounced on without notice and placed on remand for various periods of time. After the arrest comes the period of uncertainty as to how long the incarceration will be.

At the initial stage of the study I had assumed that there is law or policy on the management of menstruation within the criminal justice system. The purpose was to interrogate the law or policy to see to what extent these address management of menstruation in police and court cells. Whilst doing the pilot study it came to light that there is neither law nor policy on the management of menstruation. Rather than abandon the study it was decided that it would be crucial to create awareness about the need to have law or policy that would respect human rights of women by providing for the management of menstruation. As observed by some women failure to provide for the means to manage menstruation in remand cells is 'punishing

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<sup>1</sup> Matthew 24 verse 43



women because of how God created them.’<sup>2</sup> The law provides that every suspect is innocent until proven guilty yet women seem to suffer multiple punishments even before the pronouncement of guilt<sup>3</sup>.

## **1.2 Objectives of the Research**

Specific objectives were formulated to guide the study in order to obtain a balanced and informed view of how pre-trial management of menstruation, or its failure thereof, in police and court cells impacts upon access to justice. The objectives were:

- To investigate if the police and court cells have adequate facilities for the management of menstruation during the pre-trial period
- To interrogate the justice systems to see to what extent they provide for the management of menstruation before the determination of their cases
- To investigate the lived realities of women’s management of menstruation whilst in police and court cells and its impact on access to justice
- To create awareness for the need to have policies or regulations in place about the management of menstruation in police and court cells
- To create awareness about menstruation as a human rights issue and cause policy makers to provide adequate facilities for its management.

During the course of the research it was necessary to refocus on the objectives when the direction of the data indicated different circumstances. This became necessary when it came to light that there was no law or policy on management of menstruation in police and court cells. One of the objectives then was to create awareness of menstruation as a human rights issue and cause policy makers and human rights organisations to initiate policy or regulations for its management.

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<sup>2</sup> Comments made by Mrs. Gladys Sikiya and Mrs. Hilda Ndachi, elderly female respondents of Misi Village in Dowa who were key informants on cultural perspectives on menstruation

<sup>3</sup> Universal Declaration of Human Rights Article 11

This research explores how women in police and court cells manage their menstruation and how police and court cells emerge as gendered institutions in so far as the management of menstruation is concerned.

### **1.3. Research Assumptions**

As I had no information about how women manage their menstruation in police and court cells I tried to have an open mind when formulating the various assumptions. The absence of any meaningful literature on the topic of menstruation made me rely very much on my personal experiences in formulating the research assumptions. The following assumptions were formulated to guide the research on the lived realities of women:

1. That women on remand face challenges in managing menstruation.
2. That police cells do not have facilities for the management of menstruation
3. That the law and policies of the Police and Prison Services do not adequately address management of menstruation
4. That women remandees are not provided with sanitary facilities or the means for managing menstruation
5. That courts do not provide facilities for women to manage their menstruation during trials
6. That courts do not take into consideration issues of menstruation during the trials.
7. The failure to provide the means of managing menstruation for women on remand constitutes a violation of the right to a clean environment and access to justice
8. That the failure to provide sanitary towels or the means of managing menstruation for women on remand leads to discrimination against women on the basis of sex.

### **1.4. Research Questions**

In order to obtain the necessary information each assumption must have a corresponding research question that will guide the researcher. Research questions provided the guide as to what data was needed for each research assumption. As the assumptions were modified so were the corresponding research questions modified. The following questions were formulated in that

respect. However, as the interviews with the respondents were semi- structured these were not the only questions that guided the research in the field.

1. Are remand cells equipped with adequate facilities for the management of menstruation?
2. Are women on remand provided with sanitary facilities?
3. Does the law or policy of the Police and Prison Services provide for the management of menstruation or provision of sanitary facilities for women on remand?
4. Do courts have facilities for the management of menstruation or take into consideration the management of menstruation during trials?
5. Does failure by courts to provide facilities for women to manage their menstruation during trials have an impact on the trial?
6. Does the denial of the right to a clean environment in the management of menstruation have an impact on access to justice?
7. Does the failure to provide the means of managing menstruation for women on remand constitute a violation of the right to clean environment and access to justice?
8. Does failure to provide the means for managing menstruation, or other assistance constitute discrimination against women on remand on the basis of sex?

### **1.5. Research Design**

After the formulation of the assumptions and research questions, but before going for the field research I designed how the research would be conducted, the respondents to be interviewed and how they would be interviewed in order to inform the assumptions. It was at this stage that I determined how many group discussions and in depth interviews will be held with particular respondents, and what questions to put to the different respondents. The research design unearthed what law, both international and national, and specific actors and structures that needed to be interrogated. The population and sample selection and geographical boundaries of the research, the means of collecting data, and almost every aspect of the research, were all determined at the research design stage. Although I was equipped with the research design I did not consider this as cast in iron. As I collected the data, I was able to review the process on the ground and assess whether there was need to adopt different methods of collecting data or consider other assumptions. This was particularly helpful in two instances. The first was after

getting the similar answers from judicial officers as to whether issues of menstruation are considered during trial. It was then felt that the purpose of the interviews with the remaining five judicial officers should be sensitising them about the reality on the ground on issues of management of menstruation. The second was when it was apparent that some respondents not originally on the list were key informants to the research. This was true in the case of the Legal Officer to the Parliamentary Legal Affairs Committee. During the interviews with the women it also came to light that the women did not know that they had a right to management of menstruation. This then became the additional assumption - that women do not know that the right to management of menstruation is a woman's right. And the corresponding research question was: Do women in police and court cells know they have a right to management of menstruation? I have no doubt that without the research design collection of data would not have been as systematic and orderly as I found once in the field. The research design also helped to delimit the information collected and the number of respondents interviewed; the research design was the backbone of the overall planning of the research.

## **1.6. Structure of the Research**

Chapter 1 outlines the background to and justification for the research, the research objectives, assumptions and the related assumption questions. In Chapter 2, I discuss how each methodological approach, and methods of collecting data in women's law approach have been used as tools in unearthing the lived realities of how women in police and court cells manage their menstruation. In Chapter 3 is a discussion of the main findings of the research. Chapter 4 focuses on the analysis of the implications of the findings. Chapter 5 brings together the findings of the research and makes various recommendations that can be adopted by the policy makers and the criminal justice system in order to ensure proper management of menstruation. Various recommendations that will make the policies gender sensitive taking into consideration the physiological differences between men and women in line with international obligations are made in this Chapter. Chapter 6, the closing chapter, contains the bibliography and appendices not included in the main body of the write-up

# CHAPTER TWO

## RESEARCH METHODOLOGY AND METHODS

### 2.0 Introduction

One of the purposes of a research design was that it was used, by reviewing the objectives, assumptions and research questions, to determine what methodologies and data collecting methods would be used. This Chapter now discusses the methodologies and data collecting methods and the justification for using each one of them.

The purpose of this study is to investigate how women in police and court cells manage their menstruation. The women therefore became the departure point of the study and were followed from the time of the arrest to the end of the journey when judgment is delivered. Various ways of how women manage their menstruation in police and court cells came to light informing the assumptions that police and court cells do not have the facilities for management of menstruation.

In order to carry out an exhaustive and informative research it was necessary that several methodological approaches were used. In combining the different methodologies and data collecting methods I was able to collect different data from the various respondents that in most cases complimented each other. There were instances where data collected from some respondents contradicted other respondents' data. The contradictions served as pointers for further research. A case in point was when I was informed at Lilongwe Police Station that women spend 48 hours in the cells then they are sent to remand prison or direct to court. However the situation on the ground was different. The combination of approaches was helpful in unearthing different data on assessing the impact of management of menstruation in police and court cells and access to justice.

## **2.1. Methodological Approach**

### **2.1. 0. Qualitative Research**

This study is located within the qualitative research methodology. Qualitative research was used to gain in depth understanding of the views and attitudes of policy makers and implementers about management of menstruation in police and court cells and to see to what extent this is connected to human rights of women. And, further, make possible suggestions about the provision of an enabling environment for women in police and court cells to manage their menstruation. Qualitative research methodology provided me with insight into how various perceptions contribute to the absence of any policy on menstruation in police and court cells. This information led me to make the various recommendations that are outlined in the closing chapter. A distinctive mark of using the qualitative research is that it lays out in full the methodology and methods adopted in the field of research, which methodology and methods allows the reader to see why and how the data was collected (Bentzon 1998:263). In the methodology and data collecting methods section I have justified how each component thereof was used to unearth the lived realities of women in the police and court cells. In adopting the qualitative research method the purpose was to allow the reader to appreciate how, starting from the assumptions and research questions, I was guided to the various respondents, what data was collected and how it was analysed. And, arising from that analysis how the recommendations have been arrived at.

Qualitative research is also used to identify not only what people think but also, more importantly, why they hold such views (Ipsos, 2008). This helped me to locate the woman in the international human rights and national laws framework and to understand how these relate to the women in enhancing their right to management of menstruation. The interviews held with the policy makers and an examination of the police and court structures helped to explain why there is no policy on management of menstruation. The interviews with the women led to the grounded theory of where women are located in the criminal justice delivery system.

### **2.1.1. Women's Law Approach**

Women's law approach takes women as its starting point and seeks to examine and understand the position of women vis-à-vis the law and how the law responds to women's reality and needs. (Dahl 1987:12). The purpose of the women's law approach is to engage empirical knowledge about gender relations and local practices and procedure in a constant dialogue with theoretical generalization and concept building (Dahl 1987:12). An interrogation of the policy on imprisonment helped to unearth lived realities of women in general in society. In women's law approach the woman becomes the focus of the study. In order to gain the empirical knowledge of the lived realities of the women I went to police holding cells and prisons to interview the women. However to find how the law responds to the women's reality I interrogated the policy on imprisonment and the international human rights instruments and national law. Using the women's law approach enabled me to gather information that relates to women's life in general, which pointed to the fact that, for women, there is a disconnect between reality and theory.

Using the women's law approach in a qualitative way helped to raise awareness in the various respondents about the challenges of managing menstruation in police cells. This methodological approach became a tool in educating the respondents about the challenges of menstruation in police and court cells. As the respondents become engaged with the research, they also became empowered and provided solutions to management of menstruation (Stewart 2001:57). This was particularly true of the Deputy Director in the Ministry of Women and Child Development, who until the interview, had never thought of management of menstruation in police and court cells as a human right issue that lacked the appropriate policy. The day after the interview she said she was going to attend a meeting on the "16 Days of Gender Activisms," an awareness campaign about violence against women and she promised that she would raise the issue at the meeting. As a result of using the women's law approach I was able to hear the actual voices of the women, which consequently helped me to raise the issues of management of menstruation with the policy makers. As noted by Stewart et al, (2001:57)

Having collected the women's voices ... we make practical and implementable suggestions for reform, thereby making the women's view and opinions an important component of national decision-making processes."

The women became the starting point because of the assumption that the women face challenges with menstruation in police and court cells. The woman was followed from the time of the arrest through the police holding cells up to the courtroom for trial. Different ways of how women manage their menstruation in police and court cells came to light confirming the assumptions that police and court cells do not have the facilities for management of menstruation and therefore the women face challenges in managing menstruation.

### **2.1.2 Grounded theory**

In order to keep the research concepts and question open for constant interrogation, ongoing theorizing and new data collected I used the grounded theory. Grounded theory helped me to gain insight into the many faceted aspects of the women's life which aspects include the patriarchal perception of women who commit offences, the impact of culture on the women's life, among many others. This necessitated a constant interrogation of the data collected to see its implication or impact on my assumption. The data collected assisted me to build theories of the position of the woman in the criminal justice system. As discussed later in this chapter, some of the initial assumptions were challenged as a result of interrogating the assumptions with the data collected. Grounded theory also took me into an investigation of the policies and regulations on imprisonment, international human rights instruments and the national law to see how they interact with the women in order to make informed recommendations in the concluding Chapter of this study. Within the grounded theory I used the Dung Beetle method as collecting data requires constant interaction between developing theories and methodology.

The dung beetle method is a process within the grounded theory approach. In this approach the researcher collects data, sifts and analyses it, considers its implications on the findings, and determines what other data to collect to meet her needs and continues the collection and analysis cycle. (Stewart, et al 2001:18) This method was found to be particularly helpful in identifying the other respondents that I had not initially planned to interview. Questions were restructured based on the findings made as I constantly assessed whether the data collected met the research assumptions. By using this method I found that one of my assumptions was challenged. I had assumed that failure to provide the women with the means to manage their menstruation had an impact on equal access to justice. The lived realities of the women showed that quality of justice



was affected by other factors. The use of this method helped me to change the approach and questions for the lay magistrates. After I learnt that most human rights violations occur at the level of lay magistracy I held a group discussion with the magistrates as a way of raising awareness about the challenges that women face with menstruation in police and court cells.

At the end of each field day I reflected on the data collected, and considered whether there were emerging issues that would inform me on which respondents to interview and the type of data to gather. After a review of the interview with the officials from Ministry of Home Affairs the dung beetle method was helpful in identifying Banja La Mtsogolo as one of the organisations that provides services and soap to prisoners. Interviews with the human rights organizations helped to further identify Dr. Vera Chirwa, an ex-political detainee, and Special Rapporteur of the African Commission on Prisons, from 1998 to 2005, as an important respondent, and Mzimba Model Prison as an ideal prison for purposes of managing menstruation.

### **2.1.3 Sex and Gender Approach**

Treating women and men as the same does not cater for biological differences between them. One of the areas that need differential treatment is menstruation. The Constitution of Malawi<sup>4</sup> prohibits discrimination, among other things, on the basis of gender. Gender however, by its meaning does not take into account the biological differences between men and women.

Whereas gender is ascribed to social roles and perceptions sex connotes the physiological differences between men and women. Social biologism (or biological determinism) is an approach, which argues that male primacy and female submissiveness is founded in generic differences and is thus biologically determined and immutable. As such it is a theory that is used to legitimate sex discrimination (Bentzon 1998:82).

By using this approach the aim was to find out to what extent, if any, menstruation is recognized as a gendered issue and due attention given to it in that regard. The grounded reality on the empirical data of women's interplay with the policy on imprisonment revealed that there are inequalities and discrimination of women as a result of not taking into account the women's specific needs of menstruation.

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<sup>4</sup> Constitution of Malawi 1994, Section 24(1)

#### **2.1.4 Actors and structures approach**

The first assumption was that police and court cells do not have facilities for the management of menstruation. Three main groups of actors and structures were identified as being key in this research. The first actors were the policy makers. These were the officials at the Ministry of Home Affairs, the ministry responsible for Police and Prison Services, officials at the Ministry of Women and Child Development, the ministry responsible for policy issues of women in the country. The police and prison officials, as implementers of the policies and the Inspectorate of Prisons became the second group of actors, with police holding cells and prison as the second group of structures as I examined how the policy on imprisonment is implemented and what facilities pertain to the management of menstruation. Judicial officers and court administrators, as they determine the cases of the women became the last group of actors and courts as the last group of structure. In targeting the judicial officers the purpose was to see how they handle complaints, or reports of lack of means of managing menstruation within the criminal justice delivery system. Further, it was to find out how judicial officers use their visitations to police and prison cells and whether any of them had received reports on issues of menstruation and its management. On courts as structures I wanted to find out whether the facilities at the courts were adequate for management of menstruation. The Inspectorate of Prisons, as a Commission set by Government to monitor the conditions in courts, police and prisons, also became an important actor through its functions.

A purposeful selection of male and female actors was made to see if there were differences in their perception of the issue of menstruation of women in police and court cells.

#### **2.1.5 Human Rights Approach**

The spirit of most of the human rights provisions is to cure the inequalities that individuals suffer. The Universal Declaration provides, among other things, that there shall be no discrimination based on sex. The human rights approach was used to examine to what extent the international and national legislation recognize woman's rights to equality before the law and non-discrimination based on sex in relation to the right to manage menstruation. In this respect I examined the international human rights instruments and national law to consider whether the

management of menstruation is recognized and to what extent its management or lack thereof contributes to equality or discrimination based on sex before the law. This approach also enabled me to assess the extent to which government laws and policies on the rights of women imprisoned comply with the international human rights obligations. As a result of the analysis recommendations have been made that would, if implemented, enhance the enjoyment of the right to manage menstruation in police and court cells.

## **2.2 Methods of Data Collection**

### **2.2.0 Key Informants**

Interviews with key informants were used as a method of collecting data from the various respondents. A number of key informants were identified during the research design stage. Among these were the women under police custody, officials from the Ministry of Home Affairs, officials at the Ministry of Women and Child Development, officers in police stations and prisons in both urban and rural areas. It was learnt from all officials that there is no particular policy addressing the issue of menstruation though there is a general policy about the treatment of women who have been arrested. This revealed the absence of legislation and policy in connection with the management of menstruation in police and court cells.

Initially two human rights organisations, Malawi Human Rights Commission (MHRC) and Malawi Human Rights Resource Centre (MHRRC), that promote the rights of women and in particular women with special needs were identified as key informants. Interviews with these organisations revealed the type of support they provide to the women who have been incarcerated. Of specific interest was to find out if these human rights organisations consider menstruation as a women's human right and to what extent they were monitoring government's compliance thereof. However by using the grounded theory approach, I was constantly reviewing the data collected and the direction of the research. New data about other organisations and people who supply various items and services to prisoners surfaced and new questions were formulated that led me to them such as faith based organisations, Banja La Mtsogolo<sup>5</sup>, Inter Faith

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<sup>5</sup> A non-governmental family planning service provider organisation

Global AIDS Alliance and Dr. Chirwa. It came to light that only Prison Fellowship, a Christian organisation, supplies sanitary wear. All the others donate soap, and food items.

### **2.2.1 The Participatory Method**

The participatory method was employed in tracing the lived realities of women. As a lawyer I avoided cross-examination type of questions that limit the respondents to the ‘yes’ or ‘no’ answers and allowed the interviewees to enlighten me about the issues of management of menstruation. As I enquired into the offences that they had or were being suspected to have committed I avoided being judgmental and kept an open mind to learn from their experiences. According to Maguire (1987) the participatory approach turns the participants into the researchers rather than clients. They are the “knowers” and should therefore own the questions and process of inquiry. The inquiry forms part of the educational and empowerment process for the participants and the outcome should include action on attitudes and structures that inhibit self-worth, social justice or freedom. The participatory approach also helped to generate healthy exchange of information between the researcher and mostly the women in Mzimba Prison. Although some of the issues were not directly related to the research the discussion that followed helped to inform the women about the process of appeal and access to legal aid. As a result of using the participatory method I found that the respondents at all levels provided the solutions to the issues of managing menstruation in police and court cells. Participatory approach ensures that the voices of the participants are heard.

### **2.2.2 In Depth Individual Interviews**

Before going to the field I formulated research questions that were to guide my research based on the assumptions. These questions did not limit me in following up on issues that arose during the interviews with the respondents. Eighteen individual semi-structured in depth interviews were held with officials in the Ministry of Home Affairs, Ministry of Women and Child Development and Legal Officer of the Legal Affairs Committee of Parliament. The aim was to investigate the policy on the management of menstruation in police and remand cells. The purpose of the interviews held with five judicial officers and court administrators was to find out how judicial officers view the issues of menstruation in connection to fair trial and equal access to justice and

what facilities the courts had for the facilitation of menstruation. As a visiting justice I also wanted to find out from the judicial officers how they utilize the visits. In depth interviews helped me to gain insight and knowledge of the reasons why there is no policy on management of menstruation in police and court cells. In depth interviews inform the grounded theory and of the location of women in the criminal justice system.

### **2.2.3 Focus Group Discussions**

Focus group discussion is a method of data collection that seeks to solicit views of a group of people with some common interest. The group discussions were guided by questions I had formulated before going into the research field. However, the pre-set question method was not to curtail the discussions in any way but only to be used as a means of collecting data that informed the assumptions. Four group discussions were held with the women at Mzimba and Maula Prisons, prison warders at Maula and lay magistrates. Though the women's experiences varied it was assumed that being in police cells made the women face the same conditions which again brought a commonality which would make group discussion an appropriate method of data collection. Menstruation is a common feature among women between the ages of 12 and 50. Despite the age gap and different experiences that the women had gone through menstruation and imprisonment were seen as the unifying factors among them. Apart from two women in Mzimba and two at Maula prisons all other women found in custody fell within this age group. At Dowa Police Station there were no women and the cell was being used as safe custody for national examinations.

It was initially assumed that the presence of the prison warders in both prisons did not limit the prisoners' freedom to express themselves, more especially as it had been made clear that the research focused on the women's experiences in police and court cells. On a subsequent visit to Maula Prison I learnt that this was not the case. I was not able to research further into this area because of the limits of my present research but it is an area for further research. It would be necessary therefore to trace women released from police cells who would be freer to discuss the lived realities in the cells without fear of reprisals. As already pointed out efforts to secure such women were hampered by poor record keeping at Police. My gut feeling was that the poor record keeping was an attempt to conceal particular information that may reveal violations in the police

system. This too I consider to be an area for further studies. It was therefore decided to hold discussions with women who were in prison about their experiences whilst in police and court cells.

The purpose of the group discussions was two-fold. Initially the aim was to identify women who had their menstruation whilst in police cells. Secondly, it was to find out from the women workable solutions that could be put forward to the policy makers for implementation as a result of the experiences that they had had in police and court cells.

### **2.2.3.1 A Challenge of the Focus Group Method**

An experience at Mzimba Prison challenged this data collecting method that group discussions would be appropriate whenever a group of people is unified by common factors. The open mindedness approach led me to believe that group discussions would be appropriate for all women in prisons. But the lived realities on the ground showed that there are other factors that must be taken into account. Upon introduction of the topic, and without waiting for volunteers, I immediately asked the first two ladies, in their early thirties, sitting closest to me if they had experienced menstruation in police cells and whether they could share with the group. The seemingly quiet women shouted their protest in horror at my otherwise outlandish proposal. In order to lessen the tension I assured the women that they had every right not to partake of the discussions, and waited for volunteers. However, after other women had started narrating their experiences the two were able to relate their experiences without further prompting. I learnt later that there were two reasons for the reactions. Firstly, these two were fairly new at the prison and did not feel comfortable to share their intimate experiences with strangers. And, secondly, they had never before discussed the issue of menstruation in public – even with other women. Mzimba Prison is situated in the northern part of the country where issues of culture are strongly adhered to. My suggestion was therefore an affront of their cultural values.

The experience at Mzimba Prison was poignantly contrasted with another at Maula Prison with younger women. Maula Prison is situated in the central region where the culture is remarkably different from that of the northern part of the country. After I introduced the topic at Maula Prison, still smarting from the experience at Mzimba Prison, I proposed that individual

interviews be held with the women. There was a chorus of dissenting voices that this was not necessary since they were all women. The two older women though argued that it would be important to have the individual interviews. Though these two were in the menopausal era they still regarded menstruation as a sacred topic that could not be discussed openly in a group. This notwithstanding there was an uneasy silence amongst the younger women about the issue at the opening of the discussion. It was however noted that enthusiasm grew as the discussion was drawing to a close. The participatory interview method unearthed a lot of issues relating to that the women had never discussed before in public, which had a negative bearing on their lives. I learnt from the women that they are usually spoken to and not given a chance to be heard. My observation was that the women liked the attention I was giving them. They were therefore using this as a tactic to keep me longer so that they could unburden themselves on somebody who was prepared to give them a sympathetic ear. The views and reactions of the older women at Maula Prison echoed the views held by the two old women in the rural district of Dowa<sup>6</sup>.

These experiences, taught me that when considering the appropriate methodology to use it is important to bear in mind the particular differences of women in their various locations. On a subsequent visit to Mzimba Prison I was struck by the readiness with which the same women were freely sharing their experiences of how much easier management of menstruation had been in the previous two months since my visit because of the cotton wool I had given them. Whilst all women within this age group experience menstruation culture, age, familiarity of the members of the group one to another and other factors may have implications that have far reaching consequences for both the interviewees and a research. Before plunging into the field of study a researcher must investigate what issues need to be considered in different cultural settings.

Using group discussions I was able to collect information on the facilities in police and court cells and how women manage their menstruation in the cells and how the challenge of managing menstruation the cells impacts on their human rights

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<sup>6</sup> Mrs. Sikiya and Mrs. Ndachi

### **2.3. Literature Research**

Literature research included library research and browsing on the internet on the topic. The purpose was to learn from other writers/researchers what has been uncovered on the topic of management of menstruation in police and remand cells. The results of the library and internet search confirmed the observation made by Samakayi-Makarati (2001:4) that there is a huge conspiracy of silence surrounding issues of menstruation. The literature research included both published and unpublished works. When materials directly connected with management of menstruation could not be found the research was extended to any materials that were connected to the issue of menstruation generally. In this regard human rights instruments and the national legislation were also considered as part of the literature cited. The research on these legal instruments was to specifically look for any provisions that deal with menstruation or its management. Lack of materials and information helped to confirm that generally very little attention has been given to the matter of menstruation not just within the criminal justice system.

### **2.4. Entry into the Research Areas**

I had intended to visit the police cells without prior notice so that I could have the opportunity of seeing the state of the holding cells and the facilities available for management of menstruation. However courtesy demanded that I seek prior authorization from the Inspector General of Police. This having been done I was given a particular day to visit the Lilongwe Police Station and Dowa Police Station. I was therefore pleasantly surprised when I arrived at Lilongwe Police Station to learn, from the Officer in-charge, that no notification had been received from the Inspector General of Police. However as a judge I was immediately granted audience. I also sought permission from the Registrar of the High Court and Supreme Court of Appeal and was granted, to interview judicial officers. The Chief Commissioner of Prisons also granted me permission to do research in the two prisons and any other prison.

### **2.5 Observations**

On six different occasions at the court I observed the women being brought for trial and how they were treated. The women were brought in the morning from police cells. Since Lilongwe Police Station is very close to the courts an officer brought them to court on foot. Prisoners sat



on the grass in front of the courtrooms until the prosecutors arrived. Sometimes there was a female police officer in charge of the females but mostly it was male officers only. Some remandees were brought from prison in a van in the morning together with male remandees and they too sat on the grass in front of the courtrooms waiting for their turns. Inside the courtrooms all the suspects sat together on the benches. Only the men were handcuffed in pairs. I was informed that due to transport problems all remandees were brought in the morning and only left in the evening when trials in all the five courts were completed. There was no particular sitting arrangement in the vans but the men sat together because they were handcuffed.

As part of the data collection direct observation of the body language of the respondents in the course of the interviews was made. Experience showed, particularly at Mzimba, that women who had just recently been convicted and brought to Prison found it more difficult to share their experiences than those that had been in custody together longer.

I also observed reactions of shock, dismay, disbelief, surprise or silence as I introduced my topic or asked questions to the various respondents. This was especially noticed with the Officer in Charge of Police who, upon my introduction of the topic, quickly dispatched me to the Station Officer – a lady – telling me that since ‘these are women issues ... a woman is better placed to deal with them’. In the holding cells I observed the ‘body language’ of one young woman, upon asking her if she was menstruating, she looked up at the two police officers, looked down, and, shook her head indicating that she was not menstruating. At Lilongwe Police Station I also observed the positioning of the women and men’s cells and the toilets. At the two prisons I observed women’s uneasy silence at the introduction of the topic of management of menstruation in police cells. Some respondents explained at the end of the interviews that the particular reactions were as a result of talking publicly about menstruation for the first ever.

## **2.6 Study Sites**

The study was carried out between September 2007 and January 2008. Originally three sites were located, Lilongwe Police Station and Maula Prison. Lilongwe Police Station was chosen as a prime target for a number of reasons. The police station is located in the capital city of Malawi where more than 4million of the population reside. The capital city encompasses the low and

high-density residential areas and crime rate is high. Malawi has been divided into four administrative regions with the central region being the largest administrative region comprising nine districts. Lilongwe Police Station serves as the headquarters for the nine districts and nine sub-stations, commonly known as police units and police posts. This is the biggest police station in the central region and it was assumed that it would accommodate a number of women in the holding cells. The police station was refurbished less than two years ago, with the help of DFID<sup>7</sup>, and is now called a model police station. I was therefore interested to see to what extent the model police station took into account management of menstruation. Finally, the High Court in Lilongwe is within walking distance of the police station, it was found to be convenient for repeated visits.

Maula Prison, also located in Lilongwe, is the maximum-security prison for all the nine districts in the central region and it is home to convicts serving long sentences from the rural districts and remandees from within and without Lilongwe. Many of the rural districts do not have a female section in the prisons and almost all the women, whether convicted or on remand end up at Maula Prison. This prison is home to the largest number of women who would inform the research assumptions with their experiences of lived realities in remand cells. Interviews with the women revealed that the women had come from Lilongwe Police Station and four different police units in Lilongwe and six districts, outside Lilongwe but within the central region.

Two main factors influenced the decision to visit Dowa Police Station. Dowa District is one of the rural districts and an attempt was made to compare the lived realities of women between the urban and rural areas. Dowa used to be serviced by Dzaleka Prison, which has now, since 1994, been turned into a refugee camp and Dowa has no prison. Female suspects are kept at the Police Station before being transferred to the remand cells at Maula Prison. My assumption was that due to lack of adequate resources women who have been arrested spend a considerably long time in the Police cells before being transported to Maula Prison in Lilongwe. I therefore wanted to find out what facilities, if any, Dowa Police had to facilitate the management of menstruation.

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<sup>7</sup>Department for International Developments

Mzimba Prison had just opened its doors to the first prisoners six months prior to the commencement of the research, and it is called a model prison. At least five of the interviewees referred me to it. Though I had originally intended to visit Maula Prison only, I felt compelled to see what facilities the model prison has. At the end of the day I appreciated the insight gained at Mzimba. After the first visit I was privileged to attend the official opening of the prison by the Minister of Home Affairs in my capacity as Chairperson of the Prison Service Committee. I took the advantage to hold discussions with various officials on Government's future plans on the construction of prisons and the right to clean environment in relation to the challenges of managing menstruation in custody.

There were a total of thirteen women at Mzimba Prison who had been arrested by nine different police stations in the northern part of Malawi. This gave me an opportunity to investigate the lived realities of women in the nine police stations in the northern part of the country and compare with the experiences of the women in the central region. Although police stations vary in their capacities and operations their functions are the same. The country has thirty-four police stations, eight sub-stations with staff of thirty-six, thirty-six police posts with staff of twelve and one hundred forty-seven police units with staff of two. The women that I interviewed in the cells did not differentiate between the different categories and they called them all police stations. For the purpose of this study therefore all police premises will be called police stations. The police stations where the women were arrested are shown on a map of Malawi.<sup>8</sup>

Table 1 shows the location of the police stations where the women were accommodated after arrest and the offences they committed or suspected to have committed.

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<sup>8</sup> Map of Malawi – appendix 1

**Table 1**

Police Station	No. Arrested	Holding cell facility	Offence committed
Emfeni	3	Police cell	Illegal drugs
Karonga	1	Corridor of Male cells	Theft by servant
Chitipa	2	Police cell	Murder
Rumphu	1	Corridor of male cells	Theft by servant
Eswazeni	1	Police cell	Theft
Champhira	1	Police cell	Murder
Mzuzu	3	Police cell	Prostitution
Kasungu	1	Corridor	Theft
Mponela	32	Corridor	Prostitution
Kanengo	1	Corridor	Infanticide
Mitundu	1	Corridor	Wounding
Lilongwe at various times	12	Police Cell	Various

A *chitenje* is a piece of cloth, generally about two meters long and one and a half meters wide, that is wrapped around women as part of the traditional dress. The plural for *chitenje* is *zitenje*.

## 2.7 Research Population and Sample Selection

The study used the purposive sampling method. The factors and dimensions that influence the selection of the sample are analytically and theoretically linked to the research questions of the particular study (Ipsos 2008). The research sought to find out if there is a policy on the management of menstruation in police and court cells and examine its interface with the lived realities of women and management of menstruation in the police and prison cells. It was therefore necessary to have interviews with government officials from the Ministry of Home Affairs, the ministry in charge of prisons and police and Ministry of Women and Child Development, the ministry in charge of all policy issues in connection with women. The purpose was to investigate the policy and interview the policy implementers in an attempt to assess to what extent the policy enables women in police and prison cells to manage their menstruation. Since the advent of the multiparty democracy in 1992 human rights bodies have been monitoring Government's compliance to the international human rights obligations. Four human rights and women's organizations therefore surfaced as key organizations because of the role they play in

spearheading the rights of women. The operations of prison and police have received a lot of attention because of the abuse during the one-party state. Women in police and court cells became key informants because it was their lived realities that would inform all the assumptions. Female prison officials were also interviewed in an attempt to assess to what extent they view the management of menstruation as a human right issue for those on remand and what role they play to facilitate its management. An interview with the ex-member of the African Prison Commission, Dr. Chirwa, and an ex-political detainee was highly prized as a learning example of what avails in the African countries with respect to the management of menstruation in police and remand cells and access to fair trial

A total of forty-nine women were interviewed in the police holding cells. The selection of the sample of the respondents was purposely done to reflect those that had stayed in the police cells at the time when they experienced their menstruation and those that had their menstruation whilst going to court from any of the cells. The number of respondents was considered to be manageable taking into account that there were four different police holding cells visited; Lilongwe and Dowa Police Stations, Mzimba and Maula Prisons. Three police officers, two female and one male, and eighteen female prison warders were interviewed. Two male and five female magistrates; two of whom are professional magistrates, and three judges, two male and one female were interviewed to find out the reasons for which suspects ask for adjournments during trials. Secondly, to find out if any one of the judicial officers had ever entertained an application for bail or adjournment of proceedings based on or related to menstruation.

It had been assumed that that women do communicate, albeit not directly, about their inability to proceed, with proceedings due to issues of menstruation. Interviews with all judicial officers indicated that women never ask for adjournments of proceedings even on the point of sickness. As Her Worship Beza informed me a woman collapsed in her court one day. It was only after the woman was taken to hospital that her relatives revealed to the Magistrate that the woman was actually sick. A proposed research of court records was therefore abandoned. I presumed that through the court records I would know if women actually complained about management of menstruation.

Table 2 below is a tabulation of all the respondents based on their sexes and their locations.

**Table 2**

	<b>Women in cells</b>	<b>Police officers</b>	<b>Prison officers</b>	<b>Court Staff</b>	<b>Magistrates</b>	<b>Judges</b>	<b>Human rights and women's organisations,</b>	<b>Total</b>
Female	49	2	18	1	5	1	4	80
Male		1	4	1	2	2	1	11
Total	49	3	22	2	7	3	5	91

Ninety-one respondents were interviewed and out of these eighty were women. Forty-nine of the eighty women were women either on remand or convicted. The interviews were based on the lived experiences that these women had before the determination of their cases by the courts. Attempts to get details of women who had spent time in the cells but were not in the remand cells were frustrated by poor record keeping at the Police.

## **2.8 Challenges and Limitations**

### **2.8.0 Data Recording**

Carrying on meaningful interviews and recording the information was one of the many challenges that I faced. It was not easy to keep eye contact with the respondents when there was an urge of trying to capture as much of what was being said as possible. It is most ideal that a tape recorder be used to capture the information or, if there is no tape recording, at least a team of two or three people should conduct the interviews together and share their experiences.

#### **2.8.1 Paradox of My Position**

Whilst my position as a judge enabled me to knock on any door at any time, this was not without its own challenges. At Lilongwe Police Station the Station Officer, in an attempt to be seen to follow procedure, told me that women do not spend more than 48 hours before being granted bail or sent to court. When I visited the cell I found three women who had already spent more than seventy-two hours, and one had spent six days in the cell. At both prisons I was overwhelmed

with issues of bail, appeals, police brutality and health issues. There were expectations from both the women and prison warders that they could take advantage of my presence and push other agenda items on to the table – hoping that I would take action. Having benefited from their experiences it would have been discourteous to ignore their pleas. I took note of their concerns and passed them on to the Human Rights Commission and Women Lawyers' Association to assist accordingly.

### **2.8.2 The Indispensable Authorities**

Police and prison visitors' regulations require that all interviews with arrested persons be conducted in the presence of the authorities. Both at police and prison authorities had to be present during discussions with the inmates. It can never be properly established with certainty how much of the data collected was adulterated by the desire not to offend the officials.

### **2.8.3 Having to Stop**

After the interviews with the women in Mzimba Prison it would have been necessary to visit the nine different police stations mentioned by the women. As seen from the data, Mzimba Prison accommodates women from many parts of the northern region. Important as the leads were I could not do any follow-up as this would have meant a much wider area of study, which could not be accomplished within the time allotted for this research.

### **2.8.4 Serving Two Masters at the Same Time**

Due to logistical problems at my office I had to resume duties during the time of the field research. Managing the office schedule and delving into the field research generated tension, which could not always be contained. Some times this meant rescheduling cases or appointments with respondents.

### **2.8.5 Other Tongues**

The interviews with the women in all the cells were done in vernacular languages (Chichewa and Tumbuka). The purpose of using the local languages was to bridge the distance between the women and myself as the researcher. However some of the expressions in the vernacular languages have no comparable translation in English. Through translation meanings and impact of words lose their significance therefore the reader may not appreciate the full impact of what was said. Attempts have been made to give as close a translation of what was said as possible to help the reader appreciate the context of the words.

### **2.8.6 Limitations of the Study**

It will be noted from the study that although the issue in question was about management of menstruation in the criminal justice delivery system this did not cover menstruation in prison per se. The objective of the study was to relate management of menstruation in police and court cells and access to fair trial and justice. The emphasis therefore was on pre-trial management of menstruation.

The presence of officials during interviews was identified as a challenge as discussed above. The purpose was to assess to what extent the presence of officials influenced the data collected from women still in custody.

Prison Fellowship, a Christian group, used to supply sanitary wear to Maula Prison. Efforts were made to find out what influenced them to supply sanitary wear. However, due to limited time it was not possible to see this group.



Interviews with the women revealed that it would not be prudent to go back and clarify with the police officers about the challenges of managing menstruation because the women had expressed fear of reprisals by the police officers.

## **2.9 CONCLUSION**

As a result of using the women's law approach there was a wealth of information that surfaced that I could not deal with in this research. This is because it deals with the lived realities of women and men and how they interact with the law and different structures and actors. The interaction between the empirical data of the lived realities of women and the international human rights instruments to see to what extent the right to manage menstruation is the discussion of the next Chapter.

## CHAPTER 3

### HUMAN RIGHTS AND LEGAL IMPLICATIONS

#### 3.0 INTRODUCTION

Among some of the international human rights instruments that Malawi has ratified are the following:

The United Nations Universal Declaration of Human Rights of 1948<sup>9</sup>, the International Covenant on Civil and Political Rights of 1966<sup>10</sup>, the Covenant on the Elimination of All Forms of Discrimination Against Women of 1981<sup>11</sup>, the Protocol to African Charter on the Rights of Women in Africa of 1995. The right to equality before the law is provided under Section 20 of the Constitution<sup>12</sup>. The overall aim of both the international and national legal instruments is to improve the position of women as a group and individuals in a long- term perspective. (Hellum1997:14).

By using the methodological approach of taking women as a starting point and grounded theory approach this chapter now examines how the international and national legal provisions correspond to the women's lived realities in police and court cells. And, further, to see to what extent menstruation is provided for in the international and national laws and whether or not the government of Malawi is complying with the provisions of the international instruments.

#### 3.1. What Challenges Do The Women Face?

Nobody prepares for arrest, was the echo of all the women I found in the different cells. The question then becomes how do the women manage their menstruation in the cells. One of the

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<sup>9</sup> Article 2 provides that: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex...

<sup>10</sup> Article 2 which provides that: Each State Party to the present Covenant undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex language, religion

<sup>11</sup> Article 2 which states that: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women

<sup>12</sup> The Constitution of Malawi 1994

objectives of the research was to investigate if police and court cells have adequate facilities for the management of menstruation during the pre-trial period.

### 3.2 What Are The Structures?

Reference to facilities in this respect includes clean environment, access to water and toilets, and privacy for the management of menstruation. An interrogation of the structures in police and court cells and lived realities of the women confirmed the assumption that women face challenges in managing menstruation. Table 3 below (on page 53) shows the facilities of the police stations where the women are incarcerated.

At the time of her arrest Pamela Nyirenda, a twenty-four year old woman was on her first day of menstruation. She was not allowed to go into her house to get supplies of cotton wool. She was taken to Rumphi Police where the cell has no toilet. Realizing the challenge that this would cause in managing her menstruation she immediately informed the female officer about her situation. During the next three days and nights Pamela had no fresh cotton wool, no piece of cloth, no water, no bucket and was not allowed out of the cell. She had to continue using the same cotton wool. On the fourth day of her menstruation Pamela was transferred to Karonga Police in preparation for the court hearing. At Karonga Pamela found that:

There is no cell at Karonga Police Station so I had to sleep in the corridor next to the men's cells. There is only one toilet and one bathroom used by men and women and the door is very short – you can see the person under it or above it. I had no choice but to use the same whilst the men were peeping and shouting abuse – they said '*takufwara ndipo tidzikufwarabe ukamasamba m'menemo*'<sup>13</sup>

Having had no bath or change of cotton wool for three days Pamela subjected herself to the jeering and ridicule of the men. Joan Chisi, started menstruation immediately after her arrest at Champhira Police. She spent twenty-five days in a cell that has no toilet and no bathroom. Although she asked for pieces of cloth from the female officer no help was given until the third day after Joan had soiled her dress and *chitenje* when she was then taken to the officer's house for a bath and to wash her clothes. She was given a piece of cloths double the size of her palm,

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<sup>13</sup> Meaning that she had exposed her nakedness to the men and they would continue 'feasting on her nakedness' as long as she uses that bathroom. These words have a demeaning or derogatory connotation

which was not enough for her needs. When the cloth was soiled Joan was again only taken for a bath after soiling her dress and *chitenje*.

The Eswazini Police cell where Mariet Mphande was taken after her arrest has no toilet and had no bucket. After two days and nights of not being allowed out of the cell Mariet reported that:

For two days the officer refused to take me to the toilet and I used my shoes as a toilet – it was both urine and stools. The cells were not opened and I had to eat in the same cell when my relatives brought me food.

When asked how she felt about this experience she said that:

Although I did not have my periods in the cell the experience was just as dehumanizing.

Martha Muwisa and Freda Ghamlaga arrested by Chitipa Police at different times had similar experiences. Martha spent nine days in the cell and Freda three days before they were transferred to Chitipa Prison on remand. They both reported that the cell has no toilet and no water. When they had their menstruation they were taken to the female officer's house to bath and wash only after they had soiled their clothes. Thirty-two women arrested by Mponela Police found no toilet, no water and no bucket and they were accommodated in the corridors. Five started menstruating without any means of managing the menstruation. The following day they were all marched to court with their cloths soiled. Every police station that the forty-nine women had been to had no water and no toilets. In some cells there were buckets provided as makeshift toilets. Four women had limited access to water. Of the four two were taken to the female officers' houses, once every three days for a bath, and two bathed at the police stations once every two days.

Mrs. Dorothy Nyasulu, the Chairperson of the MHRC, commenting about the facilities in some of the police stations in the country said that:

...Nkhotakota and Karonga police holding cells' toilets are broken down and dirty, shower-rooms have no water and this means a lot for women who are menstruating.

The lived realities of the women confirm that the holding cells do not conform to the standards of the international and national legislation. Protocol to the African Charter on Human and

People's Rights on the Rights of Women in Africa<sup>14</sup>, UN Convention on Civil and Political Rights<sup>15</sup>, with almost similar provisions in the Constitution of Malawi<sup>16</sup> Sections 19(1)(2) and 42(1) all provide for the conditions under which prisoners shall be held. The Constitution of Malawi<sup>17</sup> and the African Charter<sup>18</sup> further qualify the right to dignity for women and specifically prohibit degradation of women. Arguably, these provisions, and all other international and national laws, apart from CEDAW<sup>19</sup>, do not specifically mention or refer to menstruation, their application to menstruation would therefore be by interpretation.

The right to dignity, or the respect for inherent human dignity is connected to the need for acknowledgement of one's personal and/or group qualities, distinguishable characteristics and special activities (Dahl 1987:98). The right to dignity and the right to privacy are so closely linked in considering management of menstruation that the two will be looked at together.

Dignity is the fundamental element of human self-esteem and self-respect, (Dahl 1987:98). The need to acknowledge that there are 'distinguishable characteristics and special activities' between men and women, in my view goes to the very root of the physiological characteristics of women, one of which is menstruation. The United Nations has, through its agents, formulated minimum standard rules that govern various situations. Article 12 of the UN Standard Minimum Rules for the Treatment of Prisoners, among others<sup>20</sup>, governs conditions in prisons. While Article 12<sup>21</sup> specifically relates to prisons it becomes a useful standard in providing for 'persons under any form of detention or imprisonment', which includes those in police and court cells. Again this provision does not directly mention or refer to menstruation, but it can be

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<sup>14</sup> Article 24 - (b) ensure the right of ...women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity

<sup>15</sup> Article 10(1):All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

<sup>16</sup> Constitution of Malawi (1994)

<sup>17</sup> – Section 19(1) – The dignity of all persons shall be inviolable; and (2) In any judicial proceedings or in any other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.

<sup>18</sup> Articles 3(3) and 5(d)

<sup>19</sup> Committee on the Elimination of Discrimination Against Women through elaboration of Article 12 of CEDAW – General Recommendation 24, but only recognizes menstruation as a health issue

<sup>20</sup> The Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment and the Kampala Declaration on Prison Conditions in Africa

<sup>21</sup> ...sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent way.

argued, that a wide interpretation of ‘the needs of nature’ can cover menstruation, which is a natural occurrence in women; as opposed to a health issue as reflected in the General Recommendation 24 of CEDAW. Fungai Akimu arrested by Kanengo Police and had six days of menstruation in the holding cell said:

As a woman you get wounded on your private parts. You cannot walk properly and you smell like a dead rat. At the end of the six days my private parts were swollen because of continued use of the same piece of cloth without washing it and without bathing. My whole body was painful and weak.

There was an echo from the rest of the women in the room that:

This one was smelling badly when she came.

The Clinical Officer, Mrs. Salilika, who examines prisoners on admission at Maula Prison confirmed that:

Usually when the women come from the police cells they are filthy and smelly – they tell us that they have not had baths for whatever period they were in custody. Some are kept at police for more than 5 days – the first thing we do here is to tell them to go have a bath.

According to Article 12 of the UN Minimum Standards Rules, the sanitary installation must not only be adequate but must be in a clean and decent condition. Mary Mwale, Regina Kanacha, Mary Moses, and 12 others that had gone through Lilongwe Police Station reported that there is only one toilet for men and women located outside the cells. The toilet has no water and at the various times that they were in the holding cells, they had to step on faeces and maggots due to lack of proper use and lack of water. These women stated that mostly during the night, the female officers deny them access to the toilet. When I asked them how they managed the situation they said ‘you just sit down and urinate on yourself’. The Cell Officer, Sub-Inspector Mrs. Munthali, confirmed that:

During the night we cannot open for the women to go to the toilet because we are afraid of passing by the male cells – most of the men are dangerous criminals and we are afraid they could attack us. So if anybody wants anything to do with the toilet they have to do it before lock-up time.<sup>22</sup>

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<sup>22</sup> I learnt that the lock-up time was from 3 o’clock of one afternoon until 8.00am of the next day

The police stations have no sanitary installations that comply with the needs of nature and more specifically menstruation. I learnt that most cells are not even provided with buckets and women resort to desperate measures that, as Mariet who had to use her shoes said, are ‘dehumanising’ and degrading. When I asked Pamela about her views after her experience of having men peep on her whilst she was having a bath she said that:

I felt really bad that I was treated this way – I felt very embarrassed having strangers and men for that matter looking at me as I took my bath – it was terrible. *Ndinayalutsidwa kwambiri.*<sup>23</sup>

The right to dignity can have far reaching consequences when the cells are being shared by a number of people. Alice Mwandira, Joyce Botha and their friend<sup>24</sup> were arrested at Emfeni and after a day they were taken to Mzimba Police Station where they spent another four days in a cell that could barely accommodate them. According to Joyce the cell was about two feet long and one foot wide. Joyce started menstruating soon after the arrest. At night they were given an 18-litre plastic container. When the container was full they were not allowed to empty it. Joyce had no choice but to continue using the container with her friends despite the friends’ protests. By the end of the second night the urine, mixed with Joyce’s menstrual blood, was spilling over the floor where they had to sit, sleep and eat. The friend, when asked about this experience said that:

I felt terrible to see my friend’s menstrual blood for the two days and nights. The cell was smelly and it was unbearable- it is hard enough dealing with your own menstruation. I suffer from high blood pressure and it shot up, I could not eat and my body was weak. I felt like vomiting all the time. This was degrading.

And, Alice said:

If a woman is having her periods in cells ‘*amalandira nkhanza – kumeneko ndikuphwanya ufulu wa munthu*’,<sup>25</sup>

### 3.3 Is Menstruation a Health Issue?

The ambits of this research did not cover the health consequences of failing to manage menstruation but the lived realities of the women indicate that failure to manage menstruation

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<sup>23</sup> Meaning that she felt as if her dignity was stripped off her

<sup>24</sup> Name withheld

<sup>25</sup> Meaning that the person is subjected to cruel treatment which is a violation of the person’s rights

does have a direct correlation to the right to health because of poor sanitation. The use of buckets for women, who have to squat and might inevitably touch the buckets, is highly risky for various infections including HIV/AIDS. The risk increases if, as in the case of Joyce, there is menstrual blood on the bucket, which other users may come in contact with if they have cuts. Two women informed me that they were given an old t-shirt and piece of old blanket. The conditions of these materials was not established, but if old dirty materials are used the women's health could also be at risk. The Malawi Inspectorate of Prisons in its report of 2000 picked up the consequences of poor hygiene and sanitation. The Chairperson, Judge of the Supreme Court of Malawi, Justice of Appeal Tambala, informed me that the issue has not yet been addressed. The report provided that:

There is also lack of cleaning materials, soap and disinfectants, which are required to be used to clean the toilets and bathing facilities. In general most police holding cells have no inside toilets for suspects, thus they are provided with buckets, which in most cases are not emptied when they are full, thereby causing serious health problems (Malawi Inspectorate of Prisons: 2002:7).

Menstruation however is not a health issue but a natural occurrence in women whose management must be specifically tailored for. The issues of poor hygiene and sanitation, according to His Lordship, were not linked to management of menstruation. The Honourable Judge said that he has never received any complaint about lack of means of managing menstruation and that:

If they had such a problem I am sure the women would tell the female warders – that's why there are female warders in the female section.

The women who experienced menstruating in police holding cells felt that their self-worth had been unnecessarily reduced just because they were women who have to menstruate. Equally, those having to witness the experience of others also felt that their dignity had been violated. This is contrary to Section 42 of the Constitution of Malawi, which provides that:

- (2) Every person arrested for, or accused of, .... shall in addition to the rights which he or she has as a detained person, have the right-
  - (iv) to be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces respect for the rights and freedoms of others;<sup>26</sup>

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<sup>26</sup> Underlining supplied for emphasis



All the cells had no toilets and no water and some police stations have no cells for women. These findings confirm the assumption that police cells do not have facilities for the management of menstruation.

### **3.3 How Do They Manage?**

Since the women were not given an opportunity to collect their pieces of cloth or cotton wool on arrest the right to dignity, of necessity must include having the means to manage menstruation. When I asked the women what they were provided with I learnt that two out of the fourteen women had been provided with an old t-shirt and a small piece of cloth. Pamela had to use the same cotton wool for five days after the officer told her that there was no material to give her. Joyce, who had four *zitenje* at the time of her arrest tore and used one for her menstruation. Freda had to tear her dress, Martha folded her pants and used them as a pad, Joan was given ‘a piece of cloth that was double the size of my palm’ and the women at Mponela were given nothing. I wanted to know if women are provided with soap for washing their pieces of cloth. The women all said no soap is provided. However, Mrs. Munyenyeembe, a prison warder, at Mzimba Prison informed me that Banja La Mtsogolo used to supply prisoners with soap but the program had since changed. I learnt later that Banja La Mtsogolo used to supply medicated soap as treatment for scabies in the prisons and it had nothing to do with menstruation. Faith-based organisations also donate soap for the prisoners. The women reported that the pieces of cloth smell if they have not been washed with soap:

Some boys in the cell were laughing at us when we hang our pieces of cloth on the burglar bars at Lilongwe Police – the pieces smelled.

The holding cells at Lilongwe Police are about two square meters big. Burglar bars about twelve inches apart divide the male and female cells. At the time of my visit there were three young men (of about 16 or 17 years) in the cell next to the women. I was able to observe that they heard every word the women and I said. When I asked the women at Maula Prison how they had managed their menstruation in the police cells they told me that they had to hang their pieces of cloth on the burglar bars dividing the cells to dry. The boys had laughed and mocked the women because of this. The women said:

...being in custody you lose your privacy – you use whatever facility is available.

When a female police officer refused to allow Joyce to go and bath she had to plead with a male officer and had to explain that she had not had a bath for three days and nights and she was menstruating. I wanted to find out if that was culturally acceptable and she said that:

When the male officer allowed me to go bath he had to guard me as I took the bath and I felt bad – he saw the menstrual blood but I said what use is dignity and privacy when it is only the man who can take me for a bath. It was better to lose my dignity and have the needed bath than have the dignity and spend another day with soiled pieces of cloth. Once in police holding cells women lose their dignity for the simple reason that they are women who need some assistance with menstruation.

The doors of the bathroom, it was learnt, were purposefully designed in such a way that anybody from the outside is able to see the legs and the torso of the user therein. When I enquired from Sub-Inspector Munthali, the Cell Officer, about this design she told me that the purpose was to monitor the activities of any user of the toilet. This type of bathroom, however does not meet the needs of a woman who is menstruating who has to squat to wash her private parts as this compromises her privacy. Further, the bathroom platform is raised, making the woman more conspicuous to the outsider. The Constitution of Malawi Section 21(1) provides that:

Every person shall have the right to personal privacy.

I asked the Cell Officer what facilities the model police station in terms of respecting the privacy of the inmates and she informed me that the Cell Section has partitions for individual storing of prisoners' property so that personal effects are not stolen.

When I asked the women about the facilities at the courts they told me that all courts had no toilets, and no bathrooms and it is difficult to manage menstruation once at court.

If you are going to court and you are menstruating you must ensure that you are well prepared for the whole day.<sup>27</sup>

The Court Administrator at the High Court, Mrs. Kalilani, informed me that all remandees sit on the grass when they come to court in the morning until commencement of court and that they are allowed to use the staff toilets. All nine judicial officers informed me that no woman had ever complained about issues of menstruation in their courts. They did not see how they could have initiated any discussion about menstruation when the women had not complained. They all traced this silence to culture, which does not allow women to talk about menstruation in public.

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<sup>27</sup> This was a comment from the women meaning that they have to wear a large piece of cloth to cater for the long hours

Justice Andrew Nyirenda, in his remarks, about why women find it difficult to tell courts about menstruation, had this to say:

In the lower courts, the lay magistrates especially, take joy in establishing what the problem is – they insist on knowing what exactly the problem is so that it can be recorded, and it stops there because the women will not speak more – even in the ordinary cases – such as sexual offences or marital cases – it looks like the magistrate and the whole court setting wants to know how the woman felt, what exactly did he do – they want to get down to the immoral aspect of it through the woman and not the man. It is the exposure that creates the problem because courts seem to be happy to expose the women.

Whilst courts may not know about the menstruation these observations are pertinent. If the women raise the issue of menstruation without proper awareness and training for the magistrates the women might actually create more problems for themselves. The women could be ridiculed and their dignity would be compromised. Menstruation that is not properly managed leads to women being reticent and subdued all the time. Inevitably women suffer from a double-edged sword. Physically the woman must deal with the menstruation that she must keep in secret, and socialization because of the way she is brought up as a woman. The provision of the bucket also becomes an issue of management especially because, as shown in all cases where it was provided, there was a problem because the female officers would not allow the women to empty it when it was full. There is need to investigate further whether the women in the courts are being accorded with the right to dignity.

Inmates within the central region move from various police stations to Maula Prison on remand. I wanted to find out from the clinical officer if the inmates are provided with the means of managing menstruation and if menstruation is linked to health. The Clinical Officer, Mrs. Salilika, told me that since menstruation was not a health issue women are not provided with cotton wool for their menstruation and that there is no budget allocation for any sanitary wear or management of menstruation. The only menstruation related issue that she deals with is when women complain about dysmenorrhoea and they are treated accordingly. I learnt that in prison women are given pieces of old blankets to manage their menstruation. I then attributed the discomfort that women have in court when menstruating due to the piece of blanket that they will have used to manage their menstruation. One of the objectives of the study was to provide solutions for the challenges of menstruation. I showed the warders a sample, on paper, of the

Femshuleni Sanitary Napkin<sup>28</sup>, and asked them if it could be made in prison. The warders informed me that the prison has sewing machines and that they would just need the materials. But of course use of the napkin may be ineffective if water is not made available to the women in the cells. I also learnt that sometimes relatives, friends or religious groups bring sanitary wear for the women.

The challenge of menstruating in police and court cells is compounded by the fact that the cells do not have toilets and water, there is no clean environment, and women are not afforded materials that would assist them manage menstruation. The empirical data showed that the cultural way women dress does offer some mitigation in the management of menstruation. Among the rural and peri-urban communities throughout the country a woman's dignity in dress is not complete until she has a piece of *chitenje* on top of her dress. Women can be distinguished by the quality and number of *zitenje* that they wear. A woman who uses one *chitenje* for any activity outside her house is usually considered to be not so affluent. If a woman has two, three or even four good quality *zitenje* then she is considered to be highly dignified and wealthy, popularly called '*amai aulemu wawo*'.<sup>29</sup> The women in custody also informed me that a *chitenje* is worn as a crisis management for menstruation because sometimes the menstrual cycle is unpredictable.

To deny women the means of managing menstruation does constitute violation of the right to dignity because the very institution that has curtailed their freedom is the one that is failing to provide them with the means to manage the menstruation. Table 3 below shows that there were only three women out of the nineteen that were given some form of sanitary wear; one was given a piece of old blanket, another an old t-shirt and the third a piece of cloth double the size of her palm. This confirmed the assumption that women are not given the means to manage their menstruation.

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<sup>28</sup> (See sample in the appendix 2).

<sup>29</sup> Meaning a woman who respects herself

### 3.4 Is there a Policy of Equality?

Equality of women and men before the law is one of the fundamental human rights articulated in most of the United Nations instruments such as The United Nations Charter<sup>30</sup> The Universal Declaration of Human Rights<sup>31</sup> and Protocol to the African Charter<sup>32</sup>. The Constitution of Malawi also guarantees equal enjoyment of rights for women and men as evidenced by Section 24<sup>33</sup>, Section 41<sup>34</sup> and lastly Section 44<sup>35</sup>, which, prohibits derogation of the rights.

Equality before the law presupposes same treatment of the sexes. The treatment of sameness, as evidenced by the grounded realities of women's lives does not necessarily interpret into equality for women specifically. As aptly observed by Dahl (1987:12)

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

Failure to investigate the operation of the law based on women's lived realities makes law good on paper only. In order to have a holistic discourse of the equality principle it is important that equality be looked at in collaboration with discrimination against women. As already noted above the prohibition of discrimination based on sex is found in several human rights conventions and recognized as international customary law. CEDAW<sup>36</sup> gives the definition of discrimination and further prohibits direct and indirect discrimination. However, Section 12,

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<sup>30</sup> The United Nations Charter Preamble affirms:...faith in fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women.

<sup>31</sup> Article 2 ...without distinction of any kind, such as ...sex

<sup>32</sup> Article 8 ...women and men are equal before the law and shall have the right to equal protection and benefit of the law

<sup>33</sup> Section 24(1) provides that women have the right to full and equal protection by the law

<sup>34</sup> Section 41(1) states that every person shall have a right to recognition as a person before the law

<sup>35</sup> Section 44(1) there shall be no derogation, restriction or limitation with regard to the (g) right to equality and recognition before the law

<sup>36</sup> Article 1: For the purposes of the present convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'

which guarantees equal rights for men and women in Malawi, does not define discrimination against women.

During the research design one of the assumptions was that failure to provide women with sanitary wear or the means to manage their menstruation leads to discrimination on the basis of sex and that it has an impact on the fair trial and access to justice. As discussed earlier the empirical data did not directly connect lack of sanitary wear to fair trial and access to justice but the indications were that the failure to provide sanitary wear had a negative impact on the rights of women.

Discrimination of women in the criminal justice system, according to the lived realities of women starts with the lack of policy for the management of menstruation within the police and court cells. Discrimination can be negative or positive and the distinction is in the consequences of the discrimination (Dahl 1987:41). The fact that women commit offences and that they spend time in custody should be enough to alert the policy makers about the management of menstruation. In order to understand whether there was positive or negative discrimination against the women I found it necessary to interrogate the international human rights instruments and national law provisions to find out whether what they provide for women is adequate for management of menstruation. Article 15 of the Minimum Standards Rules makes it mandatory that prisoners be provided with toiletries for health and cleanliness. Article 16 provides that male prisoners be afforded with the means of shaving their beards. The Prison Act<sup>37</sup> sets out the establishment of the prisons.

An Act to provide for the establishment of Prisons in Malawi....for the management and control of Prisons and Prisoners lodged therein and for matters incidental thereto.

Prisoners are defined as those already convicted and the 'unconvicted'. One of the 'matters incidental thereto' is that Section 121 provides that<sup>38</sup>

the hair of a convicted male prisoner shall be kept short and tidy.

The policy goes further to provide for razor blades to enable the men to maintain that status. Whilst the rule is for the advantage of men because they are the only ones required to shave its

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<sup>37</sup> Prison Act Cap.13:02 (1967)

<sup>38</sup> Regulation 58(1)

consequences have a negative discriminatory effect against women because there is no provision for menstruation, which occurs only in women.

Although the Minimum Standard Rules provide for pre and post-natal care and care of infants during their mothers' incarceration, there is no provision that specifically addresses the needs of women when menstruating. The Kampala Declaration, in its preamble, is the closest that tried to recognize that women have special needs but fell short of mentioning menstruation as a woman-specific need. Whilst it recognises that women are vulnerable it does not go so far as to spell out the actual vulnerability and what measures are put in place to address them (Samakayi-Makarati 2001:10). The Officer in-Charge at Maula Prison informed me that the male prisoner is provided with razor blades. When I asked if the female prisoner is also provided with any means of managing menstruation I was told that there has never been such a policy before and that he only implements what is prescribed for him. I was further informed that the male prisoner is provided with condoms. At first I was at a loss as to what such condoms would be used for. The explanation was that sodomy does take place in the male cells and with the challenge of HIV/AIDS it was necessary to protect the prisoners and that PSI<sup>39</sup> had a special program of providing the condoms in all prisons. It is evident from the policy and its operation that men's needs are provided for but not women's menstruation, which is a natural occurrence. And, because menstruation only occurs in women, failure to provide for it is discriminatory on the bases of sex.

The Ministry of Women and Child Development is the national machinery for the advancement of women. The Deputy Director, Christobel Chakwana, became an important actor in terms of government policy on menstruation. When I asked about the policy of management of menstruation in police and court cells she made an honest confession that she had never thought of management of menstruation as one that needed policy. She informed me that the Ministry had just published a new policy on mainstreaming of gender.<sup>40</sup>

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<sup>39</sup> Population Services International – a non-governmental family planning service provider organisation

<sup>40</sup> Managing Human Resources within The Government of Malawi: Guidelines on Gender Mainstreaming of January 2007 which is defined as “ A process of consistently incorporating sensitivity to gender differences/inequalities into the analysis, formulation and monitoring of strategies and activities that can address and help reduce inequalities between women and men. Mainstreaming addresses gender issues in all aspects of development, including decision making structures, planning processes, such as policy making, formulation and

Although the aim of the new policy is to ‘incorporate sensitivity to gender differences/inequalities so as to address and help reduce inequalities between women and men,’ it was not established to what extent the policy makers examined the new policy in relation to particular structures. A policy that seeks to achieve that purpose would need to investigate the lived realities of women so that the women’s voices are incorporated. At policy level there has been no distinction between gender and sex differences, which failure inevitably does not take into consideration issues that affect women specifically and result in discrimination against the women. Sex is based on the physical distinction between men and women, whereas gender is a social and cultural construct. Sex oriented studies focus on the biologically ascribed characteristics of men and women. Following from this male and female roles and relations between the sexes and roles ascribed to the men and women, are researched and analysed based on the biologically different roles of the sexes in reproduction. There is need therefore to employ positive discrimination for the benefit of the women to ensure that there is no discrimination based on sex. This will entail policy that specifically provides for gendered characteristics like menstruation and reproduction.

As evidenced by the women’s lived realities the failure of the sex-gender distinction has resulted in putting women in cells that have no water and no toilet. And as reported some police stations have no cells for women. The women end up using the corridors for their accommodation, which further complicates the challenge of managing menstruation.

The nine judicial officers interviewed informed me that the failure to provide for the means to manage menstruation is discriminatory and they concluded that it had an impact on the access to justice. They attributed the demeanour of the women in court to the challenges of menstruation, although they had never tried to find out from the women about this. They had all observed that women are almost always timid, subdued and or agitated when they come to court. Three magistrates attributed this to the fact that women feel intimidated by the court process. Two magistrates said they did not feel that it was necessary to inquire into issues that were not part of

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review of the required legislation, as well as budgeting, programming, implementation, monitoring and evaluation at all levels and in all sectors and organisations.”



the legal process. At the end of the day I found that although judicial officers do notice that women seem timid and subdued they do not investigate the cause of such behaviour. When I interviewed the women they agreed with the judicial officers' observation but did not attribute this solely to menstruation. Joyce explained that:

In court we sat on a bench. Throughout the proceedings I was apprehensive of my condition and made sure that I was the last one to stand when going out. I was not free to give evidence because I had the nagging feeling that everybody in court knew I was menstruating and that was why everybody was looking at me. I gave my evidence in trepidation but I told the court the truth about my offence.

Diana Kandalu and Chimwemwe Mwanza explained that almost immediately after they were arrested they started menstruating although they were not due for their menstruation. They were both in trousers at the time of the arrest and they had no *zitenje*. Both soiled their trousers and the following day they were taken to court in their soiled cloths. Asked about their court experiences Diana said that:

I soiled my cloths and everybody saw me. I felt bad about it but there was nothing I could have done. I admitted the charge not because of the menstruation but because I was guilty.

Chimwemwe said:

I felt constrained and very conscious of the fact that I was menstruating and I had soiled myself.

I admitted the case not because of the menstruation but because I had done what I was accused of.

These two women said that the judicial officers had noticed that they had soiled themselves but did not do anything about the situation or make any further inquiries about the matter of menstruation. These women were arrested for issues related with soliciting for prostitution, a trade that most people look down upon. It is likely therefore that the neglect in the treatment of these women by the prosecutor and judicial officer reflected the societal views. It is evident that menstruation does have an impact on the women's ability to give evidence but the empirical evidence did not directly relate it to access to or fair trial.

The Body of Principle for the Protection of all Persons under any Form of Detention or Imprisonment Principle 5, and the Kampala Declaration on Prison Conditions in Africa provide that no prisoner should, among other things, be discriminated against on the basis of sex. The

international instruments and most national laws have been influenced by the liberal feminist theory that seek to remove legal barriers to women by treating men and women the same in public and private life.<sup>41</sup> Mere provision of the law, both international and national may not, as shown with the empirical data of women's lived realities, necessarily address the discrimination that women suffer. There needs to be proper investigation of what it means for women to be or not to be discriminated against. Dahl (1987:47) pointed out that there is need to distinguish between negative and positive discrimination when we evaluate the aim and consequence of the discrimination. Where law or policy cannot investigate how women are subordinated by different legal, social and religious traditions, then there is bound to be negative discrimination against women. This results in systematic discrimination or inequality of condition, which cannot be addressed via the rule-based sameness of treatment approach (Cook 1994:11)

Women admitted that prison conditions are tough for both male and female prisoners but they felt that because of menstruation they suffered multiple punishments. Having cells and bathrooms that are the same for the men, or failing to provide cells for women, fails to take into account specific needs of women because of menstruation. Treating the male and female prisoner as the same has resulted in disadvantaging the female prisoner who, as observed by Pamela:

Menstruation makes women vulnerable and we end up being punished twice by the law enforcers because they refuse to help us.<sup>42</sup>

And Joyce said that:

Just because I had menstruation, the female treated me as if I had already been convicted. When I asked her for a bath she said '*asa! usamba chamba chako chomwecho*'<sup>43</sup>

The women explained that when they come to court they are unable to use the toilets because normally there is only one police officer escorting female and male prisoners. The court premises encompass courts for the lay and professional magistrates and High Court buildings. After prisoners arrive at court they all sit on the grass waiting for the various prosecutors to take them to the appropriate courts. Before courts start, I was informed, the prisoners are not normally allowed to go to the toilet because of shortage of staff. If a prisoner has to go to the toilet it

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<sup>41</sup> Taken from Dr. Amy Tsanga's lecture in the Theories and Perspectives in Women's Law Course –2007-2008, SEARCWL

<sup>42</sup> Malawi Constitution Section 42(2)(vii)

<sup>43</sup> Meaning: use your Indian hemp to bath

means an officer must accompany the prisoner. But if there is only one officer it becomes a challenge, for the officer cannot leave the rest of the prisoners on the grass unguarded. His Worship Kachama, head of the lay magistrates in central region, observed an incident in his court, which he narrated as follows:

I noticed that one young woman was fidgeting and looking uncomfortable. When she stood up to give evidence I noticed blood oozing down her legs and her dress at the back was all soiled. She did not have a *chitenje*. I suspect she did not have the opportunity to prepare properly for the menstruation before coming into court. I asked the female clerk to take her out and help her accordingly.

As the magistrate was only recounting an incident that had happened in his court some time back it was not possible to find out if the young woman had just started menstruating in court or before she came. It would have been of interest to know whether she had reported the matter to anybody at the court and find out what measures had been taken to manage the situation. However even if she had asked for the means of managing her menstruation it is not known how the court would have assisted her. As observed by Her Worship Nthara, professional magistrate:

But how can we invite the women to use the toilet at the court when there is only one toilet and the toilet paper is always stolen?

As His Lordship Justice Nyirenda, noted:

At times female prisoners have been brought to court by male warders because of shortage of staff. In these circumstances you even wonder if the women would tell the male warder about any problems that they may have with menstruation.

The courts that do not have facilities for management of menstruation, and, coupled with the procedures of administration of criminal justice are compounding the challenges that women face in managing their menstruation. As women are the only ones who menstruate denying them the structures and means for managing their menstruation is discrimination based on sex court cells.

At the end of the day all judicial officers agreed that by failing to recognize the biological differences between men and women in police and court cells there is miscarriage of justice and the women are the ones bearing the brunt of the suffering because of the fact that they menstruate. A question that exercised my mind as I interviewed the women was whether the women knew their rights and specifically the right to management of menstruation. A few

women had some faint ideas about the right to dignity and equality but none knew about the right to menstruation. The women said that if they had known they would have pressed for it. Violations of human rights cannot be reported if the beneficiaries are not aware of their rights, it is necessary therefore, that women are sensitized about these rights.

The international instruments obligate States Parties to take particular action in respect of the rights of women to ensure that there is equality or non-discrimination in the treatment of women. The extent to which a claim for dignity and non-discrimination would succeed has yet to be tested in Malawi, bearing in mind the status of the enabling human rights instrument. The Committee on the Elimination of Discrimination against Women<sup>44</sup> noted that though Malawi ratified CEDAW in 1987 the status of CEDAW on the domestic level was still unclear.<sup>45</sup> Further there is no definition of ‘discrimination against women’ in the Constitution making monitoring of the violations problematic. It was further noted by the Committee that there is no enabling domestic legislation to make CEDAW justiciable and enforceable in the Malawian courts. As CEDAW is the most significant international instrument that specifically addresses sex discrimination there is every indication that until the necessary domestication has been done beneficiaries cannot claim the rights therein. As noted in the *Unity Dow* case<sup>46</sup>

The omission of sex in the definition of discrimination may provide a conservative basis for denying women legal protection of claims that may enhance their dignity and status

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<sup>44</sup> Thirty-fifth session 15 May to 2 June 2006

<sup>45</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women: Malawi. Report of the Thirty-fifth session 15 May – 2 June 2006 CEDAW/C/MWI/CO/5 p2

<sup>46</sup> Court of Appeal of Botswana, Civil Appeal No. 4/91 (unreported 1992)

Table 3 shows the name of the police station, the number of days women spent in custody, how many had menstruation in police and court cells and the means for managing the menstruation

Police Station	Days in Police Cell	Women with Menses in Cell	Women with Menses in Court	Facilities for Managing	Means for managing
Emfeni then Mzimba	4	1	1	No bath no toilet	Own <i>chitenje</i>
Champira	25	1	No court yet	No bath no toilet	Own pieces of cloth
Chitipa	9	1	No court yet	No bath no toilet	No cloth no cotton wool
Rumphi then Karonga	4	1	1	No bath no toilet	Same cotton wool for 5 days
Eswazeni	2			No bath no toilet	
Chitipa	3	1	No court yet	No bath no toilet	Own <i>chitenje</i>
Kasungu	1	1	1	No bath no toilet	Given piece of old blanket
Mzuzu	4	1	1	Bo bath no toilet	Given old t-shirt
Mponela	3	5	5	No bath no toilet	Nothing
Mitundu	3	1	1	No bath no toilet	Nothing
Kawale	3	2	2	No bath no toilet	Own <i>chitenje</i> and pants
Lilongwe	14	3	6	No bath no toilet	Own <i>zitenje</i>
Kanengo	9	1	Not yet	No bath no toilet	Own <i>chitenje</i>

### 3.5 CONCLUSION

Evidently both the international human rights instruments and the national laws do not address the right to manage menstruation in police and court cells. Whilst the lived realities of women show that there is discrimination based on sex, the women's rights may not come to fruition until the necessary domestication is effected, and a rights claim based on the particular provisions of CEDAW may not succeed.

The right to management of menstruation was also influenced by the location of the woman in the criminal justice delivery system. The various theories and perspectives that influence the positions are also a discussion of the next Chapter.

## **CHAPTER 4**

### **WOMEN WITHIN THE CRIMINAL JUSTICE DELIVERY SYSTEM**

#### **4.0 Introduction**

The one thing that feminists agree about is that women suffer as a result of how they are perceived by patriarchy. The radicals claim that women's oppression lies in their reproductive capacity and that institutions and law oppress the women (Tong 1989:39). The Marxists claim that women are oppressed because of social structures associated with capitalism. (Tong1989:71) The lived realities of the absence of policy and the results of the sex-discrimination were influenced by the location of the woman within the criminal justice delivery system and feminist theories and perspectives.

#### **4.1 Not a Place for Women**

Literature shows that historically crime was perceived as a male domain and that police, prisons and court cells were only fashioned for men. Women who committed crimes were said to be abnormal and it was believed that they had male characteristics in them and should therefore be treated as men (Morris 1987:15). Some feminists argue that, if equality is to be achieved men and women must be treated the same in the criminal justice system; (Moulds1980:20) others state that there are differences between men and women that justify differential treatment (Smart and Brophy 1985:15).

I interviewed the Commissioner of Prisons responsible for operations, training and public relations, Mr. Tobias Nowa on 30 October 2007 who informed me, among other things, that there were, as on that date, 10,742 prisoners in total in the twenty-seven prisons. One hundred and eighty-three of these were women and sixty-five on remand. This figure however does not include all the women in the police cells. Only three women at Lilongwe Police Station were interviewed. The number of women under imprisonment is about one percent of the men. According to Mr. Nowa, the female population has never exceeded two hundred and fifty at any one time. I wanted to find out from the Legal Officer of the Parliamentary Legal Affairs

Committee, Mr. Chamkakala, about the lack of policy for the small number of women and he informed me that:

At Maula Prison it was actually said that it is only men that are supposed to be in prison and so even the women's accommodation is poor, they are accommodated in tin houses. The attitude is that once in prison you must suffer and more so the women who are not supposed to be prison<sup>47</sup>.

Mr. Chamkakala also pointed out that:

It was originally not proper for women to be in prison. This is reflected in the structures – they are meant for men only, and even the numbers of women are small. I know of the holding cells that have urinals only, for example, Zomba Police Station. This is because women are regarded as not causing problems they are more compliant.

It was held by more than half of the interviewees that police and prisons are not for women. Society, I was informed, looks at women as the soft and gentle people who should be at home looking after children and not committing crimes. Society's perception of a good woman is that she does not commit offences and if she does then she must be treated as a man, thus the structures in police and prison are meant to portray this view. The views and attitudes of society about women are also reflected by the way that police officers, who are themselves part of the society, treat the women within the criminal justice delivery system. Since the women who commit crimes are seen as having chosen to enter into the male domain police refuse to them anything that is considered to be over and above what the male prisoners get. As a result they are denied water and any means of managing their menstruation. The same sentiments are further translated in the way that policy makers and visiting justices conduct prison visits. Mr. Chamkakala informed me that members of the Legal Affairs Committee did not visit the women's sections of the remand cells at police stations and prison. Women were instead called out of their cells to meet the members of the Committee away from the cells. The same members however visited the male sections of police and prison cells and made several recommendations about improvement of sanitation, congestion and nutrition.

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<sup>47</sup> Remarks made by members of the Legal Affairs Committee when they visited police stations and prisons during the week of 20 January 2008

## 4.2 The Kind of Offences Women Commit and Their Mode of Life

It was noted that the women on remand were those whose economic status meant they ordinarily use pieces of cloth, and a few use cotton wool or sanitary pads, to manage their menstruation. I learned that the more affluent women are normally granted bail within hours of their arrest either by relatives or police bail. The women had been arrested for crimes ranging from murder of spouses, or lovers or children of spouses to theft and allegations of witchcraft. The women who had been convicted gave various reasons for having committed the offences in question. Joyce and her two friends said that:

You see we are married and have children but our husbands do not support us in any way. The children have to feed and they have to go to school. The men are using all their money in drinking and womanizing. Somebody told us that we could make quick money if we started dealing in Indian hemp so we thought we could try; unfortunately we got caught even before we could sell the Indian hemp.

Among the women at Mzimba Prison were three Tanzanian women, Ruth Ipeta aged twenty-three, Rhoda Kamali aged twenty-six and Sikujiwa Harrison aged twenty-seven years. They had been convicted of soliciting for prostitution. I learnt about their story through Ruth the only one amongst them who could speak Swahili<sup>48</sup> and Tumbaka:

We are from Tanzania and found ourselves without any means of sustenance because we have no money. We cannot get employment and so the only way to survive was to use our bodies in that way.

Martha and Freda were arrested as suspects for spousal killing; and Fungai was arrested for infanticide. However, as their matters had not been determined by court I refrained from asking for details. I learnt from the testimonies of the women that as women they bear the burden of maintaining the family and that the offences were committed as a means of survival. They were now all worried that their children were destitute because the men were not providing for the children for whose cause the women had committed the offences. As observed by Mr. Nowa:

Women are vulnerable and they must be treated more humanely than men because most of them commit what are called emotional offences. They are not really criminal by nature.

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<sup>48</sup> Commonly spoken in East Africa and in Karonga, mostly along the border with Tanzania



The type of offences that the women commit and the relatively small number of women who commit offences makes them invisible in the criminal justice system which factor, in addition to the other factors, results in ignoring their rights.

Apart from Pamela at Mzimba Prison and Cecelia at Maula Prison the rest of the women use pieces of cloth for menstruation. Generally women who use pieces of cloth are among the lowest in society in terms of education and financial capacity. It did not occur to me at the time that I should find out their educational background and occupations but I formed the general view that most are in small scale or informal business, farming or dependent housewives. A few days into the research I learnt that a wife of a prominent businessman had been arrested and was at Lilongwe Police Station. I became interested and wanted to interview her to gain from her experience about her lived reality in the cells. I was informed that she was released on bail within the prescribed forty-eight-hour rule. At the initial interview with the Station Officer at Lilongwe Police Station she had informed me that suspects are granted bail within forty-eight hours of their arrest or they are taken to court to be dealt with at law accordingly<sup>49</sup>. When I asked the women about the right to bail Regina said that:

Bail at Police is only given to those that have money. If you don't have money, forget it. When I asked for bail I was told that I should pay K17,000<sup>50</sup> – by my standards that is not small money. My sister did everything to help me – she even borrowed some of it and only after this was paid was I released on bail.

This view was confirmed by the report of the Inspectorate Commission,<sup>51</sup> which stated that:

The Inspectorate received complaints from some suspects regarding the granting of bail by the police. They complained that some police officers demanded money for bail consideration. At Mangochi prison, some prisoners complained that despite being granted bail by the court the police would ensure that they are not released as ordered by the court.

Almost all the women did not know that bail was a right and so they had not asked for it. It would seem from the lived realities of the women that there is discrimination based on the

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<sup>49</sup> Constitution of Malawi Section 42(2)(b)

<sup>50</sup> At the time of the field research between September and December 2007 US\$1 was equivalent to Malawi Kwacha 139-00 – this was about US\$122.30. The current government minimum wage is just under US\$1 a day (MK129-00) a day so this was, by Malawian standards a large sum of money

<sup>51</sup> The Malawi Inspectorate of Prisons, Report to Parliament of November 2002

knowledgeable and financial capability of the suspects leaving the less informed and less financially endowed to suffer the inequalities in custody.

### **4.3. Women Disadvantaged**

Under the Prison Act, Part XXIV – Regulations and Transitional, the Minister responsible for Police and Prison Services has power to make regulations in connection with one part of the prison or group of prisoners.

Section 121 (1) The Minister may make regulations with respect to any of the following matters-

- (r) Prescribing anything to be prescribed under this Act; and
- (s) Generally anything for the effective administration of this Act, for the good management and government of prisoners, and the discipline and safe custody of prisoners
- (2) In exercising the powers conferred upon him by subsection (1) the Minister may restrict the application of any regulation to one or more prisons and may apply differing regulations in respect of different prisons or classes of prisoners determined by him
- (3) Different regulations may be made in terms of subsection (1)(a) for different classes of prison officer and other persons employed in prisons

I wanted to find out from the Legal Officer – Legal Affairs Committee and the Deputy Director in the Ministry of Women and Child Development why it is that the Minister has never been moved to make policy in respect of management of menstruation under these provisions. I was informed by the Deputy Director that:

We have never thought of menstruation as a human right issue that needed policy to be put in place.

Mr. Chamkakala on the other hand informed me that:

You see women do not make noise about issues that concern them. Because the men make noise about their conditions things are sorted out in their section.

All the women informed me that they were first time offenders and that they found the experience and the criminal processes daunting. With this observation and the fact that generally women are socialised to be subdued and compliant I wondered as to how much ‘noise’ they could make to get things changed in their behalf. The unasked questions, I found, are can a group of people be denied their rights because it is perceived that they cannot or do not make the ‘right noise’? Is the right to human rights about ‘making noise’? The grounded reality points to the fact that the policy, rules and regulations of prison were made with the male prisoner as the

standard thus disadvantaging the women whose physiological differences are not factored into the policy. It was noted that in general women's issues tend to be given little attention. As noted by Justice Nyirenda:

To a certain degree in our community issues relating to women tend to be given lower attention but more particularly when the issues pertain to the privacy of women – we rarely pay attention to these. But men can talk about things openly even things concerning sexuality – but when the same issues touch women we don't even mention them.

Mrs. Nyasulu, on being asked about the rights of women and menstruation in police and court cells stated that:

The issue of menstruation is part of the rights of women and it is a big issue but women's rights are not taken seriously and menstruation is a big challenge. What makes the women to be ignored is because the men's side is overcrowded and attention seems to be concentrated there.

Not only are women expected to be compliant, subdued and undemanding about their rights but also because of their resultant passive nature they are denied their rights. Nobody seems to take up matters on their behalf and they suffer the inequalities in silence.

#### **4.4. The Private versus the Public**

Throughout the interviews with all respondents I was informed that issues of menstruation are private matters and women are supposed to manage them privately. Justice Nyirenda informed me that:

Management of menstruation has never exercised my mind as a right of women, and I speak from my earlier experience as a Prosecutor and now as a Judge. We always assume that all is well and leave it to the women to manage issues of menstruation –and sadly even now within the talk about human rights and the right to privacy and right to incarceration in a decent place – we have never thought of it. Courts are quick to find out why the accused are in custody or not in custody and we have mainly focused on bail. We don't go beyond the right of bail to consider the situation in which the women are detained.

I asked Mrs. Nyasulu about a recent training program and the content of the materials that the MHRC had just produced on women's human rights and she stated that:

The purpose was to link women's rights with what happens to women whilst in prison. It talks about women as child-bearers and child careers – why the family does not take up the children so that the woman does not have to take the child into prison or police cell.

Although the training was specifically to ‘link women’s rights with what happens to women whilst in prison’ Mrs. Nyasulu told me that she had never thought of menstruation as a human rights issue and it was not one of the aspects MHRC considered for training. After visiting MHRC, I wanted to find out whether other human rights and women’s rights organisations considered management of menstruation in police and court cells as connected to women’s rights. In this respect I had occasion to interview the Director for MHRRC, Mrs. Makhambela, who told me that:

We have never thought about the issues of management of menstruation for women in custody – but even suspects are entitled to the right to privacy and respect as human beings. I must confess that we have never gone beyond the issues of separation of men and women in the cells as a right.

Just like Banja La Mtsogolo whose motto is “*Providing Choices in Reproductive Healthcare Countrywide*” all the human rights and women’s rights organisations visited did not see, until this research, the right to reproductive health as having any connection with menstruation for women in police and court cells. Global AIDS Interfaith Alliance (GAIA) provides bursaries to the girl-child in secondary and nursing training schools who has been affected and/or infected with HIV/AIDS. I was informed that among the things that GAIA distributes are sanitary wear and stationery. Sister Gertrude Chipungu, the Director, informed me that she started the project because:

Being a woman makes me look for the basic needs because I grew up being needy myself so I have an interest in the basic needs of an orphan.

When asked if the woman in prison would be considered as a beneficiary of the sanitary wear and she said that:

We have never thought of distributing sanitary wear to prisons, but I think if we were given a concept paper we would look at it – the women in prison are a forgotten society. Failure to provide for the management of menstruation in custody is failure to provide for women’s needs in critical conditions.

Whilst the needs of the girl-child are rightly identified to include menstruation, it would seem that not many people go beyond the prison walls to investigate how the ‘women’s needs in critical conditions’ are catered for as evidenced by what Mrs. Makhambela, Director of the MHRRC said:

I must confess that we have never gone beyond the issues of separation of men and women in the cells as a right.

There has been lack of genuine concern about addressing women's issue and those that seek to intervene on behalf of the women have been regarded with disdain when they try to address what are commonly called 'women's private matters'. I first learnt about the matter when I had an interview with Mrs. Nyasulu who told me that:

The extent of the intolerance was evidenced by the ridicule that Mr. Chamkakala suffered just because he wrote his dissertation at SEARCWL<sup>52</sup> on the rights of women and abortion. People did not take him seriously.

I followed up this matter with Mr. Chamkakala and he confirmed to me that:

It is true that my dissertation caused some uproar in some quarters – I was asked so many questions but mostly it was why as a man am I poking my nose into women's private issues ...for my spiritual leader the question was where do I stand on it spiritually.

As put by Dr. Chirwa, 'men's shaving has a public prominence' and therefore razor blades are provided to shave the beards, but women's menstruation is private and nothing is provided. Again, men's sexual needs are given priority by providing them with condoms, and these are needs that can be managed, and not women's biological occurrence over which the women have no control. Sodomy<sup>53</sup> is a felony punishable with a mandatory sentence of fourteen years and with or without corporal punishment. However, with Government's compliance, PSI has bent the law backwards to provide condoms for the sexual needs of the men.

The Assistant Commissioner of Prisons, Mr. Sambakunsi, in a brief interview, which I asked him if his office had ever received any complaints about menstruation said that:

I have never received any reports or complaints about menstruation. It is doubtful that the women would ever complain about that because they are ashamed – these are not public matters.

The grounded reality is that there is no policy for that which is considered to be private. And, because most of the discrimination that women suffer is lodged within the so-called 'private sphere' there is need to investigate the operation of the law within that sphere. It was apparent that women are not expected to drag their private business into the public arena. However, when

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<sup>52</sup> Southern and Eastern African Regional Centre for Women's Law – University of Zimbabwe

<sup>53</sup> Section 153 of Penal Code Chapter 7:01 of the Laws of Malawi, (2003) Government Print, Zomba, Malawi

that which is considered to be private has an impact on women's public life then there is need to breakdown the walls between the private and public to address the needs of women. It would seem that not much thought has been applied as to how a woman is supposed to manage her private issues when her ability to do so has been curtailed by incarceration.

#### **4.5 What of Culture?**

Throughout the research I noticed the initial surprise or shock of all the interviewees as I introduced the topic. All the respondents referred to menstruation as taboo at culture. I wanted to find out from the informers on culture what their views about menstruation. Usually cultural issues are well preserved in the rural areas. In Dowa I had asked Mrs. Sikiya and Mrs. Ndachi to enlighten me about the subject. Among other things they informed me that:

Issues of menstruation are shameful and men, not even husbands, should know when a woman or wife is menstruating or even where she hangs her pieces of cloth. Our ancestors used to tell us that men want the menstrual blood for juju (magic) so that they get rich. But also if the man did not love you he could use the blood to bewitch you so that you slowly bleed to death and he marries another wife.

Ideally I should have found out the views of the elderly men about the subject but I could not discuss the issue with men in the rural areas because it would have been considered discourteous on my part. And, being a victim of culture myself, I refrained from asking the elderly men about it. This explained to me the jeopardy that women in prison found themselves and how most chose to suffer in silence. Whilst different cultures hold different views about menstrual blood one thing in common is that throughout the country menstrual blood is considered as a taboo. The respondents, both women and men, came from two distinctly different cultures but they all agreed that menstruation was a taboo. The views of the respondents were concretized by what Justice Nyirenda said:

This is more to do with culture – menstruation is looked upon as purely feminine and we don't look upon it as something biological – it is something that is more hidden and kept away – so much that even the women themselves can't bring it up. Women feel they can't bring it out because they regard it as something dirty and they keep it to themselves.

Culture, dictated by patriarchal perception, treats menstruation as something shameful. As observed by Mchaju-Liwewe (2005:10)

Boys are advised to be wary of women during their menstrual cycle, or after birth or when they abort lest they die from sexual contact with women who have been made dirty by the poisonous flow of blood during that time.

In the southern most part of Malawi, especially Mulanje and Thyolo districts, it is still believed that menstrual blood has power to kill and when a woman is menstruating a man must refrain from having sex with her. It is also believed that a man's right to sex is unlimited so he is perfectly entitled to pick another wife/woman when his wife is not available as a result of menstruation. A woman has therefore to hide the fact that she is menstruating to protect her marriage<sup>54</sup> because women are socialized that being single is a curse. The woman must also protect the man from the poisonous blood, lest he dies. Menstruation therefore justifies a man for sleeping around with other women; it is for self-preservation. The chiefs, in connivance with the *nankungwi*,<sup>55</sup> are the guardians and gatekeepers of traditions and customs. Men, and in this respect in compliance with the *nankungwi*, have continued to use culture to guard their interests and control women for their own benefit by perpetuating the culture of silence over menstruation. The *nankungwi* have been socialized to uphold the superior position of men in the family and society. As I noted in Dowa the two elderly women would not even let me talk to elderly men about menstruation because it was discourteous to men and a taboo. Paradoxically, the initial menstruation is still celebrated by the community as a symbol of life giving and continuity of the society. However the negative aspects of menstrual blood are emphasized so much more that the positive is subsumed in the negative (Phiri 2007:39). Phiri (2007:110) noted that menstruation continues to be a private matter for women because women, by their attitude, seem to endorse the negative perception of men on menstruation.

The two responses reflect the impact of patriarchal attitudes on women. The responses show what women have been taught over the generations, and they have come to believe that what is said about them is true. They have internalized the prejudices against women and have learnt to conform with what is expected of them to the extent that they do not seek change.

The cultural effect was evidenced from all the women who reported that menstruation is shameful or a taboo, and they cannot discuss it with men. At Maula Prison, the younger women informed me that if given an opportunity to state mitigating factors they would have mentioned to the magistrate about the challenges of managing menstruation in police and court cells. If this

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<sup>54</sup> *ibid* p14

<sup>55</sup> Traditional counselors – usually women

happened it would be a new development and probably it should be left to future studies. It would be interesting to know what could make women talk about menstruation in public.

Wearing a *chitenje*, on top of one's dress, I learnt from the two elderly women of Dowa, comes from the patriarchal perception that 'a good woman exposes her legs only to her husband'. The cultural mode of dressing has, however mitigated the lack of means of management of menstruation for women in police and court cells as seen from the examples of the women who had *chitenje* at the time of arrest.

#### **4.6 Women as Care Givers**

It is commonplace knowledge that the food in prisons is usually of poor quality. When I was first told that women are allowed to cook their own food I concluded that it was to the advantage of the women because they were in control of the quality of their food. However being a women's law researcher I wanted to find out from the prison warders at Maula Prison the genesis of this practice. I was informed that:

In all prisons now women are allowed to cook their own food. This is because the men's sections are full and they need more attention. It was therefore felt that because women are few and know how to cook already that they should cater for their own needs. They are given their daily portion but they do the cooking.

At Mzimba Prison women were also cooking their own food. What this means however is that the women have find their own firewood, and as noted by the Inspectorate, firewood is a problem at Maula Prison<sup>56</sup>. The women also plant their own vegetables. At Maula Prison women have no shelter for cooking and, come rain or sun they are cooking in the open, increasing the burden that women have to bear by the mere fact that they are women. Originally all food was being cooked under one shelter, but because of the increase in the numbers of men in prison the shelter is now for the men's use. Mzimba Prison however has a covered cooking area. I also learnt that as a result of this when there was inadequate food, the women at Maula Prison were not given their portions and had to look for food in the nearby gardens. However when I enquired whether the same applied to the men the warders said:

You cannot do that with the men otherwise they will riot.

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<sup>56</sup> Malawi Inspectorate of Prison *ibid* at note 39, p11



This resonates with the way women have been socialized; generally they will sacrifice their food for the men and children in their compounds. And, because women are not expected to riot like the men they are exploited and denied even an equitable share of their portions.

The low status given to women's position is not limited to the prisoners in Malawi. Dr. Chirwa, when asked about the management of menstruation in the prisons in African, she said:

In all the prisons that I went to in Africa women were not given sanitary wear. After lobbying with those in authority now sanitary towels are provided in South African prisons, Ethiopia and Namibia. In Mozambique it wasn't until 2005 that women were given something to use as sanitary wear.

I learnt that the office of the African Commission in Cote d'Voire is responsible for sending the individual country reports. Efforts to trace the reports on Malawi proved futile as the policy makers did not seem to know the actual office that receives them. It would have been important to know what issues the Commission has raised in respect of management of menstruation in Malawi and what action has been taken on these reports.

Dr. Chirwa further stated that:

I took up the issue of menstruation in prison with various governments after prison visits but nothing was being done because to the men it was not an issue – because the issue deals with women. Most of the officials were men. They would always say that they would take up the matter with higher authorities but did not do so, and yet the other issues that I would raise would be addressed and when I went back I would find that things were changing but nothing had been done about the issue of menstruation.

The way female prisoners are treated reflects society's treatment towards women in general as evidenced by the way female warders are treated. At Maula Prison female warders have no office and they have to use one of the tinned cells. Housing and marriage regulations are applied differently between male and female officers of the same rank, to the disadvantage of the female officers. I was of the opinion that some of the frustration that the warders feel finds its expression in the way that they treat the prisoners, whom they felt were receiving more attention from the various human rights and women organisations. Due to the limits of this study I decided that this would be another area for further studies.

## **4.7 A Visit Can Make a Difference**

### **4.7.0 The Malawi Inspectorate Of Prison Commission**

The Prison Inspectorate Commission a body set up under the Prison's Act takes its mandate from the Constitution:

1. Pursuant to Section 169 of the Constitution, the Inspectorate of Prisons was established in 1995 to:
  - Monitor the conditions, administration and the overall functioning of penal institutions taking into account the applicable international standards;
  - Carry out investigations, with the power to summon any person to answer questions relating thereto;
  - Visit any and all institutions within the Malawi Prisons Service, as well as holding cells in Police Stations with or without let or hindrance; and
  - Exercise such other powers as may be prescribed by an Act of Parliament.
2. The Constitution stipulates that the Inspectorate of Prisons is to exercise its powers, function and duties independent of any direction or interference of any other person or authority

Membership of the Commission from 1995 to 2005 was, according to the Chairperson:

...mostly men except one time we had a lady lawyer sitting on our Commission representing the Prison Services Commission but we never had a female visiting the prisons with us.

The Commission has been mandated to monitor the conditions and overall functioning of the penal institutions taking into account applicable international standards. During the period in question however no member of the Commission visited the female sections to see if the conditions and functioning of the penal institutions were in compliance with the international standards. Among some of the standards stipulated by the international legal instruments are the UN Minimum Standards Rules on what should be provided for in prison and the need for provision of toilets, and a healthy and clean environment makes it mandatory that prisoners be provided with things like soap and disinfectants. Coupled with the UN Minimum Standard Rules are the issues of the right to dignity, privacy, respect of human beings enshrined in the international and national legislations that could have been used to ensure that the rights of women in police and court cells were being upheld.

#### **4.7.1 Visiting Justices**

When asked to comment on prison visits Senior Resident Magistrate Her Worship Ndovi stated that:

I have done prison visits before but no woman told me or complained about menstruation – I was with a male magistrate and the women did not tell me their problems. I was with the male magistrate because it was my first time to go to prison - I was being introduced. I went again the second time but it was to conduct an inquest. We are supposed to visit the prison, as often as possible but because of time I have not been able to go.

The Principal Resident Magistrate commented that:

I have never been to the police cells nor did I ever think of it before. I have never gone for a prison visit except in Zomba and Mzuzu and it was for research when I was working at the National Statistical Office. I have never thought of talking about that issue with the inmates. It is a neglected field.

When the issue of prison visits was taken up with the lay magistrates I was informed that there was a problem of transport and for two years they had not visited the prison. However they confessed that it is doubtful that management of menstruation would have been on their agenda if they had an opportunity of visiting prison. With the new information that they had acquired the magistrates indicated that they would ensure to physically visit the female sections at police stations and prison and ask about the management of menstruation.

#### **4.7.2 Parliamentary Legal Affairs Committee**

Membership to the Legal Affairs Committee is drawn from the various political parties represented in Parliament. As at 28 January 2008 the Committee had nineteen members eighteen of whom are men. Among some of the main functions of the Committee are to inspect prisons and police cells and make recommendations accordingly. When pressed to explain about the disparity in the representation based on sex Mr. Chamkakala said:

In most of the crucial committees we have the absence of women who would bring the necessary changes. The perception of most political leaders about gender is skewed – ... the most important thing is for the political leaders to understand where women should be... leadership to Committees is usually considered as a benefit. Sometimes even where a member is in a committee representation in the committee depends strongly on what their Party says and the women just ‘bow’ so that their contribution may not be constructive.

When the Committee visited Maula Prison the only lady member was sick and only the men visited the prison. By some design the members of the Committee decided that the women's section would not be visited and the women were called out to meet the members. Recommendations were made about changes to be effected in the cells. It was not established whether these recommendations would apply across the board. If that were the case then implementation of such recommendations will be based on the male paradigm, which may not necessarily be sex sensitive.

### **4.7.3 Human Rights and Women's Rights Organisations**

One of the functions of the human rights and women's rights organisations is to monitor government's compliance to international obligations. The MHRC<sup>57</sup> in 2006 had, as one of its targets the Malawi Police Service. MHRC found, among other things, that the policies of the Malawi Police Service were in line with the mandate under Section 153(1) of the Constitution and reported that:

The Policy Framework further lists the rights of detained persons the Malawi Service undertakes to uphold as including the right to be given food and clean water; the right to apply for bail; right not to be tortured; right to be treated humanely with dignity and respect; and the right not to be forced to make a confession.

MHRC also noted that:

In 2006, the Commission noted improvements in the Malawi Police Service, ...(MHRC Report).<sup>58</sup>

Interested in the 'noted improvements' I wanted to find out what specific strides had been taken in terms of women's rights in general and management of menstruation in particular.

We have never gone to visit the cells at police. We have been to prison but have never found out from the women how they manage their menstruation.

I could not establish therefore the yardstick that the MHRC had used to investigate whether the rights of prisoners to clean water, right to be treated with dignity and respect had been adhered to and applaud the improvements in the Malawi Police Service without any assessment of the conditions and facilities of the cells.

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<sup>57</sup> Malawi Human Rights Commission: 2006 Executive Report on Human Rights Accountability in Malawi by the Three Arms of Government, May 2007 p1

<sup>58</sup> Ibid p21

#### 4.7.4 Gendered Structures and Actors

The empirical evidence of lived realities of women shows that the structures and policies of the police and courts are gendered. The structures (these include the cells, toilets and bathrooms) are meant for and only suited to the male user and they cannot accommodate management of menstruation. As Mr. Chamkakala observed many toilets in police stations only have urinals, which made it almost impossible for woman, even without menstruation, to use them.

The policy makers are mostly male and where there are women they are almost invisible because they have to promote the agendas of their political leaders. The women are few in number in any committee and on some committees there are no women. The National Assembly has one hundred and ninety four seats. As at 28 January 2008 women representation was only 14%.<sup>59</sup> According to the Civil Service Census of 1995<sup>60</sup> there were two hundred and seventy five men against eighty-five women at the decision-making levels in Government. As observed by Mr. Chamkakala:

If action is to be taken on matters of menstruation by the prison officers it will very much depend on whether or not they see that as a priority. Then again when the matter is reported to the seniors it will also depend on the attitude of the seniors and whether they think this is a matter worth taking up further. I however see a problem with the policy makers, because prison authorities have said there is no money for essentials such as soap, salt so obviously the issue of sanitary wear is out – allocation of funds would also be doubtful for that purpose.

In a culture where menstruation is a private matter, and never talked about in public, it would not be surprising that the large number of the policy makers would not consider menstruation as a priority in their deliberations. But even if there were more women in decision-making positions it is yet to be established whether they would have a policy for management of menstruation in police and court cells. As evidenced from the empirical data all the women respondents had never thought of management of menstruation as a women's rights issue.

As already observed the policy on imprisonment is biased towards men. Although the Minister responsible for prisons and the Inspectorate Commission have power to make regulations and

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<sup>59</sup> National Assembly: Committees Membership 2004 to 2009 List by Posts, The Office of Clerk to the Malawi National Assembly, Chief M'belwa House, Lilongwe

<sup>60</sup> Managing Human Resources Within the Government of Malawi *ibid* at note 48, p7

rules directly relating to particular sections of the police, prisons and courts, this has never been used to the advantage of the women. The language of the Prison Act, on the face of it, seems to be neutral. Its interpretation and application, however, clearly show that it was made with men only in mind. As already discussed the Minister has used this power to make rules and regulations in respect of a particular group of prisoners to benefit the men razor blades and condoms. There has been a high concentration of attention and resources on the male section without due regard to the female section with particular attention to specific sex needs of women. Whilst the women do not need the condoms for the reasons for which they were given to the men, there are other equally important distinctive characteristics of women that need particular interpretation of the policy. There is need to use the policy to make sex based analysis of the situations in prison when exercising such powers to benefit both male and female prisoners. I learnt from the Chairperson of the MHRC that the police officers and prison warders had been trained in human rights and gender yet from the lived realities of the women there is no respect of these rights.

#### **4.8 Separation of the Sexes**

The policy for imprisonment, according to the Prison Act:

Part IX – Segregation and Classification of Prisoners provides in Section 64(1)

Male and female prisoners shall be kept apart and confined in separate parts of the prison in such manner as to prevent their communicating the one sex with the other.

The policy makers informed me that the inequalities that women suffer were taken care of by providing them with separate accommodation from men. As a women's law researcher I decided to interrogate the concept of separation to find out if the women's needs were catered for. I found that the purpose was to protect the women from sexual abuse. The comments of the Inspectorate of Prison in 2002<sup>61</sup> were that:

The Inspectorate was however pleased to note that female prisoners were completely separated from male prisoners and generally well looked after in terms of living conditions. It was further noted that female prisoners were always under the custody and supervision of wardresses.

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<sup>61</sup> Malawi Inspectorate of Prison *ibid* at note 80, p15

Having female warders, according to the grounded realities of women in custody, does not adequately address the management of menstruation as noted by Dr. Chirwa:

I was given nothing for management of menstruation at Zomba and Chichiri Prisons. I had to ask for old clothes to use. These are female guards and they don't even think about how women in custody manage menstruation.

Whilst there has been proper identification of the biological differences between men and women the separation has not gone far enough to identify what needs to be in that separate space. Women need water, for washing their pieces of cloth and a line for drying them, water for bathing and more particularly so when menstruating. Due to the low number of women in prisons there is no congestion in the female cells. However, privacy demands that the woman must have space to manage her menstruation in the absence of others, even if the others are fellow women. If therefore women's rights to equality and privacy before the law are to be meaningful there is need to interrogate the principle of separation more. It is not enough to put the two sexes apart. As already observed earlier men are provided with razor blades and condoms, which are gendered items without any compensatory measures for the women. The separation of the sexes, it is evident from the grounded reality, is not for the purposes of addressing the needs of the women but convenient for administrative purposes only. At Lilongwe Police Station the separation of the sexes only by "burglar bars" exposed the women to verbal abuse by the men and loss of the right to dignity and privacy in managing menstruation due to the nature of the 'walls' between the male and female cells. Failure to give meaningful purpose for the separation negatively impacts upon the rights of women that are always subordinated to men's values and qualities. At Maula Prison the separation of the sexes has translated into women being accommodated in tin houses. According to the women:

...these tin houses are hot when it is hot and terribly cold when it is cold and we do not have adequate mats and blankets for the cold.

At Lilongwe Police Station it was observed that only the men's cells had blankets and women were using their *zitenje* for covering. However, not all women comply with the mode of dress of using *zitenje* at all times. Failure to provide the women with blankets in the cells on that ground would be a gendered stereotyping of the women's dress code. At Lilongwe Police Station I was informed that there is no policy of separation of the sexes, but that common sense dictates<sup>62</sup> that

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<sup>62</sup> Underlining for emphasis

female suspects can only be arrested, searched and handled by female officers. But Justice Nyirenda noted that sometimes the women come to court with a male warder only.

#### **4.9 Power Relations**

Positions of power seem to have significance in the challenges that women face in managing menstruation in police and court cells. The data points to the fact that women in positions of power use their positions to oppress other women in lesser positions. Having female officers in charge of the women in custody did not improve the situation for the women. As observed by all the nineteen women who had menstruation in police holding cells, the female officers did not help them with the means for managing menstruation. Those that were allowed to have baths did so only with the intervention of the male officers. Heidensohn (1885:64) noted that Elizabeth Fry was the first to identify the needs of women prisoners as being different from those of men. After that Fry espoused the idea that having women officers in charge of women prisoners helps to meet the women's needs. However Joyce and her two friends reported that the female officer did not even allow them to empty their eighteen-liter container when it was full after two days. All the women at Mzimba Prison said male officers seemed more helpful than female officers. Bardsley (1987:74) had earlier made the same observation when she noted that female officers are capable of inhuman and degrading treatment on fellow women. She noted further that this is sad because it was 'women doing it to other women'.

It would seem that power creates a social class that can be used to oppress those that do not possess it which leads to the abuse of the power. According to the 2005 civil servants' census,<sup>63</sup> there were 82 women as compared to 273 men in policymaking positions in Government, which was attributed to the gender imbalances in government policies. The question however is whether just increasing the number of women in the policy-making positions would adequately address women's rights and in particular the challenge of managing menstruation in custody. The prison warders at Maula Prison admitted that they have never taken up the matter of menstruation with the Officer in-Charge. They provide the women with old pieces of blankets. I

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<sup>63</sup> Managing Human Resources *ibid* at note 48p



did not find out whether they would tell the male officer about shortage of material for menstruation if there were no old blankets.

#### **4.10. CONCLUSION**

The marginalisation of women was generally influenced by the theories of the locations of women discussed above. The prison visits by various groups, which concentrate on the male sections, go a long way in rubber-stamping the perception of the unequal treatment of women, which is not sex sensitive. It was noted with all the respondents that there was lack of awareness about the challenges women face in police and court cells and that even if they had visited these cells they would not have picked up the issue of management of menstruation.

The discussion in the previous Chapters 3 and 4 have so far demonstrated that women's human rights are not respected because of the neutral language which excludes women specific needs and the location of the women within the criminal justice system which makes them invisible. The concluding Chapter now looks at various remedies and recommendations that could be adopted to remedy the situation.

## **CHAPTER 5**

### **CONCLUDING REMARKS AND RECOMMENDATION**

#### **5.0 INTRODUCTION**

One of the objectives of this study was to create awareness about menstruation as a human rights issue, and, in this respect, to make recommendations for policy reform for women in prison and provide an enabling environment for the management of menstruation. The recommendations seek to target the actors and structures identified in this study.

#### **5.1. CONCLUSION**

Making the woman the main focus and the starting point of the study assumptions were formulated in order to unearth the lived realities of women and how they manage menstruation in police and court cells. The data collected confirmed the assumption that menstruation is not provided for nor do the structures respond to the needs of women in respect of menstruation.

A number of factors were attributed to the absence of policy for menstruation in police and court cells, the main ones being the invisibility of the women in the criminal justice system and patriarchal perceptions of women.

The policy, which does not recognize the sex-based differences between men and women, is gendered in its operation thus prejudicing the women who find themselves in male-tailored institutions. A failure by the Constitution to distinguish between sex and gender, and the use of the neutral terminologies leads to further discrimination that negatively impacts on women who are not the prime target of the law. The absence of the right to management of menstruation in the international human rights instruments and the location of menstruation as a health issue denies its significance as a natural occurrence that needs specific management, especially for women whose ability to manage it has been curtailed by detention. The equality clauses that purport to remove barriers for women in the legal framework actually act as barriers because they purport to make 'equal' that which has nothing to compare with in men. The right to manage menstruation, it is apparent, largely depends on some goodwill interpretation of the legal

instruments at the international and national levels. Unless there is specific recognition in the international human rights instruments, the national laws and policies, and change of the African culture of silence on the issue, menstruation will continue to be a 'private women's issue' that seriously impacts upon the lives of women and causes multiple punishment. This is contrary to law, which provides that a person cannot suffer double punishment for any offence committed. Not only are women punished severely, but the criminal system also condemns women to additional punishment even before they are heard by denying them the means to manage their menstruation.

All this calls for a holistic intervention targeting the actors and the structures and the law, where the law encompasses the international and national legal provisions.

## **5.2 RECOMMENDATIONS**

Since the recommendations to the various actors are not uniform, this section will categorize the recommendations according to the various actors, accordingly.

### **5.2.0 Policy Makers**

One of the reasons for the lack of policy on the right to management of menstruation is lack of awareness among the policy makers. The policy makers for matters regarding Prisons include the principle secretaries, directors and deputy directors of the Ministry of Home Affairs and the Ministry of Women and Child Development.

These should be targeted and brought on board about the problems being faced by female prisoners in managing menstruation. This may be achieved through meetings by human rights and women's rights organisations.

The focus of these meetings should target achieving policy reform to bring on board issues of managing menstruation within the police and court cells. The policy should tackle the following areas:

The right to privacy must be accorded paramount importance in erecting accommodation for female prisoners. The Government, as a duty bearer, must provide modest sanitary facilities for female prisoners in all the institutions that the women may visit in the course of the criminal justice proceedings; this includes the police, prisons and the courts. Budgetary plans for prisons should include the provision of sanitary wear for the purposes of menstruation. There must be purposeful maintenance of a high standard of hygiene within the police and court cells at all times.

With the policy in place, the next step would be to target the Minister of Home Affairs to enact rules and regulations to put the policy in place. As discussed in Chapter 4, under the Prison Act, the Minister has unlimited power to make rules and regulations that pertain to a particular group of people or individuals.

### **5.2.1. Malawi Law Reform Commission**

The Commission is responsible for law reform and it is proposed that the following reforms be effected in law to give meaning to the national legislation and the rights of women in compliance with international obligations. Under Section 20(2) of the Constitution, Parliament is mandated to pass legislation that addresses inequalities in society. This can be interpreted to make specific provisions in respect of menstruation so as to comply with the international obligations.

### **5.2.2 Police**

It was noted that though police officers and prison warders have been trained in human rights and gender issues, there is a need to train them specifically with the aim of changing attitudes towards the management of menstruation. Monitoring of attitude change will be discussed under human rights organisations.

### **5.2.3 Court Administration**

The court administration must make sanitary facilities available and accessible to female prisoners for the purposes of managing menstruation. Arrangements must be made to ensure the availability of staff for purposes of providing assistance to women regarding menstruation,

where necessary. A clerk of the court must be assigned to ensure that women who are menstruating are provided with the means to manage their menstruation.

#### **5.2.4 Judicial Officers**

Judicial officers at all levels should carry out random police and prison visits to follow up on the management of menstruation within these institutions. In order to ensure that the female prisoners are given the right environment to voice their concerns, female judicial officers should visit the female sections of the police and prison cells without the accompaniment of male officers and make specific enquiries about management of menstruation. Judicial officers should be sensitized about the need to make physical checks of the cells and interview inmates, particularly with regard to management of menstruation. To this effect policy should be put in place that forbids the presence of police officials during interviews of inmates. The Judiciary should include as mandatory activities in the court schedules police and prison visits which are supervised by the Registrar of the High Court.

Judicial officers should make interventions by ensuring that menstruation is not used to punish women prisoners by finding out if their right to menstruation is being respected by the other actors and make rulings accordingly. This will include revisiting the practice of informing people attending court about court procedures and discipline and include information on management of menstruation and provision of sanitary wear. It will also include the Registrar of the High Court monitoring the efficacy of the practices on procedures and making reports accordingly.

#### **5.2.5 Human Rights and Women's Rights Organisations**

These organisations should train service providers on the rights to management of menstruation in police, prison and court cells. After such training the human rights and women's rights organisations must monitor compliance of management of menstruation for those in custody and report to Government about violations. In order to make compliance effective they should make random physical checks of the facilities in the cells. Reports of the African Commission on

Prisons should be used as a benchmark for the necessary changes to be effected in police and court cells from time to time.

As human rights and women's rights organisations they should propose amendments to legislation to take into account management of menstruation through Private Members' Bills to Parliament. The organisations should also raise awareness about the discriminatory consequences of lack of management of menstruation to the general public through workshops, seminars and the media. In collaboration with each other, coordinating partners (these include other stakeholders, both governmental and donors) should redesign and refurbish existing police, prison and court cells to accommodate management of menstruation. As seen from the grounded realities of women's lives, women do not know that they have a human right to menstruate with dignity and in private. It will be necessary therefore to train women in communities about the right to the dignified management of menstruation and how to report violations whilst in custody. The members of the Legal Affairs Committee and Women's Caucus Committee need to be trained so that they are more responsive to policy that is sex-based as opposed to gender-based.

#### **5.2.6 Malawi Inspectorate of Prisons**

The Inspectorate should create awareness among its members of the sex-based needs of women in police, prison and court cells. Members should be visiting specific cells so as to make recommendations that take on board the needs of men and women, as opposed to using the male prisoner as the sole standard. As a constitutional body monitoring the conditions, operations and management of police, prisons and court, the Inspectorate must report violations of rights to the African Commission on Prisons for follow-up with the State Party.

### **5.3 Going Beyond Recommendations**

The research raised a high level of awareness among policy makers and human rights and women's rights organisations. As pointed out earlier the aim of the study is to cause changes in the management of menstruation within the criminal justice system. Therefore, the recommendations made will be taken up with the appropriate actors. As suggested by Mr.

Chamkakala the findings of the research will be brought to the attention of the Legal Affairs Committee so that the necessary corrective measures can be considered. Using my new positions on the Inspectorate Commission and Prison Service Commission, it will be appropriate that I take up the matters with the various bodies and organisations. That, I believe, will mitigate the suffering of women who pass through the police, prison and court cells and have to manage their menstruation, because the dignified management of menstruation is a right and not a privilege.

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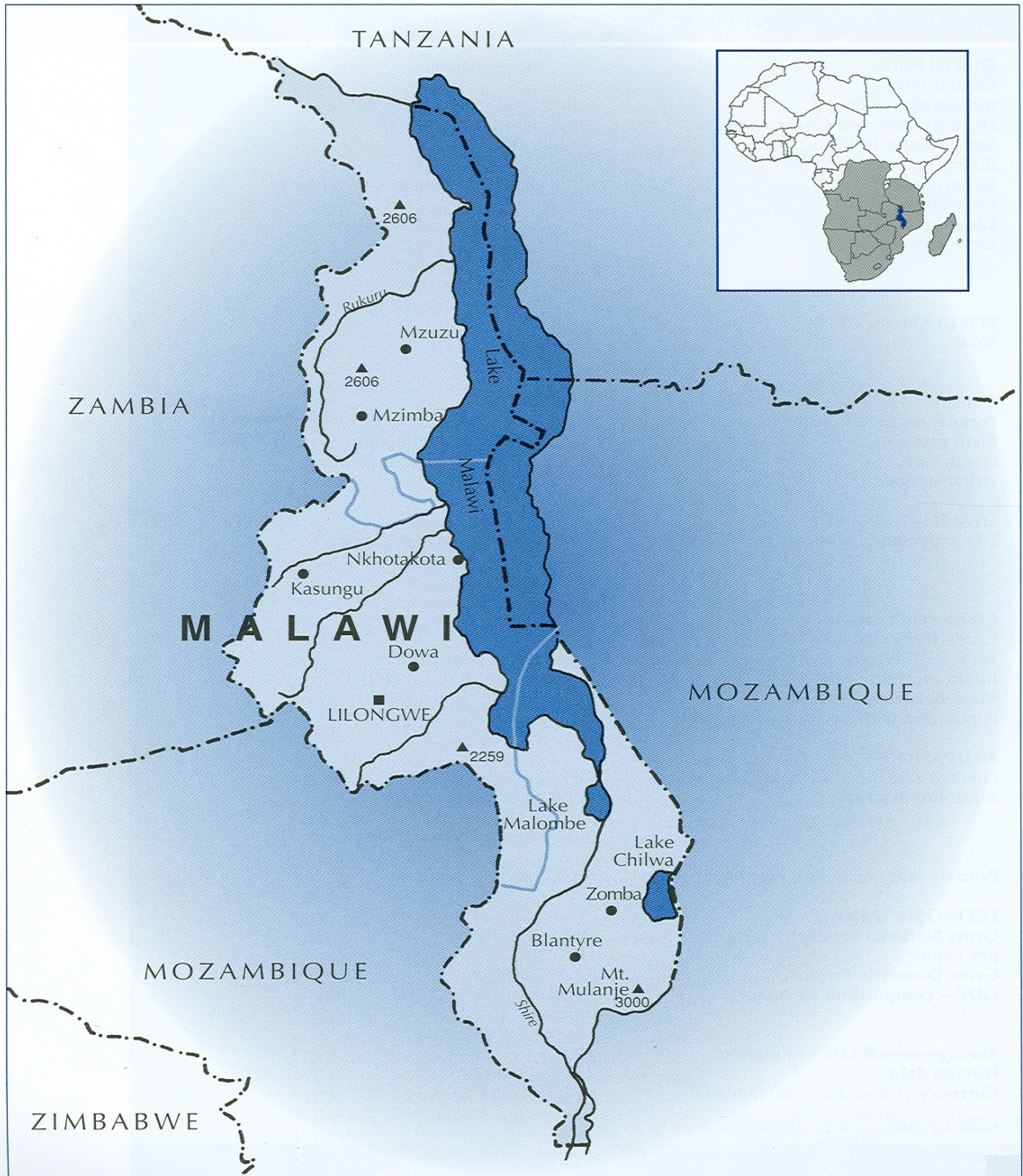
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# APPENDICES

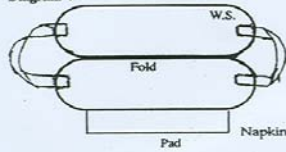
Appendix 1 - Map of Malawi with positions of police stations – sourced from WLSA Malawi (2005)

BEYOND INEQUALITIES



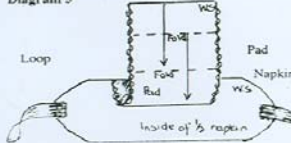
## Appendix 2 – The Femshuleni Sanitary Napkin

Diagram 4



- Tack 1 cm from edge, all round and leave space for turning out.
- Secure with running or machine stitch.
- Trim seam to 0.5 cm and press open. Clip on inner curves and notch on outer curves (See diagram 3)
- Turn napkin inside out and stitch up the space used for turning using overcasting.
- Attach loops as shown in diagram using top-stitching; Fold pad along fold lines (See diagram 5).

Diagram 5



### SUGGESTED FABRICS

- Clean old towels or any absorbent fabric
- Flannelette
- Thick knitted cottons
- The sanitary napkin can be sterilised by boiling
- The napkin can be bleached
- There is no risk of reacting to dyes
- Cotton fabric is advisable because it is:
  - Hygienic
  - Durable
  - Affordable
  - Comfortable

### CARE OF WHITE COTTON NAPKIN

- Rinse off the blood.
- Soak the napkin in cold water to remove bloodstains. If salt is available dissolve some in the soaking water for easier stain removal.
- Wash in warm soapy water.
- Boil the napkin to kill germs and to bleach the napkin. If available, chemical bleach such as jik can be used for this purpose. Dissolve some bleach in cold water and soak the napkin. Rinse thoroughly to remove the bleach afterwards.
- Dry outdoors in direct sunlight.
- When dry, iron to kill germs.

### HINTS ON PERSONAL HYGIENE

During menstruation it is important to take extra care of yourself to ensure you smell fresh all the time. Bath daily.  
Make 3 or 4 femshuleni sanitary napkins to ensure you have enough protection all the time. Change sanitary napkins frequently. Wear clean underwear.

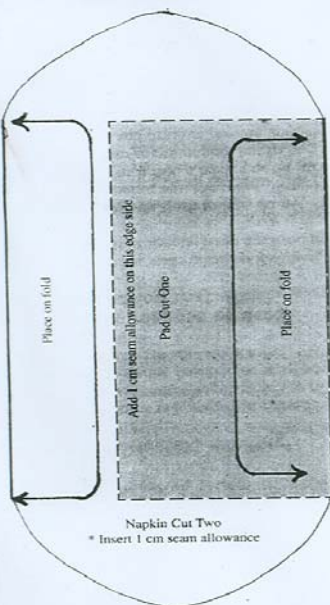
*If you need help, please contact Ms F. Sankanyo  
Midlands State University Faculty of Science  
Department of Home Economics  
P.O. Box 9033, Gweru, Zimbabwe  
Telephone: 034 00841 E-mail: faye@msu.org*

## The Femshuleni Sanitary Napkin



The Femshuleni research project is being conducted by Women's Law Centre, University of Zimbabwe and is funded by the Rockefeller Foundation

### THE PATTERN



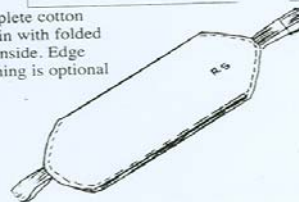
### THE FEMSHULENI SANITARY NAPKIN

- Research has established that:
- Girls miss school during menstruation because of poor or no protection;
  - the femshuleni sanitary napkin has been designed to help girls stay in school;
  - the femshuleni sanitary napkin is:
    - Affordable, girls can make their own even out of clean old garments;
    - Reusable because it is washable;
    - Portable and thus can be taken to school;
    - Versatile, can be made in different sizes with different types of fabric to suit individual needs and activities;
    - Above all, practical, has been tested and really works.

### INSTRUCTIONS FOR MAKING THE FEMSHULENI SANITARY NAPKIN

- Cut out the two pattern pieces provided and add 1cm seam allowance all round as shown on the diagram.

Complete cotton napkin with folded pad inside. Edge stitching is optional



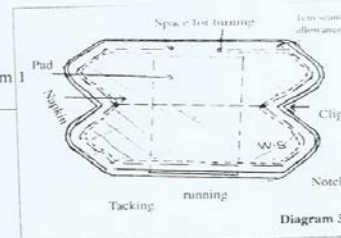
- Lay the pattern pieces on your choice of fabric and cut out.

Diagram 2



Place pad over one side of napkin, RS facing.

- Neaten the pad on three sides using overcasting or zigzag stitches.
- Place pad over one side of napkin with right side facing as shown in diagram 2.



- Place second piece of napkin with right side over pad.