
**CHALLENGES WOMEN FACE IN OBTAINING REDRESS THROUGH THE
CRIMINAL JUSTICE SYSTEM IN RAPE CASES: A CASE STUDY OF HANDENI
DISTRICT, TANGA REGION, TANZANIA**

BY

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**A Dissertation submitted in partial fulfilment of the requirements for a Masters Degree
in Women's Law, Southern and Eastern African Regional Centre for Women's Law,
University of Zimbabwe
2014**

Abstract

Rape is a crime, human rights abuse and public health concern. Although rape is a crime, with well-known mental and physical impact, a number of rape offences go unreported. The aim of this magistrate's research was to ascertain the adequacy for victims of the responses of state agencies to the crime of rape and the accessibility of the criminal justice system to rape victims. Various methodologies were used but the women's law approach was key to the use of the cross-cutting approach of the study.

The research revealed that many social-cultural factors were perceived as barriers deterring women from reporting the crime of rape to the criminal justice system. It was further revealed that health and legal institutions are not adequately accessible or equipped to handle rape cases. To promote and protect the rights of rape victims in line with human rights instrument standards, the writer suggests improvement in both the health and legal systems through a number of law reforms and the introduction of sensitization training for service providers. Educating the community and women's empowerment are also necessary.

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Declaration

I, Wilbert Martin Chuma, declare that this research is my own work. It has not been submitted for a degree, certificate, etc., to any other University.

Signed.....11/4/2014

Wilbert Martin Chuma

Dedication

This work is dedicated to my beloved wife Fatuma A. Mgomba for her emotional, moral and material support and her understanding my absence during my study. My children, Mercy and Emmanuel, for understanding my absence. My parents for my upbringing and showing me the right direction.

Acknowledgments

I would wish to thank God who made everything possible throughout my studies.

My special appreciation goes as well to the following:

Norad for their full financial support of the programme.

My supervisor, Professor Julie Stewart, the Director of Women's Law Centre for her guidance, comments and encouragement throughout the process of this work. Input from members of the panel during data analysis presentation are much appreciated.

Sesedzai Munyarazi, Cecil Mariri, Johnson, Shingi, Prim, Rudo and Blessing their support and assistance in their respective expertise cannot be forgotten.

My gratitude goes as well to the respondents for their willingness to participate during data collection. Editorial work done by Lesley Paterson and Mr. Bill Louw is appreciated.

My classmates for their assistance and co-operation throughout my studies are as well appreciated.

List of acronyms

ACHPR	African Charter on Human and Peoples Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPA	Criminal Procedure Act
DNA	Deoxyribonucleic Acid
GBV	Gender Based Violence
ICCPR	International Convention on Civil and Political Rights
LMA	Law of Marriage Act
MOHSW	Ministry of Health and Social Welfare
NPA	National Prosecution Act
OCD	Officer Commanding District
PF3	Police Form Number 3
PGOs	Police General Orders
RPC	Regional Police Commander
SEARCWL	Southern and Eastern Regional Centre for Women's Law
SOSPA	Sexual Offences Special Provision Act
UDHR	Universal Declaration of Human Rights
UNFPA	United Nation Fund for Population Activity
UNIFEM	United Nation Development Fund for Women
URT	United Republic of Tanzania
VEO	Village Executive Officer
WEO	Ward Executive Officer

List of international and regional human rights instruments

African Charter on the Rights and Welfare of the Child

Convention on the Elimination of all forms of Discrimination Against Women

Convention on the Rights of the Child

International Convention on Civil and Political Rights

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

The African Charter on Human and Peoples' Rights

The Universal Declaration of Human Rights

List of domestic policy and legislation

Criminal Procedure Act

National Health Policy

National Management Guidelines Policy

National Prosecution Act

Sexual Offences Special Provision Act

The Constitution of the United Republic of Tanzania

The Education (Imposition of Penalties to Persons who Marry or Impregnate a School Girl) Rules 2003

The Law of Evidence Act

The Law of Marriage Act

List of cases

Abdallah Manyamba v The Republic Cr App No 126/2005

Arabi Abdi Hassan v The Republic Cr App No 187/2005 (unreported)

Bakari v The Republic Cr App No 172/2005

Goodluck Kyando v The Republic Criminal Appeal No. 118 of 2003 (unreported)

Henry J.B. Kndal and others v Peter Hamilton (1887) 4 AC 504

Meston Mtulinga v R. Criminal Appeal No. 426 of 2006

Prosper Mnjoera Kisa v R. Criminal Appeal No. 73 of 2003

R v Hassan Said TLR 226

Said Haruna v The Republic Cr App No 227/2007(unreported)

Salehe Ahmed Salehe v The Republic Cr App No.91/2007(unreported)

Shabani Ally v R Criminal Appeal No. 50 of 2001

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Executive summary

This work provides a brief summary on what the research was all about, methodologies and methods used and the findings revealed on the ground. This study was carried out in Handeni District, Tanga region, Tanzania. The research was focused on the challenges women face in obtaining redress through the criminal justice system in rape cases. The objective of this study was to ascertain the adequacy of responses of state agencies and the accessibility of criminal justice system to rape victims. The reporting of rape cases and the responses of the community, family and service providers to rape cases was investigated.

In the course of my study various research methodologies and methods were used but the women's law approach was key to the use of the cross-cutting approach of my study. Methods of data collection like unstructured interviews, documentary review and group discussion to mention but a few were accordingly used in the entire study.

The research revealed that distance and the complexity of reporting process, financial constraints, and lack of information and communication, were perceived as barriers preventing women from using the legal system in rape cases.

An unfriendly reporting environment, lack of gender sensitivity, incompetence of service providers and corruption are further structural barriers that rape victims face when seeking redress within the criminal justice system. A lack of facilities and shortage of trained personnel in legal and health institutions lead to the improper treatment of rape victims.

The service providers and the general public are not aware of the National Management Guidelines which provide for the rights of the people and roles, responsibilities and guidelines for service providers who deal with victims of gender-based violence. Likewise the policy and protocols are not disseminated to health and legal institutions. Hence despite there being good and supportive guidelines, they remain confined to paper and currently serve no useful purpose for the people.

The study further revealed that social-cultural factors stand as barriers against the reporting of sexual abuse. Factors like fear and stigma, pressure and influence, family compromise in

terms of compensation and/or marriage prevent sexual assaults from being reported at all or reported in good time within the criminal justice system; they may even cause cases to be withdrawn or abandoned.

The study recommended among other things that a review of the laws is needed in order to harmonize them and do away with contradictory provisions in the existing legal framework.

Gender sensitive court procedures should be established and implemented in order to avoid the institutionalised re-victimization of the victims.

A witness-support unit should be established in courts to assist and explain what is expected of victims and what they should expect to happen while in court.

Victims must be assured that they are protected by the law, family and society at large as provided for under article 23(1) of the Convention on Civil and Political Rights 1996 through the enactment of vulnerable witnesses legislation.

The government should provide gender sensitization training for service providers to make them properly interpret and enforce the law. Special focus should be addressed at improving attitudes and behaviour toward victims and the public in general.

To increase access to the legal system and improve the quality of care to the victim, the government should ensure that the New National Management Guidelines 2011 are made available to all legal and health institutions as well as the general public. This will assist in reducing the complexity and circuitous reporting system found in the field.

CHAPTER ONE

1.0 INTRODUCTION

'The journey that women have had to take in search of criminal justice is not as direct or systematic as often alleged. In seeking justice the women is forced to travel many paths.'

Kidd et al. (1999:190)

This study was carried out in Handeni District, Tanga region, Tanzania as a case study. Tanga region consists of eight districts. Of the eight, Handeni District is the largest. The focus of my research was on the challenges women face in obtaining redress through the criminal justice system in rape cases. The objective of this study was to ascertain the adequacy of responses of state agency and accessibility of criminal justice system by rape victims. The reporting of rape cases and the responses of the community, family and service providers to rape cases will be investigated. This chapter covers the background of the study, its objective, research assumptions, research questions, limitations of the study and sets the stage for further discussions in the remaining chapters.

1.1 The background of the study

It is not easy to understand the reaction of rape victim unless one is aware on what rape represents. Some scholars describe it as the non-consensual intrusion of a man's penis into the vagina of a woman's privacy and autonomy...while the physical pain might be greater with the insertion of a bottle or other object; it is a penis penetration that is regarded as especially significant. It is the ultimate assertion of male power. The woman is having to suffer the most intimate proximity possible between herself and her assailant, a proximity not only degrading in itself but one that creates fear of vulnerable, disease and pregnancy (Burchell & Milton,1997).

The choice of this topic was greatly influenced by my experience as a magistrate. In this capacity I dealt with various criminal matters, including rape cases. During all my years on the bench I observed the way rape victims struggle to adduce evidence about what exactly happened to them in order to convince the court to believe that they were actually raped. In other words, I often found it difficult to find cogent evidence presented by the prosecution to

prove the crime beyond a reasonable doubt and convict the accused; but I didn't understand the reasons for such difficulties. Some of the victims did not appear for trial; hence, the court ending up dismissing the matter for wants of prosecution and releasing the alleged culprit.

As a magistrate I was never trained to deal with gender-based violence; even my undergraduate studies emphasized the rights of accused persons, and very little was taught about protecting the right of rape victims. The issue of gender sensitivity was not taught at all. Against this background all cases were given equal attention, except that in some cases, such as sexual offences were heard *in camera*. I never thought about the difficulties or distress experienced by rape victims in seeking redress through criminal justice system. My only concern was to ensure that the crime had to be proved based on the required standard (i.e., beyond reasonable doubt) short of which the accused was acquitted.

After commencing my studies at the Southern and Eastern African Regional Centre for Women's Law (SEARCWL,) during which I learned much about gender-based violence, I realized that rape victims are greatly affected by the criminal justice system in general starting right from the reporting stage. The way the state machinery responds and deals with rape case often re-victimizes them and therefore special assistance is absolutely necessary to accommodate those who have been so seriously violated by rape. I also noted, as rightly pointed out by Tamale, that sexual offences do not only damage a woman physically, but it also severely affects her mental faculties and dignity (Tamale, 1992: 9). This fact should be taken into consideration at every stage of the handling of rape cases so that any further loss of women's dignity does not occur.

Human rights instruments at international, regional and national level contain provisions which stipulate that various fundamental rights are to be enjoyed by all human beings. Unfortunately, in many settings, girls and women fail to adequately address their grievances because they remain unaware of the law or face social and economic barriers that make it impossible for them to exercise their rights (Bott *et al.*, 2005). Some women and girls who try to seek legal assistance after they are raped are often discouraged because, *inter alia*, there is a lack of effective legal standards and there are weaknesses and negative attitudes on the part of law enforcement agents who are responsible for implementing the existing laws.

From my experience before joining the programme, there was a rape case before me involving a victim below 10 years which at the end of the day the accused were sentenced to life imprisonment. Its trial was so challenging. It took me a whole day with only one case to record the evidence of the victim. There were several adjournments to let her relax, drinks and sweets were also bought for her. She was so reluctant to talk and was always sitting near the magistrate.

As I have said above by then I never thought the difficulties involved, but after the course I came to realize that the court environment was not user friendly. This is because though trial conducted *in camera* but the victim still faced the accused and other people due to absence of vulnerable witness provisions in our law. More so perhaps she encountered other hardships at police and hospital before coming to the court.

In order to understand the rationale behind why rape victims face difficulties in the criminal justice system, it was necessary for the research to reveal exactly what happens on ground and its impact to the relevant people, the women, in particular. Initially my interest was to study the problems women face during trial but my supervisor advised me to look at problems women face in obtaining redress through the criminal justice system in general, i.e., that I had to look at all stages rape victim pass through starting at the reporting stage through to the actual trial.

1.2 Objective of the study

The objective of this study was to ascertain the adequacy of responses of state agency and accessibility of criminal justice system by rape victims.

1.3 Research assumptions

The following assumptions and sub-assumptions were accordingly formulated as guidelines in carrying out my study.

1. Some women do not report rape cases due to pressure, influence, fear and stigma from the police and family members.
2. Some evidentiary standards such as corroboration requirements related to the evidence of a woman holds back prosecutorial process.

3. Lack of gender sensitivity by investigators, prosecutors and magistrates limits effective prosecution in rape case.
4. Rape cases are not properly handled due to the negative attitude of the police, prosecutors and magistrates.
5. Women face difficulties in adducing evidence during rape trials because of an alien and impersonal criminal justice.
6. Problems in evidence collection due to lack of cooperation between investigators, prosecutors and witnesses holds back prosecutorial processes in rape cases.
7. Lack of awareness among the general public/victims on the correct procedures after rape, i.e., not bathing and keeping clothes negates prosecution process leading to low convictions.
8. There are other underlying factors affecting accessibility to criminal justice system by rape victims in Handeni District.

1.4 Research questions

Based on the above assumptions the following research questions were framed.

1. Do pressure, influence, fear and stigma from the police, family and community or society members prevent some women from reporting rape cases?
2. Do some evidentiary standards such as corroboration requirements related to the evidence of a woman hinder the prosecutorial process?
3. Does lack of gender sensitivity by investigators, prosecutors and magistrates limit the effective prosecution of rape cases?
4. Are rape cases improperly handled due to the negative attitudes of the police, prosecutors and magistrates?
5. Do women face difficulties adducing evidence during rape trials because of an alien and impersonal criminal justice system?
6. Do problems in evidence collection due to lack of co-operation between investigators, prosecutors and witnesses hinder the prosecutorial process in rape cases?
7. Does the lack of awareness among the general public/victims about the correct procedures to follow after a rape (e.g., not bathing and not discarding one's clothing) negate the prosecutorial process leading to low convictions?

8. What are the other underlying factors affecting the accessibility to the criminal justice system by rape victims in Handeni District?

1.5 Limitations of the study

Some members of the criminal justice system found the research area questionable and were reluctant to respond to my questions, believing that the issues raised were the concern of women only. To overcome this I had to explain to them the nature of the research in more detail and the context of improving women's human rights to access criminal justice.

I encountered respondents who were understandably reluctant to provide information taking into account the nature of the matter researched.

Locating respondents was sometimes difficult in certain areas. Sometimes I had to go more than once to visit them because of their failure to keep appointments.

Getting permission to carry out my study, especially from the Handeni District Administrative Secretary, was also a challenge I faced.

Some of the respondents were very defensive (especially service providers) during the interviews I had with them.

1.6 Conclusion

This chapter has dealt with some general introductory remarks, my reasons for choosing the topic, the research objective, assumptions and research questions as well as the limitations of the study. They serve as a general introduction for further discussions in the following six chapters on the challenges women face in obtaining redress through the criminal justice system in rape cases in Handeni District.

CHAPTER TWO

2.0 METHODOLOGICAL FRAMEWORK

There is a saying that you cannot start a journey without knowing where to start and what route to follow to reach your destination. Similarly in my study in order to investigate challenges women face in seeking redress within the criminal justice system in Handeni District various methods and methodologies were used but the women's law approach was key to the use of the cross-cutting approach of my study. The approach is cross-disciplinary and pluralistic and calls for the free use of available materials whenever it can be found (Dahl, 1987). It involves building up legal and social science knowledge and encompasses the practices and perceptions of women and men (Bentzon *et al.*, 1998).

This approach is meant to engage with women at the grassroots level in order to achieve a holistic picture of rape victims' experiences. Using this approach and using group discussions, unstructured interviews, random sampling, I interviewed the people from Kwamatuku, Michungwani, Mazingara, Kwadoya, Kwamgambo and had direct conversation with them in order to gain as much understanding of their lived realities as possible.

For instance as a result of using this approach, I was able to find out the true manner in which the victims were treated by the service providers such as police, magistrates, prosecutors, hospital and what they considered to be the challenges such as harsh or mistreatment they faced when seeking redress from the criminal justice system, all of which will be revealed in the findings chapter. The methodology assisted me unearthing a number of dilemmas in decision making that women experienced between legal problems and those that were not regarded as legal problems; this helped me to identify possible solutions from an informed point of view. The interaction between the implementation of the laws governing rape cases (such as SOSP, Penal Code, procedural laws and evidence) and the real situation subsisting in the day to day lives of those in the enforcement machinery were also thoroughly investigated using women's law approach. The weaknesses and strengths of the existing laws and policies together with their applications were also analyzed in the light of feminist perspective on law.

The role and actions of the state were also assessed in relation to the lived reality on the ground using a number of international human rights instruments as the basis for a comparative analysis. The Maputo Protocol and SADC Declaration were the first to be looked at. Article 8(d) and article 21 direct that state parties take all appropriate measures to ensure that law enforcement organs are equipped to effectively interpret and enforce gender equal rights to ensure equal protection before the law and effective remedies to victims as more widely provided for under articles 7 and 8 of UDHR and article 13(1) of the URT Constitution. The provisions prompted me to question and assess the ability and competence of those within the law enforcement machinery to apply the law correctly, fairly and reasonably. I engaged with magistrates, police men and doctors to see how they understand and apply the relevant laws and human rights instruments.

The existence of article 12 of CEDAW (which requires state parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure equal access for both sexes to health care services) impelled me to question the extent to which medical services are accessible and affordable to rape victims in Handeni.

Articles 5(c) of the Protocol provides that necessary support must be given to victims of harmful practices through the provision of basic services (health and legal). Rape may lead to harmful practices through marriage arrangements and the state is required to ensure that those victims are protected and provided access to necessary services (health and legal) the failure of which amounts to violation of international human rights. It was important to assess whether the state is making efforts to ensure rape victim enjoy those services.

The state is also obliged to take appropriate measures to prevent violence against women and to protect women who are at risk as provided for under Article 4(1)(b)&(c) and Article 5(d) of the Women's Protocol. The state is duty bound to do so in order to ensure a victim's right to dignity and protection of humanity, legal right to and access to justice, to effective remedies, and the equal protection of the Law (as per article 3(1) and 8 of Women's Protocol, article 7 and 8 of UDHR and article 13 (1) and (2) of the URT Constitution) are respected. Based on the above articles cited, I had to question the efficiency of the state machinery to see how diligent its personnel are responding to sexual offences in Handeni District. Also I had to ascertain whether the reporting environment and processes are user friendly to rape victims.

In order to achieve a holistic thoughtful approach to the research, the grounded theory approach became my research tool of choice as it is an interactive process in which data and theory, lived reality and perception about norms constantly engage with each other to help the researcher decide what data to collect and how to interpret it (Bentzon *et al.*, 1998: 17). Using this method, the researcher collects data, sifts and analyses data, considers the implications of findings and then determines what to collect next to meet the needs of the research and continues with the collection and analysis cycle (Bentzon, 1998: 18).

This approach was used to test what the reality is on the ground regarding the adequacy of responses of state agencies to the accessibility of the criminal justice system by rape victims and the constraints women encounter in the course of seeking remedies in that system. This methodology also helped me to obtain an insight into emerging issues whose logical conclusion I had to pursue. For instance the issues of lack of information and communication and lack of due diligence by service providers, I first interviewed people within the community who gave me the reality on the ground. Thereafter other sources were also interviewed such as the police and medical doctors. I then went back to the community to obtain further clarity on the issues and its responses will be discussed in the findings chapter.

A number of actors in different structures dealing with rape cases were interviewed such as family community, police, lawyers, magistrates, and medical doctors, political and church leaders on their role in the fight violence against women such as rape. One-on-one interviews were useful especially with officials, when I and interviewees had more time, however I sometimes used the group discussion method (e.g., with members of the community).

I gathered a lot of data from the actors within their relevant structures since all of them dealt directly with the victims of rape in one way or another and they proved to be very important source of data. The approach enabled me to focus on rape victims, their relationships with police officers as well as other actors within the criminal justice system.

It was important to establish how rape victims negotiate their way through the difficult journey from reporting rape cases, being medically examined and undergoing court room examinations and what they experience at each stage and how they are affected by such experiences. I also needed to discover how those structures in one way or the other might influence reporting, non-reporting and or the abandonment of rape cases. A particular stage

of the process may facilitate or deny women access to the criminal justice system. For example Village Executive Officer from Mazingara was interviewed to know how he came to secure convictions in two rape cases at Misima village way back when he was serving as Village Executive Officer. Likewise local authorities, families and community members from Kwamatuku were interviewed together with the police regarding the failure of the authorities to prosecute two rape cases reported many years ago in 2006 and 2009. This will also be revealed in the findings chapter. There may be good laws but if the actors (police, medical doctors, magistrate and prosecutors) have negative attitudes towards a particular laws and or a victims, then that laws implementation will be compromised.

Table 1: Showing details of all the respondents

RESPONDENTS	WOMEN	MEN	TOTAL
Individual interviewees and group discussion	61	18	79
Police Officers	4	11	15
Magistrates	1	3	4
Private practitioners	1	4	5
Religious leaders	-	6	6
Health care providers	5	3	9
State Attorneys	1	4	5
Political and Local leaders	3	14	17
	76	63	121
TOTAL			

CHAPTER THREE

3.0 LAW, POLICY AND LITERATURE REVIEW

3.1 Introduction

This chapter deals with various studies conducted by other people regarding the crime of rape. The law, international and regional human rights instrument will be looked at to see what they provide on rape matters in general.

The Tanzanian government has shown its commitment to address gender-based violence issues by being a signatory to several international instruments related to gender-based violence and gender: The Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 1985) which has been instrumental in fighting the effects of discrimination, including violence; the Beijing Platform for Action (BPA, 1995), African Charter on Human and People's Rights on the Rights of Women, SADC Protocol as will be highlighted here under and then further discussion on its compliance on the findings chapter.

In its response to gender-based violence Tanzania has also put in place national policies and laws which regulate those matters affecting its citizen women and men differently but its enforcement is affected by a number of factors such as social, economic and cultural values.

3.2 International human rights instruments

Article 1 of the UDHR and article 2 of the ICCPR, ICESCR, CEDAW and the African Charter condemn discrimination on account of sex. For instance article 1 of UDHR states that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 12 of CEDAW requires states parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services. The study revealed that distance to reach medical services limits rape victims to enjoy health right. Failure to provide medical services in more accessible and affordable manner to rape victims' violates this right.

Article 15 of CEDAW provides for non-discrimination and equality before the law on the basis of sex. It also obliges state parties to accord to women equality with men in stages of procedure in courts and tribunals. The provision is sound if implemented at domestic level which to a great extent is not the case on ground. The study revealed that there are few rape victims who make use of the criminal justice system for legal remedy due to the manner the process is carried out, such as collection of evidence, medical examination and court room examination. This promotes indirect discrimination as the victims of rape are women.

Furthermore article 5(a) of CEDAW provides for the elimination of prejudices and all other practices which are based on the idea of the inferiority or superiority of either of the sexes. Rape victim face various prejudices within criminal justice system. The service providers sometimes tend to disbelieve the victim's story and ask them questions which suggest that they are telling lies. Since those prejudices still exist this indicates that the state has failed to fulfill its obligation to take appropriate measures to eradicate such prejudices and is contrary to article 13(1) and (2) of the URT Constitution which provides for equality and protection of the law for all persons. Equal protection remains questionable if some rape victims fail to report abuses due to the existing prejudices within the criminal justice system.

Likewise CEDAW in its General Recommendations 19 regarding Violence Against Women (article 24), the Committee on the Elimination of Discriminations Against Women recommends that:

- ‘(a) State parties should take appropriate and effective measures to overcome all forms of gender-based violence, by public or private act;
- (b) State parties should ensure that laws against family violence and abuse, rape, sexual;
- (c) assault and other gender-based violence give adequate protection to all women, and respect their integrity. Appropriate protective and support services should be provided for victims. Gender-sensitive training for judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;
- (d) States parties should encourage the compilation of statistics and research on the context, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;

- (e) States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report the measures that they have undertaken to overcome such violence including causes, prevention and the effect of those measures.’

However, the Government of the United Republic of Tanzania will fail to effectively abide by this General Recommendation particularly when no adequate training of the service providers such as police, magistrates, health personnel on the aspect of gender and awareness raising of the public at large is provided.

Article 3 of the UDHR states that everyone has the right to life, liberty and security of a person. The URT government should establish and implement gender sensitive laws and procedures which create a favourable environment for the victim to express their claims freely in the criminal justice system. The service providers have to be sensitized to deal with rape cases effectively and efficiently.

Article 7 of UDHR provides for equality and equal protection before the law without any discrimination. Article 8 of UDHR provides for the right to an effective remedy by the competent national tribunals. Article 8 of the Protocol to the African Charter on Human and Peoples Rights on the rights of women provides for access to justice and equal protection before the law. Article 3 of the African Charter on Human and Peoples Rights provides for equality before the law and equal protection of the law. Article 14 of the ICCPR provides for equality before the courts and tribunals in the determination of any criminal charge against him or his rights and obligations in a suit of law, every one shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law.

Article 3(1) of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa provides that: Every woman shall have a right to dignity and protection of her human and legal rights. The provision acknowledges the need and importance of woman care and protection of her human and legal rights without any inhibition as was emphasised by the wise words of Armstrong thus:

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

Article 4(1) of the Protocol, provides that every woman shall be entitled to respect for her life, the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

‘2. States Parties shall take appropriate and effective measures to:

- (a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
- (b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
- (c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
- (e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims.’

Article 8(e) of the Protocol obliges State parties to take all appropriate measures to ensure that women are represented equally in law enforcement organs. There are generally few female police officers in the police service. In that sense not all rape cases are handled by female police officers. The state is duty bound to ensure that the stereotypes that women may not manage such jobs be done away with and encourage women to participate and also create conducive working environment for them.

Articles 5(c) of the Protocol provides for necessary support to victim of harmful practices through basic services such as health and legal. Rape is one form of harmful practices and the state is required to ensure that those victims are protected and provided with necessary services (health and legal) failure of which amounts to violation of international human rights.

The government has put in place legislation which criminalizes rape offenders. The issue is to what extent those laws are implemented? And is women’s integrity and dignity respected and

protected by service providers? If not, why not? This is because the foregoing rights will remain abstract if not respected at domestic level. It is therefore important to examine the extent to which the government of the URT has fulfilled the international obligations to ensure women in Handeni enjoy their rights and protected when seeking legal redress in criminal system.

3.3 Policy framework

3.3.1 Tanzania National Health Policy 2007

The Tanzania national policies are drawn from the international conventions and regional instruments to which the country is a party and has signed and ratified.

The purpose of National Health Policy is to provide sufficient health services to every person including HIV prevention and response, however issues of GBV are not adequately addressed. Hence the Ministry of Health and Social Welfare took initiative to develop the National Management Guidelines Policy for health sector prevention and response to gender based violence in 2011. The Management Guidelines Policy was established in response to the directives of National Policy Guidelines for Health Sector Prevention of and Response to Gender-Based Violence (GBV). The guidelines have been translated and are available in Swahili which is the national language.

The aim of the guidelines is to ensure that those who experience gender-based violence receive holistic, effective and comprehensive medical and legal services at all levels in the country for both children and adults. The guideline provides standards for provision of high-quality and comprehensive medical services and procedures to gender-based violence victims. It also provides a frame work to guide comprehensive management of gender-based violence victims encompassing medical management and referrals with linkages to social and legal protection system.

The guidelines will provide medical providers with protocols to manage GBV survivors and help to train medical staff on how to establish service delivery points and how best to manage GBV survivors. Healthcare managers in the public and private sectors are expected to use these guidelines to plan, integrate, coordinate, monitor, and evaluate the provision of GBV services in facilities and the community. Healthcare providers will be equipped to handle the

medical aspects of GBV, including psychosocial care and support, collection of forensic evidence, and referral to the police or legal systems.

The guidelines outline the roles and responsibilities for health sector and other stake holders on how to handle gender-based violence. The policy also provides the guidelines for the Establishment of Police Gender and Children Desks of 2012 and Standard Operating Procedures on Prevention and Response to Gender Based Violence and Child Abuse of 2012. It further provides National Guidelines for the Integration and Operationalization of One Stop Centres (OSC) for Gender Based Violence and Violence against Children (VAC) Services in Health Facilities. The guidelines provide guidance to personnel working within the OSC at health facilities and other service providers on how to assist GBV and VAC survivors in provision of medical, social and legal services in a holistic and well-coordinated manner (Management Guidelines Policy, 2011).

The policy guidelines direct health providers to inform the victim and community the following when GBV occurs

Individuals who are at risk or experience violence need to find a safe space immediately with a neighbour, relative, local leader, or police. They should immediately inform a trusted individual or contact the police and report to a medical facility for treatment. The police can be reached at the police hotline (telephone number 112). In sexual offences, it is recommended that survivors do not clean themselves or bath, as this will destroy any evidence that needs to be collected for prosecution purpose in court.

It is further recommended that, if possible, victims should not change clothing. If a change of clothing is necessary, then the survivor should place the soiled clothes in a paper bag or wrap them in a newspaper, but not in a plastic bag. If possible, survivors should wait to urinate or defecate until they reach the health facilities. Survivors should use clean containers to collect urine or stool samples if they cannot wait.

And at the health facility, they should report to the reception/triage desk without waiting in the normal line take the card and report to a healthcare provider immediately.

If the survivor reports to a health care facility first, he/she should be treated without making a prior police statement and later report to a police station/post. If the survivor reports to the police first she should from there go to a health care facility for examination purpose.

If the victim reports to the police station first, she must ensure that she visits the hospital as soon as possible or within 72 hours of the offense. At the police station, the victim will report the incident, make a statement, and obtain a PF3 form (Management Guidelines, 2011:10).

Health service providers are duty bound to identify the victim in the queue and take her to a first track service. To provide counselling, ensure her confidentiality, treat her with respect and dignity to avoid trauma. They are also supposed to show empathy, and be sensitive, discreet, friendly and compassionate to the victim. Furthermore they should collect specimens for forensic investigations and document findings related to forensic evidence from history and physical examination conducted for prosecution purpose. They are also required to testify in court as witnesses once summoned (Management Guidelines, 2011: 25).

It was expected that the policy will be available in all health and legal institutions to enable service providers handle gender-based violence effectively and in more comprehensive way. However those guidelines are not available in health and legal institutions in Handeni District, hence service providers and the community at large are not aware of the guidelines as will be revealed in chapters four and six. Lack of awareness on the legal and health procedures and provisions prevent the people from taking appropriate action in Handeni District.

In response to the guidelines designed to improve its response to GBV the Tanzania Police Force on 26 November 2013 officially launched a three-year Action Plan for Police Gender and Children's Desks confidential spaces in police stations where victims of gender violence can file their complaints to female officers.

Gender desks are dedicated units in each police station consisting of a reception area, interview and counselling room, resting area and an office. The Desk officers are duty bound to conduct awareness raising sessions in schools and community meetings. The vision of the Police Force is to ensure that every child, woman or man that reports to a Desk is treated with dignity and sensitivity and that every case is handled effectively and efficiently.

‘The police force is committed to improving its response to survivors of GBV (gender-based violence) and victims of child abuse. To encourage survivors and victims to speak out, every police station needs to be a place where they feel safe, comfortable and supported,’ said Inspector General of Police, Saidi Mwema (Thomson: 2013).

This study will then investigate the effectiveness as far as implementation is concerned for realization of the right to effective legal remedy and services to rape victim in Handeni District.

3.3.2 Tanzania legal framework applicable to rape offences

The United Republic of Tanzania (URT) Constitution 1977 as amended from time to time was revisited to see what is contained in line with violence against women. The Penal Code, Sexual Offences Special Provisions Act, Evidence Act, Criminal Procedure Act, Police General Orders and National Prosecution Act were examined as they all deals with rape cases.

The URT Constitution fails to address the question of violence against women in particular and that is one of its weaknesses. It provides generally the right to life, liberty dignity, rights to security of the person, personal freedom, right to health and freedom of movement. It also bars discrimination on the basis of sex among other things. The Constitution also provides for the guidelines and principles for the state authority and its agency to rely on in determining individuals’ right.

Articles 12 to 24 of the Constitution contain the provision of the Bill of rights which every human being is entitled. Article 12(2) of the Constitution states that every person is entitled to recognition and respect for his dignity. Article 13(1) and (2) of the Constitution provides for equality before the law and that all persons are equal before the law and are entitled, without any discrimination to the protection and equality. Article 9(f) of the Constitution provides inter-alia that the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring that human dignity is preserved and up held in accordance with the spirit of the UDHR that human dignity and other human rights are respected and that all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism are eradicated.

Article 13(6) of the URT Constitution provides that, to ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

- ‘(a) When the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing;
- (b) For the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process;
- (c) No person shall be subjected to torture or inhuman or degrading punishment or treatment.’

Article 14 provides that every person has the right to life and to the protection of his or her life by the society in accordance with the law. Article 16(1) stipulates that every person is entitled to respect and protection of his person, the privacy of his own person.

Article 107A(2) of the URT Constitution provides that, in delivering decisions in matters of ...criminal matters in accordance with the laws, the court shall observe the following principles, that is to say:

- ‘(a) impartiality to all without due regard to ones social or economic status;
- (b) not to delay dispensation of justice without reasonable ground;
- (c) to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice.’

The Penal Code Cap 16 as amended by SOSPA 1998 under sections 130 and 131 provide for the definition of rape and its punishment, respectively.

Section 130 of the Penal Code as amended by section 5 of SOSPA, Act No. 4 of 1998, provides:

- ‘(1) It is an offence for a male person to rape a girl or a woman.

- (2) A male person commits the offence of rape if he has sexual intercourse with a girl or a woman under circumstances falling under any of the following descriptions:
- (a) not being his wife, or being his wife who is separated from him without her consenting to it at the time of the sexual intercourse;
 - (b) with her consent where the consent has been obtained by the use of force, threats or intimidation by putting her in fear of death or of hurt or while she is in unlawful detention;
 - (c) with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by any drugs, matter or thing, administered to her by the man or by some other person unless proved that there was prior consent between the two;
 - (d) with her consent when the man knows that he is not her husband, and that her consent is given because she has been made to believe that he is another man to whom, she is, or believes herself to be, lawfully married;
 - (e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man.
- ...
- (4) For the purposes of proving the offence of rape—
- (a) penetration however slight is sufficient to constitute the sexual intercourse necessary to the offence; and
 - (b) evidence of resistance such as physical injuries to the body is not necessary to prove that sexual intercourse took place without consent.
 - (c) For the purposes of this section spouses shall be deemed lawfully separated even if the separation is arranged by the family or clan members.’

Section 131 of the Penal Code as amended by section 6 of SOSPA Act, No. 4 of 1998, provides for the punishment as follows:

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

- (2) Notwithstanding the provisions of any law, where the offence is committed by a boy who is of the age of eighteen years or less, he shall–
 - (a) if a first offender, be sentenced to corporal punishment only;
 - (b) if a second time offender, be sentence to imprisonment for a term of twelve months with corporal punishment;
 - (c) if a third time and recidivist offender, he shall be sentenced to life imprisonment pursuant to subsection (1).

- (3) Notwithstanding the preceding provisions of this section whoever commits an offence of rape to a girl under the age of ten years shall on conviction be sentenced to life imprisonment.’

S. 138 of the Penal Code Act as amended by section 11 of SOSPA provides for the offence of defilement by a husband of a wife under fifteen years as follows:

- ‘(1) Any person who, being married to a woman under the age of fifteen years, has or attempts to have sexual intercourse with her, whether with or without her consent, before she has attained the age of fifteen years, is guilty of an offence and is liable to imprisonment for ten years.

- ...

- (6) Nothing in this section shall render it an offence for any person of African or Asiatic descent to marry or permit the marriage of a woman under the age fifteen years in accordance with the custom of the tribe or religion where it is not intended that the marriage shall be consummated before the woman attains the age of fifteen years.’

The SOSPA seems to improve protection of women and children in particular, however its enforcement and or implementation are limited by legal challenges and social-cultural factors which influence the pursuit of such matters outside the legal system. The law criminalizes sexual intercourse of a girl below 18 years; but if the victim is married and is subjected to

forced sex by her husband, this is not considered rape. The contradiction is not only in this legislation but also under the Law of Marriage Act (LMA) which permits the marriages of girls of 14 years and above subject to the leave of the courts and the consent of their parents or guardians.

3.3.2.1 The Penal Code and SOSPA and the laws of evidence

The wording of section 127(3) Tanzania Evidence Act as amended by Act No 4 of 1998 requires the court to receive and accept the evidence of minors and or victim of sexual offences without in depended corroboration. The section reads:

‘Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years or of a victim of the sexual offence, the court shall receive the evidence, and may, after assessing the credibility of the evidence of the child of tender years of as the case may be the victim of sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth.’

Section 144 of the Evidence Act provides for the required number of witnesses that:

‘Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.’

Section 164(1)(d) of the Evidence Act provides on impeaching the witness credit in the following words, when a man is prosecuted for rape or an attempt to commit rape, it may be shown that the complainant was of generally immoral character. At the same time lack of consent means lack of one of the elements which constitutes rape under section 130 of Penal Code as amended by section 5 of SOSPA.

3.3.2.2 Procedures and rules to deal with rape cases

The Criminal Procedure Act (CPA), National Prosecution Act (NPA) and Police General Orders (PGOs) deal with evidence collection, procedures, investigation and prosecutorial functions.

Under the CPA, PGOs and NPA police are directed to receive a complaint, attend the victim, arrest and detain the suspect, conduct investigation and gather or collect evidence for prosecution purpose. Prosecutors are duty bound to prepare the case and prosecute it before the court of law.

Section 186 of CPA requires sexual offences trials to be held *in camera*. The provision states that:

- ‘(3) Notwithstanding the provisions of any other law, the evidence of all persons in all trials involving sexual offences shall be received by the court in camera.’

Statements by medical witnesses are provided for in terms of 240 of CPA as follows:

- ‘(1) In any trial before a subordinate court, any document purporting to be a report signed by a medical witness upon any purely medical or surgical matter shall be receivable in evidence.
- (2) The court may presume that the signature to any such document is genuine and that the person signing the same held the office or had the qualifications which he possessed to hold or to have when he signed it.
- (3) When a report referred to in this section is received in evidence *the court may* if it thinks fit, and *shall*, if so requested by the accused or his advocate, summon and examine or make available for cross-examination the person who made the report; and the *court shall inform the accused of his right* to require the person who made the report to be summoned in accordance with the provisions of this subsection.’(Own emphasis)

This paper seeks to examine the extent in which law enforcement agencies comply with the law and policy guidelines in handling rape cases in Handeni District.

3.4 Literature review on rape

Some of the factors influencing women and girls to not seek legal services include, fear of stigma and judgment they may face from service providers; the negative attitudes and poor quality of care given by service providers (in particular, those that are the first point of contact - health and police); the fear of retribution by an abusive partner (especially where police capacity is low and orders of protection are not closely monitored); and intimidation

and hesitation to engage with a complex legal system and processes that are not gender-sensitive and may re-victimize them (UNIFEM, 2010).

Deciding to report a case of rape is a step many victims never take. If they do it is only the first step. There is a long road to conviction and sentencing (Estrich, 1987: 15). Because of the very nature of rape cases, victims have second thought on whether to report or not and not only to the police but also to their close associates like family members and friends. Victims always tend to blame themselves for the ordeal they went through and also wonder what response they would get if they had to tell somebody (Estrich, 1987: 15).

When a victim reports the crime of rape to the police station, she is asked to give her personal details, i.e., her age, marital and occupation status and emotional and physical condition. These personal details may determine whether a case will proceed further in the criminal justice system or be dismissed (Clark *et al.*, 1977: 83).

Police officers are not only one of the law enforcing organs but also the first to be contacted by victims. However, in many cases, they often fail to investigate cases or protect women and girls in danger of GBV (UNIFEM, 2010). Police officers' attitude towards GBV, victims of GBV or women in general can affect the success or failure in enforcing the law or protecting women and girls from GBV crimes (Logan *et al.*, 2006 and Campbell, 2005). Police officers' attitude affects how each case of GBV is reported and/or handled. That is why the attitude of police officers and the investigation officers towards a certain case are very vital to the outcome of the case (Original *et al.*, 2004).

Violence against women has long been shrouded in a culture of silence. Reliable statistics are hard to come by as violence is under reported because of shame, stigma and fear of retribution. It is not uncommon for women to be blamed for their own rape and for bringing dishonour to their families. One of the reasons women remain silent is that in many societies violence against women is accepted as a normal aspect of gender relations (UNFPA, 2005).

Overlooking the health implications of gender based violence is not just a missed opportunity. Women sometimes disclose intimate partner violence such as rape to health care providers and providers who respond by blaming the victim may inflict severe emotional trauma. Those who view violence as a social rather than health issue may fail to provide

holistic care to women in danger or to provide necessary even life saving care. Public health policies, institutions and programs must pay more attention to gender based violence not only as a public health problem in and of itself, but also as a key component of the HIV/AIDS pandemic (Bott *et al.*, 2005)

In deciding whether a case should continue, the prosecutor will look for corroborative evidence of rape. This is independent evidence which confirms other evidence. For example there must be corroborative evidence which confirm the victim's own account of the rape. (Taylor *et al.*, 1991: 30). The legal requirement of corroboration also necessarily means that immediately after a woman has been raped, she collects and keeps as much of the evidence and exhibits as possible, and that she undergoes a thorough medical examination as soon as possible. Given the level of our socio-economic conditions, and the state of the victim immediately following the offence, such legal requirements are not realistic (Tamale, 1992: 6). Yet it is possible and realistic if the victim is prepared or supported to do so and the services are accessible as provided for in management guidelines policy.

Tanzania eliminated the requirement of testimonial corroboration in rape cases following the enactment of Sexual Offences Special Provision Act (SOSPA) Act No. 4 of 1998. The Act amended the Law of Evidence Act, Act No.6 of 1967 (Revised Edition 2002). Section 27 of SOSPA and section 127(7) of the Evidence Act stipulates that:

‘Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years or of a victim of the sexual offence, the court shall receive the evidence, and may, after assessing the credibility of the evidence of the child of tender years or of a victim of the sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, *the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth.*’ (Emphasis is mine.)

Unfortunately much remains to be done, few reforms measures have been vigorously evaluated and little information exists about their effectiveness. Evaluation often highlights challenges than successes. For example judicial reforms often are poorly implemented, simply because government lacks the resources to educate judicial personnel about the changes (Usdin *et al.*, 2000).

The former Secretary General United Nations Kofi Annan expressed his concerns about violence against women:

‘Violence against women is perhaps the most shameful human right violations, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development, and peace’ (Kofi Annan).

Amnesty International is also of the view that sexual violence against women is a human rights violation that cannot be justified by any political, social, religious, or cultural claim (Amnesty International).

CHAPTER FOUR

4.0 REPORTING PROCEDURE AND THE ROLE OF SERVICE PROVIDERS

4.1 Reporting procedure

The law presumes that when a rape incident occurs the victim or care taker as the case may be will immediately report to police and then to hospital for medical examination and then back to police station to return the PF3 and undergo statement taking. If the victim reports first to the hospital she will be required after being examined to go back to police to report and get the PF3. The victim may contact the police via police hotline number 112 for quick action.

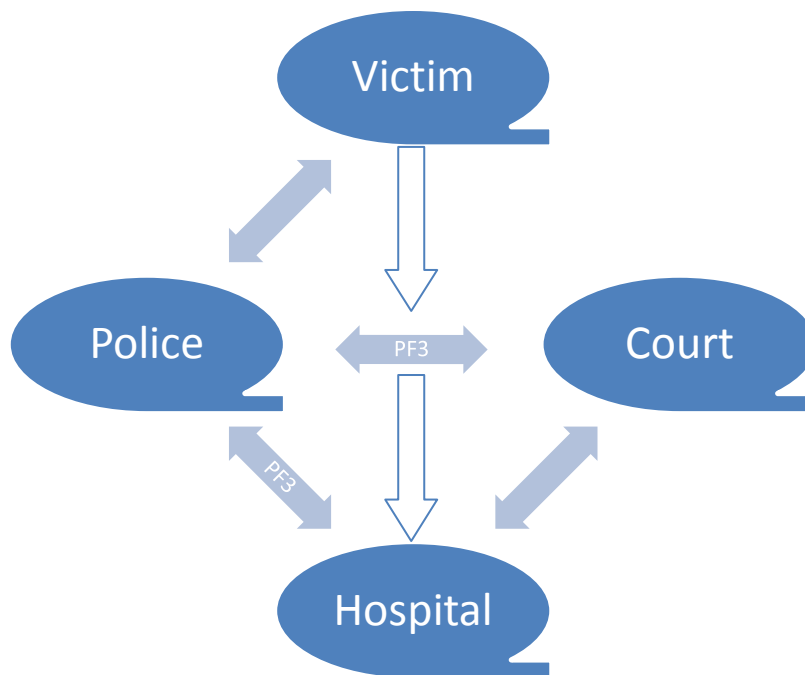
There after the victim is expected to be informed on the progress of the case reported by the police. It is this time when the identification or arrest of the offender, investigation and collection of evidence should take its course to prepare the docket for prosecution in court.

At the hospital the victim is not meant to be managed or treated together with other regular patients (e.g., they are not supposed to join the same queues as the other regular patients). It is recommended that survivors do not clean themselves or bathe, as this will destroy any evidence that needs to be collected.

If possible, survivors should not change their clothing. If a change of clothing is necessary, then the survivor should place the soiled clothes in a paper bag or wrap them in a newspaper, but not in a plastic bag.

If possible, survivors should wait to urinate or defecate until they reach the health facilities. Survivors should use clean containers to collect urine or stool samples if they cannot wait (Management and Guidelines Policy, 2011). The figure below illustrates the reporting process presumed by the law.

Figure 1: Diagram showing reporting procedures presumed in terms of the law



From the above figure the law presumes that the process will take place within short period of time but this is possible in a small geographical area. On the ground the study revealed very complex reporting processes contrary to what the law provides or expects as will be revealed in chapter six.

4.2 The role of service providers

4.2.1 Police

The police being the first point to come in conduct with the victim are expected to receive the complaint and issue Police Form No. 3 (PF3) for medical examination. The police have to open the docket and take the victim to hospital and take the statement of the complainant and any other witnesses if available at moment and file them accordingly. Another role is to arrest the suspect and make all necessities such as interrogation in accordance with the law and procedures. It is expected for the police to conduct investigation, collect evidence and take the suspect before the court for trial. In all that process the police officers are required to treat the victim with respect in order to maintain her dignity. They should exhibit a sense of empathy and also be sensitive to avoid re-victimization to the victim. They should collaborate

with reporters and any other witnesses and to observe the confidentiality doctrine. Patience and due diligence are required.

4.2.2 Health care providers

Health care providers should identify the victim in the queue and take her to a fast track service. To issue counselling, ensure her confidentiality, treat her with respect and dignity to avoid trauma. Furthermore they should collect specimens for forensic investigations and document findings related to forensic evidence from history and physical examination conducted for prosecution purpose. The PF3 must be properly completed and sent back to the police without delay. They are also required to testify in court as witnesses once summoned. They are also supposed to show empathy, and be sensitive, discreet, friendly and compassionate to the victim. To make sure that the victim is treated within 72 hours and follow up after 72 hours.

4.2.3 Court

The duty of the court is to hear or receive and assess evidence and give judgment according to the law of the land. In so doing the court is obliged to ensure that in all cases parties are fairly treated by judicial officers under the due process of the law and that respect to dignity and integrity is maintained.

The magistrates have to be knowledgeable on the content and context of the laws in order to avoid misinterpretation and application of the law leading into miscarriage of justice to either party in dispute. In addressing Judges and Magistrates conference in Dar es salaam on 7 December 1965 Mwalim JK Nyerere former President of URT said:

‘The fact that judges and magistrate interpret the law makes it vital that they should be part of the society which is governed by the law. Their interpretations must be made in the light of the assumptions and aspirations of the society in which they live. Otherwise their interpretation may appear ridiculous to that society, and may lead to the whole concept by the people.’

To ensure justice is not only done but seen to be done, Dahl said:

‘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 laws consequences for individuals’ (Dahl, 13).

Likewise, integrity requires magistrates to be human and knowledgeable in the law (Sammata, 2011).

The United Republic of Tanzania Constitution directs the court to adhere to the principles enshrined under article 107A(2) which states that, in delivering decisions in matters of ... criminal matters in accordance with the laws, the court shall observe the following principles, that is to say:

- ‘(a) impartiality to all without due regard to ones social or economic status;
- (b) not to delay dispensation of justice without reasonable ground;
- (e) to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice.’

The study will investigate on how the above prescribed reporting procedures and the role of service providers have been experienced by rape victims and its impact on the ground.

CHAPTER FIVE

5.0 THE RESPONSE, APPLICATION AND IMPLEMENTATION OF THE LAW BY SERVICE PROVIDERS

5.1 The interpretation of the law

Service providers are expected to have knowledge and skills on the content and context of the laws, understand the offence and its essential elements as stipulated by the law. To reach into sound and reasoned decision on rape cases ability and competency to understand, evaluate and interpret the law on evidentiary requirement. Corroboration may be defined as evidence tending to confirm some fact of which some other evidence is given (Massawe, 2000).

Corroboration is also defined as independent evidence which supports the testimony of the complainant, confirmation from some other source that the witness (complainant) is telling the truth in some part of her story which goes to show that the accused committed the offence (Tibatemwa, 2005).

The legal requirement of corroboration also necessarily means that immediately after a woman has been raped, she collects and keeps as much of the evidence and exhibits as possible, and that she undergoes a thorough medical examination as soon as possible (Tamale, 1992: 6).

The requirement of corroboration in sexual offences though it has been removed but the fact remains that it is a rule of practice and not mandatory in law and its absence is not by itself fatal to conviction. When interviewed on the existence of a sort of cautionary rule, the Magistrate from Handeni District Court responded that whether to rely on corroboration or not depends on the circumstances of the case at hand but much trust is placed in independent witness (third party corroboration).

Private practitioners on the other hand said corroboration is important considering the fact that its punishment is heavy and sometimes women tend to lie therefore there is a need to strictly ascertain from other sources what victims allege such as the medical report and other material and circumstantial evidence.

In addressing the issue of corroboration Hon Mussa J in the case of *Salehe Ahmed Salehe v The Republic* Cr App No.91/2007 (unreported) noted that:

‘The requirement of warning or cautionary rule is no longer there; and I should suppose further that, a victim of a sexual offence is viewed on the same footing as is the case with any other witness, save for a new requirement, imposed by the provision, for him/her to be a certified witness of truth, that is, upon such reasons as must be manifest on the record of proceedings.’

Speaking of the provision, I should make it clear that it is concerned and; exclusively so, with a situation where the testimony of the victim is uncorroborated. Where there is some corroborative evidence, it would not be necessary to invoke section 127(7). Some corroborative evidence is emphasized, of which, I assume, as has always been the case; corroborative evidence required of sexual offences need not be direct, *R v Hassan Said* TLR 226. The wisdom underlying being that offences of this nature are rarely committed in the open. It suffices if there is circumstantial evidence touching on some material particulars so long as it is sufficiently positive and tangible to support an inference of guilt.

From the study it emerged that the concept of corroboration is interpreted differently by some of the interviewed magistrates with what the law provides as rightly pointed out above by referring to third party corroboration. That interpretation ignores other material evidence which need not be direct as argued by Hon Mussa J in the *R v Hassan* case. Insisting on third party corroboration becomes impossible because rape cases occur mainly in the absence of witnesses who could substantiate the victim’s testimony. By doing so a gap is created between law and lived reality. It also contravenes section 143 of the Tanzania Evidence Act which provides that evidence of one person is enough to prove the fact, that no particular number of witnesses is required to that effect. But also it has been insisted on that the court should treat all witnesses as credible unless there some reasonable grounds to the contrary as it was held in the case of *Goodluck Kyando v The Republic* Criminal Appeal No. 118 of 2003 (unreported) ‘that...it is trite law that every witness is entitled to credence and must be believed and his or her testimony accepted unless there are good and cogent reasons for not believing a witness...’

Failure to know what constitutes corroboration might cause a miscarriage of justice in the course of the trial which mostly adversely affects the victim. Training is vital to make them understand, interpret and enforce or implement the law properly for better performance of their duties for effective and efficient delivery of services.

Training needs are also provided for under article 8(d) of Maputo Protocol, article 21 of SADC Declaration on Gender and Development and CEDAW General Recommendation 19 article 24(c) which directs States parties to take all appropriate measures to ensure that law enforcement organs are equipped to effectively interpret and enforce gender equality rights.

A close look on the provision of section 127(7) of the Law of Evidence Act as amended by SOSPA one may note that it gives courts a discretion on whether or not to act on uncorroborated evidence. The section reads:

‘Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years or of a victim of the sexual offence, the court shall receive the evidence, and may, after assessing the credibility of the evidence of the child of tender years or of a victim of the sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth.’

However there are no statutory guidelines on how to exercise this discretion or what factors to consider. Even principles found in case law leads to a dilemma as the courts discretion is invoked differently from one case to another. In the absence of clear guidelines there is the risk that the victim may become exposed to the prejudices of the magistrate. This is because judicial officers are human beings with individual values and beliefs peculiar to them and therefore decisions may differ from one magistrate to another in determining matters before them.

5.2.1 Negative attitude, unfriendly reporting environment and lack of gender sensitivity on the part of service providers

The reporting environment at police stations is not a conducive environment for making victims of rape feel free to express her claim. From the study despite the existing police gender desk, the complainant must first approach police officers at the counter where the

possibility of being interviewed by more than one officer is high. The interview is made before other people because it is an open place. The study revealed that in other police stations the victim is being interviewed at the police counter where again there is no privacy. There are no separate rooms set for such interviews. Therefore being a place where people walk here and there the victim becomes embarrassed to narrate a rape story while other people are listening.

Almost all victims interviewed blamed service providers for not being gender sensitive in dealing with rape offences. One of the victims who failed to report after being raped said:

‘I did hesitate to report my case to police because I was worried to be asked humiliating questions, equally in court where I heard that one has to explain all that transpired before other people.’

A similar view was expressed by the members of the group discussion held at Mazingara village regarding the issues of attitude and lack of gender sensitivity. One female representing other group members had this to say:

‘Police attitudes towards rape victim are always negative. Their questions normally suggest untruthfulness on the part of the victim. The questions are asked before other police officers as well as other complainants. It is impossible for a rape victim to respond to those questions and or explain her sexual experience freely before other people.’

From the service providers, 10 police officers out of 15 together with prosecutors and magistrates interviewed sided with rape victims and other respondents regarding the unfriendly environment at police and lack of gender sensitivity in dealing with rape victims. They however blamed the government for failure to provide them enough facilities. That they normally try all means despite lack of resources such as insufficient of interviewing rooms, shortage of female police though other police indicated that the number is sufficient at the moment. That they use female police to interview rape victims though sometimes it becomes difficult because of workload as they also perform other duties. One of them said:

‘We fail to handle rape cases in a proper manner due shortage of female police and lack of facilities as you can see we are lacking enough offices where we can interview rape victims in a more friendly way.’

The study therefore reveals that, despite the requirement to establish Gender and Children Desks at each police station with the aim of improving the response to gender-based violence, the state has failed to make that desk operational in Handeni District. It lacks facilities and there is shortage of trained personnel. For example in Handeni only one police officer trained to handle such matters. Obviously she cannot manage to handle those cases and meet the vision of the police force to ensure that every case is handled effectively and efficiently.

5.2.2 Unfriendly environment and lack of gender sensitivity at health facilities

According to the National Police Management Guidelines 2011 a rape victim has to be handled in a user friendly manner at health facility. The health providers are required to identify her in the line and take her to a first track service, provide counselling service before and after examination. They should treat them with respect, exhibit empathy to avoid trauma. Before carrying out an examination the service provider must inform and seek consent from the victim.

I found contrary treatment by service providers as pointed by one of the medical doctors that rape victim face stigmatization instead of being assisted to report the matter to criminal justice system for them to enjoy assistance of the law. He further stated that at the hospital rape victims are not given priority they have to follow the queue like other patients. He also contended that the guidelines are not available at health centres. They use experience and knowledge acquired from university. From that knowledge and experience they are supposed to treat those victims as emergency case if known or they come to their attention. There is no clear mechanism to identify them unless she identifies herself or through the accompanying person. It is difficult for the people to identify themselves because they are not aware about their rights and that at the hospital there are no any posters or flyers informing them of their rights. Failure to attend the victim immediately after reporting increases her trauma as she might have spent some time at the bus stop, police station and then at the hospital in the whole process of seeking those services.

Sometimes victims are not attended to on the reporting date which may distort evidence leading into acquittal of the accused even though the offence was committed. It also increases trauma as such results discourages them from reporting such issues to the criminal justice system. An example of the failure to exhibit due diligence by a medical doctor is found in the case of *Said Haruna vs The Republic* Cr App No 227/2007 (unreported). A 15 year old girl

was raped on 16/2/2001. After reporting the matter to the police she then went to the hospital but was not attended to. Rather she was advised to return the following morning. On 17/2/2001 she was not examined for a second time and only a swab (high vagina swab) was taken for examination for spermatozoa. She was examined on 19/2/2001 three days after the event. The doctor could not see any signs of violence in her genitalia and her hymen was found torn but it was not a recent tear. He could not reach a conclusion that she had recent coitus.

Another doctor stated that other health providers conduct examinations without taking into account the trauma the victim went through in the process. They conduct the examination without counselling the victim or even explaining to her the procedures involved nor do they seek consent from the victim or from any care taker who accompanies them. As a result the victim experiences more trauma and distress. The above scenario indicates a failure by the state to provide service providers with gender sensitization training to ensure that the right to recognition and respect of one's dignity is adhered to as provided for under article 12(2) of URT Constitution.

Lack of due diligence was also revealed in the following situation. It is quite clear that police officers are duty bound to arrest the suspect soon after receiving and taking a statement from the complainant. However the study shows that in rape cases police officers are reluctant to act immediately. This implies a sort of pre-existing bias by police towards rape victims. Changing negative attitudes and perceptions of police towards rape victims is of importance for better realization and protection of the rights of victims. For example, in a group discussion held at Kwamatuku village it was revealed by group members that a 65 years old woman was raped way back in 2009, the matter was reported to police but no action has been taken to date. The offender was never arrested and all this indicates failure on the part of the state and its agents such as the police to act with due diligence to protect victims by arresting and prosecuting the alleged culprit. The state is obliged to take appropriate measures to prevent violence against women, to protect women who are at risk as provided for under article 4(1)(b)&(c) and 5(d) of the Women's Protocol. The state is also violating the victim's right to dignity and protection of human, legal right and access to justice and equal protection of the law as per articles 3(1) and 8 of the Women's Protocol, article 7 of UDHR and article 13(1) and (2) of the URT Constitution.

CHAPTER SIX

6.0 THE TRIAL PROCESS

6.1 Inaccurate or improper filling-in of police PF3 forms and reluctance of medical doctors to appear and testify in court

Medical examination is very important in the process because the report forms part of the vital corroborating evidence in rape cases. The study shows that police and prosecutors insist on the availability of the medical examination report failing which it becomes difficult to bring a case to court for trial. When interviewed one prosecutor said:

‘It is difficult to take rape cases to court in the absence of medical evidence because in most cases getting eye witnesses is next to impossible. To avoid relying solely on the evidence of the victim we better insist for medical examination report.’

It is evident however that a medical report may not yield the best results for a victim who failed to report the event immediately due to the trauma involved in the process. Considering the nature of the offence...the victim may be too traumatized to report the matter immediately after its occurrence. She may as well not be in position to collect and preserve evidence and exhibits that could be used in the event of prosecution (Tibatemwa, 2005).

The above concern shows a need to improve the criminal justice system to enable the victim to report the incident effectively to avoid losing important evidence for prosecution purpose as medical evidence remains crucial evidence in rape cases. But also other means such as DNA testing was recommended by one of the doctors interviewed stating that it will serve its purpose particularly where the medical examination fails to reveal the presence of semen especially if the victim fails to appear for examination in time due to distance or time wasted in various reporting structures.

Medical personnel ought to assist the police by collecting specimens for forensic investigations and documenting findings related to forensic evidence from the history and physical examinations conducted for the purpose of prosecution. However the respondent

explained to me the problem of improper documentation of the police form (PF3) in carrying out their examination and failure to appear in court to testify.

The journey to investigate this problem started at the court where the magistrate stated that PF3 are sometimes improperly documented. The problem is not the PF3 itself but rather the way in which the doctors fill it in. But also doctors are not appearing in court to testify as expert witness which implies lack of cooperation. He went on to state that in court doctors never testify in cases before him which sometimes affects the outcome of the case because the law requires them to appear and testify on the document they filled in. The information received from the magistrate prompted me to interrogate medical doctors in their capacity as actors in the structure regarding the problem of incomplete or incorrect documentation and their failure to appear and testify in court.

The doctor in his defence stated that in law the proper person to fill in a PF3 form is someone with the rank of a medical officer and above. This is because those doctors are trained to handle such cases but below that rank conduct examination based on practices. Not all doctors are trained to handle rape cases or detect the signs that are necessary for them to consider and indicate when they fill in a PF3 form. It should be noted that qualified medical officers are placed at hospitals at district level and above but not at clinics or dispensaries that are the nearest sources of health care support to victims of GBV. Furthermore, it should be noted that the recommended hospitals for preparing PF3 forms are government hospitals not private ones which sometimes are more flexible than government hospitals. He suggested a need to train all health personnel and or doctors on how to deal with rape cases because the number of qualified personnel is not sufficient. His suggestion will comply with the law which presumes that health personnel who fill in the PF3 form is a qualified person to do so as explained in the Tanzania legal framework in chapter three.

An example of poor documentation of PF3 is found in the case of *Bakari v The Republic* Cr App No 172/2005 where a doctor filled his observation in columns 1,3,4 and 5 of the PF3 as follows: (1) Raped case (3) Genital area (4) Dangerous harm and (5) Sexual intercourse. He concluded with the remark 'dangerous harm'. The Court of Appeal expunged it because those details do not help the doctor or the court to conclude that the victim was raped.

Regarding failure to attend and testify in court, Dr Richard from Handeni District Hospital was of the view that perhaps unqualified doctors do avoid testifying in court in connexion with medical examination forms they have completed. He further argued that if he were called he would appear in court and defend his professional expertise but said that he had never been called upon to testify in court notwithstanding that he used to fill in a number of PF3 concerning rape incidents.

That information did not end my journey it rather paved the way to the police where investigators and prosecutors were interviewed regarding the failure of medical doctors to appear in court. Those investigators responded that according to section 240(3) it is the duty of the court to summon such witnesses if necessary and/or if requested by the accused or his advocate. They went on to say that in order to prevent the state case from becoming weak (because sometimes the court may not see any need to call such witness), they have started taking the statements of those doctors and listing them in the list of prosecution witnesses who are required to attend court if called.

Based on that information I examined the relevant case law to ascertain the views of judges in cases where section 240(3) has not been invoked by the magistrate. That took me to the case of *Abdallah Manyamba v The Republic* Cr App No 126/2005 where the doctor who prepared the PF3 form was not called to testify in court. On page 3 of the judgment of the Court of Appeal it was held that although the doctor who prepared the PF3 report was not called to testify, there was sufficient evidence to establish the offence of rape. From the foregoing decision it is evident that although medical evidence remains important in proving the offence of rape and that section 240(3) requires the testimony of the doctor who completed the PF3 form, the doctor's failure to appear should not be used as ground to defeat justice. This is because it is not the only evidence to prove the offence; other evidence will still suffice if the case is thoroughly investigated.

Article 107A(2)(e) of the URT Constitution directs the courts to dispense justice without being too tied up with technical provisions which may obstruct the dispensing of justice. The procedure for instance provided under section 240(3) of CPA exists in order to facilitate, not obstruct, the process of justice.

Notwithstanding the foregoing argument on non-appearance of medical doctors to adduce evidence on the document prepared, the Court of Appeal in the case of *Arabi Abdi Hassan v The Republic* Cr App No 187/2005 (unreported) directed all Judges-in-Charge to instruct magistrates to observe section 240(3) which requires the court to inform the accused of his right to have the doctor who prepared the PF3 to be called to testify. This is because a number of cases confirm that such an omission has led on appeal to the overturning of the state case and some of which have arguably amounted to miscarriages of justice.

6.2 An alien and impersonal criminal justice system and absence of facilities for vulnerable witnesses

The existing system is not promising for a rape victim as explained by the respondents during data collection. In a group discussion at Kwachaga area one of the respondents stated that:

‘Be it at police, hospital or court, the question of sexual history is inevitable which to them determine whether you were really raped or not.’

Another respondent who lost a case for want of proof leading to the acquittal of the accused person stated that during cross-examination the defence counsel tended to ask questions about past sexual experience to establish relationship if any in order to convince the court that the victim initiated the act. Requiring the victim to explain what transpired during an act sometimes way back in time may cause second victimization leading to self blame. When interviewed a Senior State Attorney also contended that rape victims mostly feel too humiliated to answer shameful questions especially those connected with their sexual history or experience especially how the event took place sometime in the past. To clarify the issue the magistrate replied by confirming that it takes time to convince the victim to say exactly what they ought to say because of their embarrassment to talk about such things arising from the culture. They feel uncomfortable talking about sexual experiences in the presence of other people. He also said that during trial the victim is normally placed between the magistrate and the prosecutor to keep a distance between her and the accused.

Societal perceptions about women being subordinate to men and the fact that they exist in order to be abused sometimes affects even service providers. Much effort is required to be made to convince them that the offence was actually committed. The same observation was also made by Armstrong who said that the victim is required to describe in graphic detail an

ordeal which was painful, humiliating and frightening and which she would rather forget. Her testimony is treated with suspicion. In effect she is put on trial (Armstrong: 1988).

It is beyond doubt that such a question may not be avoided in court in order to test credibility of witnesses as far as proof is concerned and of course to dispense justice for both parties. But sometimes lawyers do not act in a gender-sensitive manner which defeats the very purpose of testing the credibility of the witness. Furthermore, the environment in most cases is not conducive for the victim to narrate such matters comfortably. In my study for instance it was revealed that the magistrate, prosecutor and other personnel in court are all men. The victim is in a situation which she cannot feel free to reveal issues about sex in front of them notwithstanding that such cases are conducted *in camera*; she still has to face the accused and those service providers. The only way to avoid this is through the use of vulnerable witness protection provisions which will enable them to give evidence in a room separate from that of the accused or under the protective cover of a witness protection box.

The same view was expressed by the people in a group discussion held at Kwamgambo village who said that the system demands a personal explanation by the victims about the rape experience in front of other people and women feel humiliated having to talk about such issues in public. One of the group members stated:

‘The criminal justice system is dominated by male personnel, i.e., police, prosecutors, doctors and magistrate therefore narrating those incidents before them is a big challenge for women. In court the victims equate themselves to the offender the way trials are conducted for instance requiring them to prove the occurrence of the offence by explaining categorically what transpired.’

This problem will only be solved by disregarding the evidence of character, sexual history or relationships as in the case of South African laws where those issues are considered irrelevant in rape proceedings.¹

Commenting on this matter, the Senior State Attorney from Attorney General Chambers in Tanga Zone, recommended that magistrates should be reminded of their role was to interfere

¹http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0CC0QFjAB&url=http%3A%2F%2Fwww.law.utoronto.ca%2Fdocuments%2Fihrp%2FHIV_pearce.doc&ei=TRoqU6eAFo-0AXXpIGACA&usg=AFQjCNFFbDGCJeW1vNwCY66t3jLEblxFsw&bvm=bv.62922401,d.d2k-accessed on 20/3/2014.

in the proceedings to stop irrelevant and humiliating questions which tend to frustrate the victim unnecessarily.

6.3 Failure to name and/or describe sexual organ or parts

Rape victims become discouraged by having to refer to sexual organs and body parts using names which they are shy to use but which the court prefers or insists that they must use in order to avoid any misinterpretation. This issue was raised by the respondents in a group discussion held at Kwachaga who said that the words and language that the court insists on using is a problem because a model woman cannot pronounce or name sexual organs such as penis and vagina in the presence of other people. Terms like private parts or dudu are used to refer to sexual organs because women are shy. The failure to use the exact words which are required by the court may lead to an acquittal of the offender.

The magistrate confirmed this issue by saying that victims feel uncomfortable talking about sexual matters or naming body parts in court notwithstanding the fact that those trials are conducted *in camera*. It is important to prepare the victim psychologically prior to the commencement of the trial that is right from the reporting stage to make them aware of what they should expect to happen in court.

The problem of the use of graphic terms was also well responded to by the prosecutor and a private legal practitioner who said that for a number of the people it is difficult to use words that the courts and lawyers prefer because are not terms they normally use in their daily lives. They also stated that the situation is even worse for a child who requires special assistance when giving evidence because using legal jargon or graphic terms as such is not easy for them. They urged the court to take into account that children are still in the learning process.

6.4 Absence of witness support unit and the issue of demeanour

The credibility of witnesses in court is measured by their demeanour that is by the way they present themselves in court when adducing evidence. The look or manner of a witness, which includes hesitation, his/her doubts, variations of language, confidence, calmness or consideration, reveals much about the witness and the evidence given (Chipeta, 2009).

The data collected indicates that a number of victims are not aware of what is expected to happen in court due to the absence of a witness-support unit which could assist them by explaining what is expected of them and what they should expect to happen while in court.

Most people have never experienced the court system and are likely to be ignorant on the trial process. From the study it emerged that on some occasions the conversations indicated that rape victims may not use the criminal justice machinery for redress for fear being at risk of personal humiliation during trial.

But also cultural factors limit women's ability to meet the law requirement. For example, as regards the issue of demeanour, the lack of witness protection for vulnerable witnesses prevents women from adducing evidence in court at the required standard.

Similar concerns were also observed and shared by the respondents from Kwamgambo village who said that women usually have evasive eyes and cannot talk freely to and face men in conversation and as a result hence the issue of their demeanour in court may be held against them. From Michungwani area the respondents repeated the same story by saying that women are not easily trusted when adducing evidence due to their conduct which is influenced by cultural norms such as fear or feeling shame when looking directly at people.

Likewise the issue of demeanour as a problem was confirmed by prosecutors, and a state attorney from Attorney General Chambers that, as matter of culture, a woman is not expected to face a male or maintain eye contact. But in court the victims' demeanour is considered in giving evidence. Failure to look at the offender or magistrate weakens the case. The credibility of a witness is measured on the way evidence is presented, i.e., the failure to indicate any sign of distress may create doubt in the court's mind. But also remaining silent or hesitating before answering questions in court may lead to the conclusion that the witness is untruthful.

A senior State Attorney said:

‘Considering the nature of the offence which affects a women physically as well as mentally things like inconsistent evidence, discrepancies are mostly expected to happen especially with the prevailing procedures where a victim adduces evidence before a person who violated her.’

6.5 The offence of impregnating a school girl

According to GN No 265/2003 passed under Education Act 1978 the Education (Imposition of Penalties to Persons who marry or impregnate a School Girl) it is an offence for any parent who aids, abets or solicits a school girl to marry while pursuing primary and secondary education. A parent shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding two years or both such fine and imprisonment. But also it is an offence for any male person who impregnates a school girl and the offender is liable to imprisonment upon conviction for not less than three years and not exceeding six years with no option of fine. The reason behind its enactment was to curb the problem of school girls dropping out from school before completing their studies. Unwanted pregnancies and early or forced marriage were seen to be a major cause.

The study revealed that the community, society and general public at large take the offence of impregnating a school girl more seriously than rape. From the respondent such seriousness is due to the fact that the law punishes members of the family as well such as parents. Government pressure is also another reason that makes the offence seem very serious. For instance in Handeni District, the District Commissioner introduced a school based programme bearing a very famous slogan known as '*niache nisome*' which simply means 'let me study'. The aim is to raise awareness on gender based violence and its impact on the people, women in particular. That programme which proves the existence of political will influences the people to take it seriously. The attitude of service providers seems to be positive when they deal with this group of victims because of that pressure from the District Commissioner. In the interview held at his office the District Commissioner said:

‘My target group is that of young who seem to be more easy or open to accept changes and views on gender based violence than adults. Therefore school based programs is my preference. It is through this perhaps the social cultural norms will change which limits women to report rape cases.’

Despite those efforts those cases are still under reported and if reported are withdrawn for want of cooperation from the family who opts to marry off their children to avoid the burden of taking care of the victim and the child if the offender is jailed. The issue of marriage was confirmed by one Sheikh from Mazingara during a one to one interview that marriages of young girls below 18 years are conducted as Islamic religion allows such marriage. The only

thing they do is to prevent school girls from entering that institution although parents are hiding the truth as they use marriage as a solution once they are raped or pregnancies. Bakwata² Handeni had similar view as well but insisted that people report rape cases in order to protect women and children from abuse.

However despite the clarity of the legislation, girls are still undermined and/or discriminated against by being expelled from their studies after falling pregnant contrary to article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC) which provides that every child shall have the right to an education.

Article 28 of CRC require States Parties to recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. However, the education policy does not allow married or impregnated girls to continue with school. The Tanzania education policy does not conform to the provision of Article 10(f) of CEDAW which requires State Parties to ensure reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely. But it also contravenes section 3 of the GN which requires any enrolled school girl to regularly attend and complete the period of institution specified in respect of the level of education for the attainment of which she is enrolled. It also breaches article 11 of URT Constitution which provides for the right of education for every person. The rules focus more on punishing the offender without considering the well being of the victim and the child.

On the other hand this piece of legislation has an adverse impact on young girls who are not at school such as domestic workers. The legislators overlooked that class of people by disregarding them and as a result denied them protection of the law as provided for under articles article 8 of the Protocol to the African Charter on Human and Peoples Rights on the rights of women, article 3(1) of the Protocol right to dignity, human and legal rights, article 4(1) provides for respect for life, integrity and security of person. Also breached are the equality and equal protection by the law (article 7 of UDHR) and article 13(1) & (2) of the URT Constitution as well as right to recognition and respect of one's dignity (article 12(2) of the Constitution).

² Baraza Kuu la Waislam Tanzania (The Muslim National Council of Tanzania).

6.6 Conflicting laws

As pointed out in the legal framework the respondents complained about the confusion found in various laws regarding rape offences. The police, prosecutors, private lawyers and the magistrate stated that the available laws create a dilemma in the handling of sexual offences involving a girl under 18 years particularly when a girl consents to sex with age-mates. They went on to argue that allowing marriage between persons below 18 years of age while labelling non-consensual sex between sexually mature persons of the same age an offence creates ambiguities. This is because whether the accused is 18 years or below or both are of a similar age and the victim has consented, the law does not recognize such consent unless one is married subject to the consent of their parents. The issue of age is only considered in sentencing where a boy below the age of 18 years is given a lesser sentence if the culprit is a first offender as per section 131(2) of the Penal Code as amended by section 6 of SOSPA 1998. People become confused as to which law is applicable to a sexual offence. Below is an illustration indicating the contradictory laws within the Tanzania legal frame work.

Figure 2: Diagram illustrating the conflict of laws for a victim below the age of 18



The conflicting laws shown in the above figure create a loophole for people to marry off a girl below 18 years to the violator leading to denial of legal protection and of the right to respect, dignity and recognition as well as right to consent as enshrined in various human

rights instruments. It should be noted that even the Law of Child Act which provides a broad range of protection reflecting serious challenges facing children such as, right to protection from torture, non-discrimination, right to opinion and degrading treatment condones early marriage below 18 years.

Section 130(2)(e) of Penal Code as amended by section 5 of SOSPA, Child Act of 2009 and LMA Cap. 29 R.E 2002 contravenes international human rights and Constitutional provisions such as article 21(2) of ACRWC, article 6(b) of the Protocol, article 16(2) of CEDAW and its Committee General Recommendation 21 which bars child marriage and prescribes 18 years of age as being the appropriate legal age of marriage for both men and women. The Tanzania legal frame work also contravenes CEDAW General Recommendation 19 article 24(c) which obliges state parties to take effective measures to enact and enforce laws to prohibit all forms of violence against woman including unwanted or forced sex. This is because by allowing early marriage technically is to allow forced sex in that union because the parties are not legally competent to consent as they are below the age of majority.

The existing laws are in conflict with the provisions of art 16(1)(b) of CEDAW, article 16(2) of UDHR, article 6 of Women's Protocol and article 8 of SADC Protocol on Gender Development which curtail discrimination against women and insists on free and full consent between men and women to enter into marriage. The law also exposes girls to further sexual abuse within marriage as marital rape is not an offence under our law.

It also exposes her to pregnancy-related complications, including death, because the adolescent body is not fully matured. Therefore, allowing girls to get married under the age of 18 is as good as exposing their life and health to risks contrary to article 14 of the URT Constitution which states that every person has the right to live and to the protection of her life by the society in accordance with the law.

CHAPTER SEVEN

7.0 MORE BARRIERS AGAINST PURSUING LEGAL REDRESS

7.1 Fear and stigma

The victims suffer from the notion that the act of rape itself brings shame upon them. They are humiliated or stigmatized as if it is their fault and it even extends to their family and/or community. Most of the victims are not trusted, their families or community might think that the victim had a relationship with the offender prior to the crime. The rape victims are unwilling to disclose rape matters in public such as to the police and then to the courts which might cause shame to their families. Young girls are hesitant to tell their parents or guardian for fear of being blamed, accused of lying and of being a threat to themselves and to the offenders. In an interview with church members of Tanzania Assemblies of God in Handeni one reverend stated that:

‘It is necessary to understand the stigma that is folded into the blame put on woman. Once raped it is her reporting which brings more shame and disgrace than the act itself. This kind of humiliation stands as roadblock towards reporting rape cases.’

7.2 Fear of the offender

A number of women are threatened with their lives by offenders themselves and the extended family members of the offender if she reports the matter to the criminal justice machinery. Even if victims report the alleged culprit to the police leading to his arrest and he is then sent to prison after being convicted, the victims, due to the lack of any victim protection programme, is still worried about further harassment the moment the offender leaves jail on bail or his prison term comes to an end.

Selected using random sampling of respondents who were leaving court and those who were seated outside the court premises, one victim aged 16 years stated that she was raped by a neighbour aged about 30 who threatened to kill her if she reported the matter anywhere. After some time it was obvious she was pregnant and her mother took steps to report the crime to the police as a result of which the entire case was made public before the court. Despite this

publicity, the victim was still worried about the perpetrator's threats and how she would manage to adduce evidence in court before the offender.

7.3 Fear of divorce

Married women fear reporting rape incidents to either their husbands or families in order to protect their relationships. It is no easy thing to be believed by one's family or community members if you are really raped; they are usually inclined to think that the victim had an affair with the offender. One woman had this to say:

‘I was raped but for fear of being ashamed and blamed as well as embarrassing my family I have remained silent to date.’

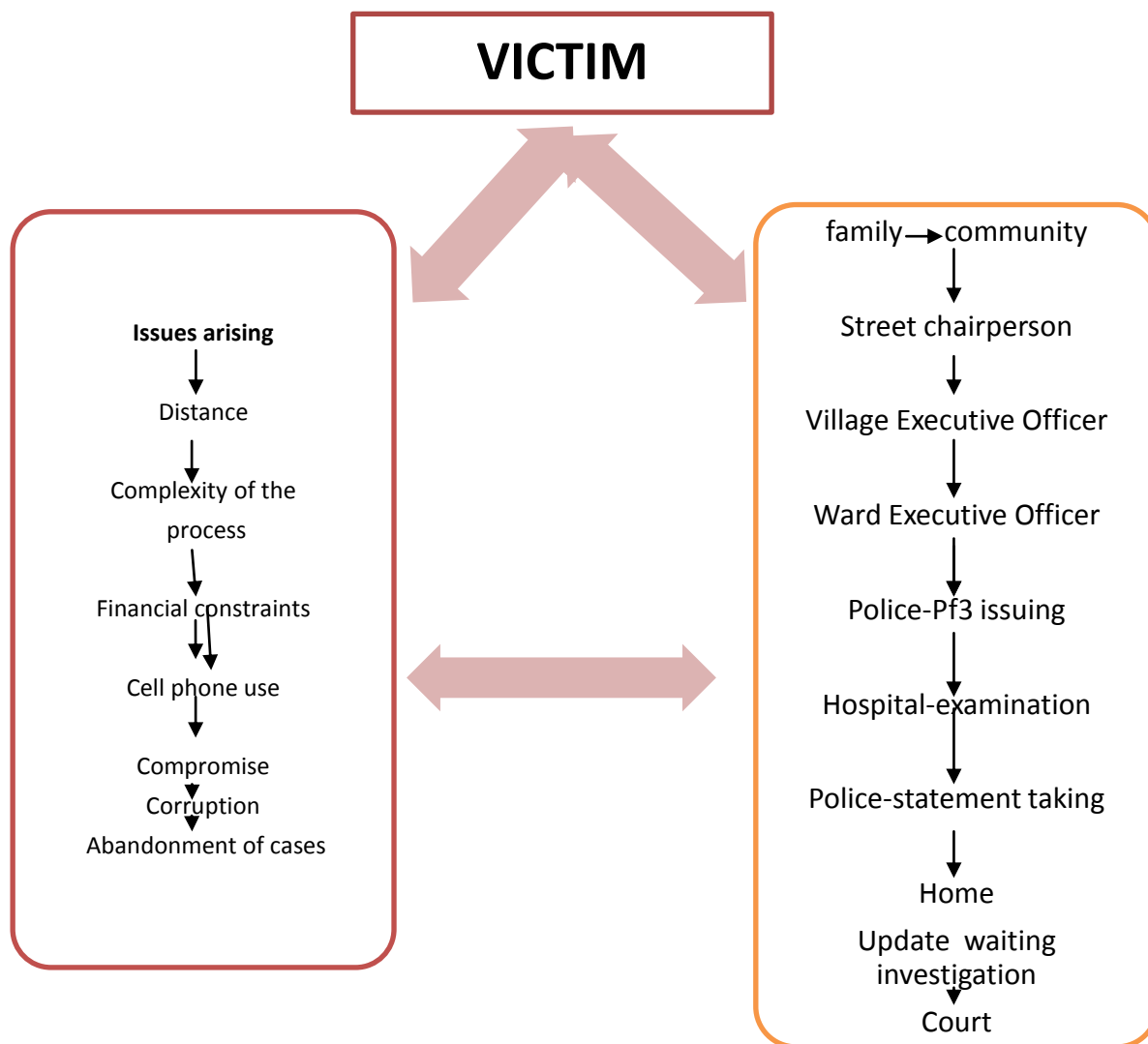
7.4 Fear of losing support from the family or community

Economic status or access to resources also determine or influence a woman's ability to respond to the crime of rape including its reporting and pursuit of its progress through the criminal justice system for the purpose of securing a remedy and protection. This is because most of the victims are dependent on their husbands, parents and family. They also fear that offenders will corrupt law enforcers as they have control of the resources. Therefore victims face a dilemma as to whether they should seek justice and suffer social exclusion or abandon their pursuit of justice and suffer in silence. Most of them are overpowered by social needs which lead them to abandon their right to justice.

7.5 Complexity of reporting

As discussed in chapter three it is expected in terms of the law that when rape incidents occur the victim (or usually the victim) will report the matter to police where a PF3 form will be issued and then the victim goes to the hospital for a medical examination. From there she will go back to police to return the PF3 form if it has not yet been completed. Then she will give her statement to the police. She then returns home and waits there for updates. The matter will then be investigated and taken to court for prosecution purposes. The law expects that the process will be conducted timeously and in a well organized manner to enable the victim acquire the required legal and health assistance services. However on the ground the situation is different from what the law presumes as illustrated in the figure below.

Figure 3: Diagram illustrating the reporting procedure on the ground



Unlike the reporting process explained in chapter three, the reporting and handling process of a rape case is complex as indicated in the above figure and confirmed by the respondents in a group discussion at Kwamatuku village who said the process is even more complex especially where, as in their case, they have no police station. This is because the complaint is attended first within the family who will decide whether to take it outside their family structure. The next step is to the community who will make their decision. If they decide to take it to the legal system, they will start reporting to a cell of ten leaders who will refer the

matter to the street chairperson, the village executive officer, and sometimes to the Ward Executive Officer, the health or clinical centre, the police station, back to the health centre or hospital and then back to police for further steps. The research further revealed that even where there is a police post or station it is very rare to get assistance from the police without passing through those local leaders. Equally at the health facilities a victim will not usually be attended to without showing a PF3 form indicating that she has first reported the crime to the police. This is contrary to what the guidelines policy provides. The procedure to move between different service structures is tiresome and cumbersome to the victim of rape if one takes into account the serious and traumatic nature of the offence. It invites compromise as the victim has to pass through different actors with different perceptions and attitudes towards the offence as explained below.

Experience within the family as a first point of entry

As indicated in figure 3, above, the study revealed that the family is the first place where reports of various wrongs including rape cases are made. As one of those structures the family has an influence on how, when and by which *forum* rape matters will be dealt with when it comes to their attention. In deciding whether to settle the matter within the family or take it to other structures, the protection and preservation of the family dignity within their community is extremely important with little or no regard to the rights of the victim. Factors like age which is linked to issues of marriage, the protection of dignity and compensation were found to have an influence on whether to take the matter to the criminal justice system or not. For example where the victim is a child the reporting decision rests on the parent. Sometimes parents are reluctant to report such cases so as to protect the dignity of the victim and the family at large. They may also seek to compromise the complaint by way of monetary compensation or a marriage arrangement between the victim and the offender, sometimes without involving the victim. Compromise in marrying off the victim to the violator violates the right of the victim and benefits the offender by releasing him from trial as well as ‘giving’ him a wife. From the victim’s point of view she may not only be married off to the wrong person, she will also be left without a remedy for the violation she has suffered.

The matter will be reported if the intended arrangements fail as was revealed by one of the rape victims (aged 14) who when interviewed said that she was raped by a street mate. She said she reported the matter to her parents who informed the offender’s family instead of

reporting it to the police or other relevant leaders. The two families then arranged for a marriage between the two of them without involving the offender who later admitted to having committed the offence but refused to marry the victim. It was after that refusal that the matter was reported to the police through the local authorities and then to the hospital for a medical examination where her pregnancy was revealed.

Late reporting denies the victim her right to an effective remedy because at the moment the matter comes to the attention of the criminal justice machinery the essential evidence to prove the offence becomes distorted which benefits the offender as there is a likelihood of an acquittal at the end of the trial for want of proper evidence or proof to warrant conviction.

Local government authorities

As explained above some of the victims who opt to take the complaint to the formal legal system still have to endure going through the long process of consulting and moving back-and-forth between the various authorities in the process of seeking redress. The system is structured in a hierarchical manner with referrals for one to pass from one level to the next, the entry point being the leader of the cell of ten elders. Sometimes officials are not available in their respective areas 24 hours a day which makes it difficult to get the referral letter necessary to move to the next level. This creates delays in getting assistance or care and exposes the victim to potential re-victimization as they are supposed to narrate their experience to different actors who are mostly men. According to the respondents from Kwadoya village the local leaders are very powerful in negotiating settlements in terms of compensation to a victim. They also focus on maintaining relationships within the family and community. Their decisions are influenced by cultural beliefs and attitudes just as much the rest of the society.

Police stations

From the local government, their efforts to push matters to the police are discouraged by poor response from the police officers. The link between the community, local authorities, police and health facilities is very poor. The people have no direct contact with even Gender Desk personnel who are supposed to assist survivors in reporting and escorting them to the hospital for examination. Despite the people being in possession of cell phones they cannot communicate directly with service providers (e.g., the police) for a number of reasons as will

be discussed later in this chapter. The responsibility to navigate the legal system path ways in seeking remedies falls solely on the victim.

Health care facilities

The above process may delay a victim accessing the care they need immediately and may compromise the chain of evidence collection. This is because a person might reach the hospital only the next day and she might not be attended on that very day. And there are also long queues which discourage victims as they are not given priority as required by the guidelines policy discussed in chapter three. One female respondent at Kwadoya village stated that:

‘After being raped, I went with my sister to a ten cell leader who referred me to street chairman. From there I was referred to village executive officer who gave me a letter to go to police station where I was issued with a PF3 for medical examination. At the hospital I found myself in long line and decided to go back home.’

The foregoing scenario indicates how the Management Guidelines Policy 2011 is not working. This is because as discussed in chapters three and four, according to the guidelines, the victim is not supposed to join the general public queue for attention at a health service provider and if she does the authorities are duty bound to identify her in the line and take her to a fast track service. But this is not always done in the hospitals as revealed by the medical doctor as well as by respondents from Kwadoya village. There are no posters or notices at the legal and health institutions informing the public about their rights and procedures. The reasons for failure to provide good quality care as provided in the guidelines is not only lack of awareness about the existence of that guidelines policy but also availability of it to the health and legal institutions in Handeni District. Service providers and the general public are not aware of the guidelines. Therefore the people cannot enforce or question their rights unless they are informed of them in the first place. For service providers the absence of guidelines and protocols which guides their duties and lack of training on how to deal with gender –based violence limits their performance. The quality of treatment depends on the attitudes and experience of individual in the system.

7.6 Corruption

Corruption was also repeated several times by the respondents as a bar to accessing the criminal justice system. One of the respondents stated that:

‘It is not easy to get assistance from the police if you have no money.’

Sometimes they are asked to bear transport costs such as paying for the fuel for police vehicles to go and arrest the suspect. For ordinary people who have no access to resources it is not easy to afford and the rape matters remains unreported. From my observation most of the respondents were distressed as a result of the response received from service providers on rape issues.

7.7 Distance

Regarding the distance issue the study found that the court, district hospital and central police station are all located in an urban area which is far from most of the people. For example, from Kwamatuku village to the central police station is more than 60 km away. Although rape cases can be reported to a police post, and a victim can be initially attended at a clinical centre, the victim will be referred to the central police and then to the district hospital for further steps, i.e., examination and the filling in of the PF3 form for prosecution purpose as was said by the medical doctor when interviewed. But even police posts and clinics are located far from villages.

This uneven distribution of state machinery is seen as a denial of justice by rural people who have to travel long distances to reach these structures after exhausting the local government channels explained above. For instance from Kwadoya village to Handeni District Court, the central police station and district hospital is about 150 km. The respondents from Kwadoya and Segera stated that there is no public transport from Kwajambe-Kwadoya to Segera which is more than 30 km away. They said that the available transport is motorcycles or concessionary big cargo trucks. One has to use those means of transport to reach Segera where one can they take public transport to Handeni central police station, the hospital and the court. As a result of the prevailing poverty levels coupled with the uneven distribution of these legal services people end up not reporting crimes like rape, they abandon their cases or opt to accept lesser informal remedies outside the criminal justice system. The distance also affects or distorts proof of the offence in issue because the moment the victim reaches any of

the aforesaid services things like spermatozoa, soiled clothes might have been discarded. One of the respondents from Kwadoya village stated that:

‘Some of the victim feels embarrassed to walk long distance first in motorcycle and then in public transport without changing clothes or bathing, to preserve evidence.’

The respondent suggested that there is a need to have at least more than one magistrate or District Court in Handeni District, health centre and police post in each ward, failing which physical access to the criminal justice system will continue to be denied to the majority of women in Handeni.

If we argue that the enforcement of all other rights depends on the effectiveness of the right of access to justice, then it is important for all relevant services to be easily accessible by everyone no matter where they live.

7.8 Financial constraints

Economic position or access to resources is also a factor that determines women’s ability to manage or react to rape cases including reporting and making follow ups in the criminal justice machinery for their protection and securing a remedy. This is because most of the victims are dependent on their husbands. Families and parents are also unable financially to assist the victim .This was evidenced in an interview with Kwamatuku villagers who stated that they always fail to make follow-ups after reporting the matter to police or attending court for want of money. They also said that the cost involved in the system of administration of justice includes transport cost, accommodation and meal costs. Travelling from Kwadoya village to the central police, district court and district hospital costs around US\$9 which is difficult for people to meet considering the prevailing poverty levels. Therefore access to justice is denied to a claimant who has no financial means to pay the costs involved in legal proceedings.

The study revealed that poor people view the law as a tool which the rich and well-connected and organized people can use against them. Because of poverty, access to criminal justice is seen to be enjoyed by the rich people only (Interview with people at Kwamatuku). However it should be noted that the poor are more in need of the law’s protection than the rich.

Samatta expresses his concerns on the effect of denying access to justice to the poor stated that:

‘If access to justice is limited to the rich, the poor are likely to resort to vigilantism, the consequences of it are bound to have a disastrous effect on the maintenance of law and order, if the poor see the legal and judicial system in the existence in their country as mainly serving the interest of the rich and the powerful, that will result into the end of rule of law and democracy in the country’ (Othman and Peter, 2003).

7.9 Abandonment of cases

Regarding the non-continuation, abandonment or withdrawal of reported and/or prosecuted cases the respondents said that it is due to the lack of due diligence by the police like delays of investigation, poor investigation and failure to arrest the offender when the matter is reported. It was further stated that police are not committed to prosecuting rape offences as they are normally reluctant to take action immediately such as arresting the suspect and even conducting a thorough investigation. They sometimes only take the victim’s statement without further investigation. It is very rare for them to even visit the scene of the crime. A Senior State Attorney when interviewed said:

‘Lack of commitment from the police and investigators leads to delay of investigations which in turn brings out poor investigation resulting into acquittal of the accused in court which discourage the victim to initiate matters in criminal justice system.’

The magistrate also confirmed the issue of delay of investigations by stating that the case may sometimes be dismissed to the prejudice of the prosecutors which adversely affects the victim. This point is further confirmed by the police record which shows that out of 86 reported cases from January to October 2012, 47 cases are still under investigation. The magistrate further stated that the non-appearance of the witnesses before the court also leads to the withdrawal of cases. The reasons for non-appearance include fear and stigma, threats, family pressure, financial constrains and the complex procedures. In this respect the government is blamed for not giving these cases priority which points to a lack of sensitivity towards GBV matters.

Other victims abandon or withdraw their cases due to the fear of being isolated by unscrupulous members of the society, solicited by the accused and or their relatives to do so.

Because of culture the relatives of the victim may not want their children or family members who are raped to be known to other people and this information cannot be withheld if the matter goes to full trial.

At Kwamsisi and Kwamatuku villages the respondents stated that some people report rape cases to the police just to threaten the offender or his family to pay what they consider is a sufficient amount of money to compensate the victim. Once the agreement is reached that is the end of the case and no further follow-ups are made. And sometimes victims are not involved during these negotiations. The other reasons for abandoning or withdrawing a complaint are protection of relationships, fear of victimization and harassment during trial.

The police stated that a number of the reported rape cases concern victims below the age of 22 and these are mostly reported by parents who might be not aware of an existing relationship between the victim and the offender; as a result they end up withdrawing or abandoning the matter after discovering their relationship.

The abandonment or withdrawal of rape cases also arises from the lack of knowledge or ignorance on the part of victims, their families or the general public about what constitutes rape, its impact and what should and should not be done. This being so it is very easy to convince the victim and/or her family to withdraw, abandon the allegations or even alter her statement made earlier which frustrates the prosecution's case.

Marriage between the perpetrator and the victim is another factor in the abandonment of rape cases. The situation is worse where the perpetrator is economically powerful or has a good social position or has authority and the victim and the family is poor. Sometimes such arrangements are made even without consulting or involving the victim especially where the victim is a young person or a child. This was revealed by one respondent from Mazingara village who was married off to the offender against her will as their parents arranged everything without consulting her. She said that the marriage ended the matter which was pending in court as no steps were taken to pursue the case. Full of sorrow, she said:

‘I was married to a person who raped me without my consent as the arrangement was made between the two families and I had no option other than going along.’

It is therefore clear that parents appear to dictate what has to be done or define what justice is without considering the right of the violated victim. Marriage arrangements mean the accused person benefits from the wrong by first avoiding trial and being held responsible for their crime but also they acquire a wife in the process. The victim is married to the person who has violated her and obviously without her consent contrary to article 6(a) of the Protocol on the Rights of Women in Africa which provides that no marriage shall take place without the free and full consent of both parties; article 16(1) of CEDAW and article 23(3) of ICCPR which provide that no marriage shall be entered into without the free and full consent of the intending spouses; article 16(2) of UDHR which provides that marriage shall be entered into only with the free and full consent of intending spouses. Section 16 of LMA also prohibits forced marriage by providing that, 'No marriage shall be contracted except with the consent, freely and voluntarily given, by each of the parties thereto'. Article 8 of UDHR provides for the right to an effective remedy through the competent national tribunals. Article 8 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women provides for access to justice and equal protection before the law. According to article 8(d) of the Protocol, women and men are equal before the law and shall have the right to equal protection and benefit of the law. Article 3(1) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa provides that, 'Every woman shall have a right to dignity and protection of her human and legal right.' The state is obliged to protect those marriages in order to adhere to article 19(1) (CRC, 1989) which provides:

'States' parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.'

Table 2: Showing relevant statistics for the crime of rape (2011 to 2013)

Year	Filed cases	Decided cases	Withdrawn cases	Pending cases
2011	36	5	31	Nil
2012	36	5	29	2
2013	22	2	3	17

The above statistics shows a high level of case withdrawals in Handeni District Court.

7.10 Lack of information and communication

It has been said that information is power and if communicated between individuals and service providers the right information can be important means of protecting individuals' rights. I remember my supervisor asking me on the way to the research field on one occasion if ordinary people from the village I was engaging with in the field have cell phones. My answer was a simple, 'No'. However in a group discussion held at Kwamatuku village the respondents, very ordinary people, were seen in possession of cell phones contrary to what I presumed. My supervisor then advised me to ask about the use of cell phones to receive and give information on matters affecting them. My inquiry revealed that community members indeed possessed cell phones which if properly used could assist them in giving and receiving information from service providers. It should help to minimize the cost in terms of money and time in dealing with rape cases such as reporting and making progress reports on pending cases and seeking immediate assistance when the crime occurs. I asked myself, 'Do or could people benefit from the use of their cell phones especially in reporting and getting feedback on the progress of investigating GBV crimes like rape when they are reported to state machinery? If they do/could benefit, how and to what extent do/could they do so?'

The respondents revealed that the cell phone numbers of service providers like the police in particular are not available to the public due to a lack of transparency and accountability on the part of police, the fear of asking for such information, and a reluctance by the police to avail individuals of their numbers. Even if one happens to have a contact number for the police, their possible failure to respond to a call made to their cell phones may deter the police from giving out their cell numbers.

Armed with the respondents' responses I went to police stations and found a contrary view on the police's failure to avail individuals of their cell phone numbers. When asked they replied that their numbers especially Regional Police Commander, Officer Commanding District, Officer Commanding Criminal Investigation Department, and officer on duty are displayed at each police station. And that at division level police officers cell phone numbers can be found for the officer in-charge of community police. In addition, the police hotmail number 112 is available any time for free.

That information prompted me to return to see the response of the consumers. When I put this information to the respondents from Kwadoya, Mazingara, Kwamsisi, and Kwamatuku and I asked them further about the matter they said that the environment at police stations as well as the conduct or responses of the police officers are not conducive to the giving of such information to ordinary people. One of the respondents from Kwamsisi village representing other group members stated that:

‘If we fear to report matters at police stations due to harassment encountered how dare could we manage to get or ask for those contacts?’

They argued further that for those who managed to get those numbers the response has been poor which discouraged them from communicating at all with the police. As far as the hotmail number 112 was concerned the respondents said unless the caller was previously known to the police or the caller had influence with the police then nothing would be done. There were also other respondents were not aware of that hotmail police number. Likewise even the displayed one especially of the lower ranks who are always in the field, patrolling or on duty are always switched off. For top officers at least their numbers are available but the problem is how to get them and also there is a big gap between them and other officers.

This lack of information and communication contravenes article 9(1) of African (Banjul) Charter on the Human and Peoples' Rights on the right to receive information which provides that every individual shall have the right to receive information. It is also against article 18(b) and (d) of the URT Constitution on the right to seek, receive and or disseminate information, the right to be informed at all times of various issues affecting them. The National Management Guidelines Policy are also contravened as they direct service providers to keep

victims of rape informed of the progress of investigations into their cases and to act promptly and come to the help of victims when they seek assistance.

CHAPTER EIGHT

8.0 CONCLUSION AND RECOMMENDATIONS

8.1 Conclusion and discussion

The study aimed at examining challenges women face in obtaining redress through the criminal justice system in rape cases. The objective was to ascertain the adequacy of responses of state agencies and the accessibility of criminal justice system from the point of view of rape victims. The findings resulting from the data collected as discussed above will be discussed in summary form forming the basis for recommendations to improve the handling of rape cases for the better protection of women in Handeni District.

The study revealed that social-cultural factors act as barriers to reporting sexual abuses. The respondents established that fear and stigma, pressure and influence, family compromise in terms of compensation and/or marriage may prevent sexual offences from either remaining unreported or cause their late reporting to the criminal justice system; they may even be the reason why cases are withdrawn or abandoned. Some of the respondents believed that disclosing sexual matters in public by reporting rape cases to the legal system will bring disrespect to their family name and put their relationships in jeopardy. They also believe in protecting the virginity of the victim especially if the victim is a young girl; they feel in other words that exposing the rape will reduce her prospects of marriage. They also fear threats and further harassment from the offenders and members of their families due to inadequate mechanisms within the legal system which should exist to protect the vulnerable from such possible harm.

The service providers and the general public are not aware of the National Management Guidelines which provide for the rights of the victims and roles, responsibilities and guidelines for service providers to deal with victims of gender-based violence. Likewise the policy and protocols are not disseminated to health and legal institutions. Hence despite the guidelines being good and supportive their provisions remain stuck on paper; they have not been brought to life and implemented on the ground and therefore serve no purpose for the people whom they are intended to benefit.

An unfriendly reporting system staffed by gender insensitive personnel stood out as a significant barrier against victims reporting rape cases. Lack of private rooms in which to interview rape victims at police stations, blame, harassment and ill-treatment of victims by service providers discourage victims from reporting sexual abuse against them. Societal perception that women are subordinate and exist in order to be abused sometimes affects even service providers themselves when they handle rape cases. The victims' stories are rarely believed by those who people those structures. Thus the danger is that in the course of enforcing the laws they place themselves in the shoes of the offender with whom they are likely to have common attitudes, culture and or perceptions.

Regarding lack of due diligence by service providers, the respondents complained of the failure of the police to act urgently when a rape case is reported to them by not arresting the suspect, conducting thorough investigation, delaying in carrying out investigations all of which leads to the collection of poor evidence often resulting in the acquittal of the offender even in what should be clear-cut cases where conviction should be relatively easy.

Lack of due diligence was also found on the part of health service providers in many respects such as the failure to attend the victims in time or not all on the reported date. This increases the trauma and trouble for the victim who has to walk around carrying the men's semen on her body and staying in the same unchanged clothes she was wearing when the attack took place in order to preserve the evidence. The incomplete and or improper filling-in of the PF3 form by medical staff due to lack of training and their failure to appear and testify in court all of which prejudice the prosecution case were also noted as factors which compromised rape victims' rights.

The incompetence of service providers leading to the wrong understanding, interpreting, implementing and application of the laws was found to be another barrier preventing victims from enjoying their rights. Some service providers did not fully understand the meaning of corroborative evidence and some relied on third party corroboration which undermined the outcome of cases.

Long distances and the complexity of the reporting process also contribute to the under-reporting or late-reporting of rape cases to the state machinery. The social and state structures which victims have to negotiate are strict and clearly hierarchical and passing from one stage

to another requires referrals such as from the ten cell leader, to the street chairperson, to the village executive officer, to the ward executive office and then to the police especially where there is no local police post. It invites compromise as the victim has to pass through different actors with different perceptions and attitudes towards the offence. Corruption was also mentioned several times by the respondents as being a bar to accessing the criminal justice system. In addition legal and health services are located far from the people. One has to travel for more than 100 km to reach these services using public transport; and where there is no public transport, private motorcycles are used.

Financial constraints limited reporting or even caused the abandonment of the reporting process altogether especially where the victims' families were far less well-off than the suspects of their families within the legal system. Those categories of disadvantaged people are more likely to be persuaded to accept negotiations involving marriage and/or financial gain.

Conflicting laws were also observed as a problem for service providers especially when they deal with sexual abuse involving young girls who consent to have sex with age-mate males. This is because one law allows marriage between parties below 18 years while at the same time there is another which criminalizes the sexual act of a male person of the same age unless he is married to that girl. It still breaches the rights of a girl below 18 years because the law does not recognize marital rape which means that a victim will be exposed to abuse throughout her married life.

There are also many shortcomings regarding the offence of impregnating a school girl because it fails to consider those victims who are not at school. It also focuses more on punishing the offender leaving the victim and the child unprotected. Because of that there is also the problem of the under-reporting of those cases due to a number of reasons one being the marriage arrangements that are entered into between the suspects' and victims' families in order to avoid the cost of caring for the victim and the child if the culprit is imprisoned.

The absence of any witness protection programme or witness support units in court also hinders the prosecutorial process. This is because the system is so impersonal and alien to victims who find it difficult if not impossible to narrate sexual experiences before other people. A number of women have never experienced the court system and are likely to be

ignorant of the trial process. The study showed that on some occasions rape victims feared using or being part of the criminal justice machinery to obtain redress for fear of being at risk of acting against their culture during trials. Cultural values inhibit women from adducing evidence before other people. For instance the failure or reluctance of victims to face the court and talk freely, coherently and cogently may have the effect of undermining their credibility.

Inadequate facilities and the lack of co-operation on the part of the victim and other witnesses was mentioned by service providers as factors that contribute to the under-performance in the handling rape cases. Last but not least the lack of information and communication was identified as contributing to low reporting and also the abandonment of cases. People were found in possession of cell phones which if properly utilized may assist them to report rape cases and to receive information on the progress of the reported matters or seek immediately assistance from them. Instead of going now and then to state machinery cell phones could assist in calling them to a scene of crime and to get necessary assistance. The State via its agencies fails to perform its duty to ensure that the right to receive and disseminate information is fully exercised to individuals by making sure that service providers' cell phones numbers are available to them and also making sure that they respond when called for assistance.

8.2 The way forward

A review of the laws is needed in order to harmonize them and do away with the contradictory provisions such as section 130(2)(e) of the Criminal Code which criminalizes sexual intercourse with a girl below 18 years but also exempts the offender if he is married to that girl.

Section 138 of Penal Code as amended by section 11 of SOSPA should be amended because it serves not other purpose than to oppress women. Instead it should read simply that it is an offence for any person of African or Asiatic descent to marry or permit the marriage of a woman under the age of eighteen years in accordance with the custom of the tribe or religion.

The Education (Imposition of Penalties to Persons who Marry or Impregnate a School Girl) Rules GN No 265/2003 made under the Education Act 1978 should be reviewed to provide full protection for all including those who are not at school but are of the same age.

To make sections 16(1) of the LMA meaningful, section 13(1) of LMA should be amended by setting the minimum age for marriage at 18 years for both females and males.

An amendment to section 13(2) of the LMA is vital in that 14 years should be deleted and 18 substituted in order to correspond with the UN recommendation regarding the minimum age for marriage. This is because section 17 of LMA does not reflect the needs of women.

Gender sensitive court procedures should be established and implemented in order to avoid the re-victimization of rape victims. This is because the existing laws and procedures do not reflect women's experiences and as MacKinnon says, 'the law...should be recreated to address specifically the needs women have' (MacKinnon, 1989).

A witness- support unit should be established in courts to assist and explain to victims what is expected of them and what they should expect to happen in court.

Victims must be assured that they are protected by the law, family and society at large as provided for under article 23(1) of the Convention on Civil and Political Rights 1996 through the enactment of vulnerable witnesses legislation which has occurred in other jurisdictions such as Kenya³ and Zimbabwe.⁴

Statutory or case law guidelines should be established on what magistrates would rely when invoking section 127(7) of the Evidence Act.

The government should provide gender sensitization training for service providers to help them interpret and enforce the law appropriately. Special focus should be given to improving attitudes and behaviour. Judicial personnel in particular require continuous refresher courses on the use of human rights instruments and Constitutional provisions in decision making so

³ Section 319 of the Criminal Procedure and Evidence Act 9:07.

⁴ Section 31 of Sexual Offences Act 2006.

that they can have the right frame of mind to challenge and eliminate discriminatory laws and practices which harm people.

The state should ensure that their machinery such as police, prosecutors, and health service providers keeps in regular contact with the people to make sure they receive and give information on matters affecting them.

Investigators should speed up investigations to reduce the time and potential for buying off and/or corrupting potential witnesses which has the effect of discouraging people from pursuing rape cases in the criminal justice system by either not reporting or abandoning them.

The government should make sure that legal and social services and the criminal justice system are all accessible and affordable to the people.

In order to increase access to the legal system and improve the quality of care to victims, the government should ensure the New National Management Guidelines 2011 are available to all legal and health institutions right down to the general public. This will assist in reducing the complexity and circuitous reporting system found in the field. The guidelines allow the victim to receive medical care without the police form (PF3). But on the ground the PF3 form is proving to be an obstacle to both reporting and affording medical care to victims. The police are reluctant to assist a victim who has not followed the circuitous reporting structure and medical case may not be issued to a victim who went directly to a hospital without their first having visited a police station, reported the matter and obtained a PF3 form. Service providers who are not prepared and not aware of the Guidelines put the victim at further risk by providing inappropriate care or assistance. (See Appendices 1 and 2).

There is a need to establish one-stop centres with trained and sensitive service providers to deal with sexual offences at Handeni District as required under the National Management Guidelines Policy 2011.

The Government should include issues on preventing gender-based violence in school curricular as part of a long-term programme.

The public at large should be well informed of the implications of sexual abuse and should be encouraged to adopt a community participatory approach to discourage and overcome social-cultural values that support the non-disclosure of cases of sexual abuse resulting in the non- or late reporting of such abuse. They should be informed of their rights, policies and laws governing sexual offences as well as the procedures for enforcing their rights within and through the criminal justice system in order to protect their person integrity and dignity.

The Government should put in place and operate accountability mechanisms to monitor the effective delivery of legal and health services to the victims of gender-based violence.

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Appendices

Appendix 1: Old Police Form (PF3)

Tanzania Police Medical Examination Report

PF3

No. _____

From _____

THE MEDICAL OFFICER _____ 20____ Sir, I have the honor to request the favor
of _____ your _____ examination

_____ sent to hospital on the
_____ 20____ And of
your furnishing me with a report or overleaf of the nature and extent of harm sustained by the
said _____ I have the Honor to be Sir,

Your obedient servant

Signature _____ (P.T.O.)

1 Nature of injury (physical or psychological) (e.g., cut or bruise, internal or external) grievous harm)	2 Size of Injury (in cms for length and depth)	3 Part of the Body (where inflicted or penetrated)	4 Level of Harm (harm, dangerous harm)	5 By What Means (weapons or organ inflicted)

Definitions

“Harm” means any bodily hurt, disease, or disorder, whether permanent or temporary.

“Dangerous harm” means harm endangering life.

“Grievous harm” means any harm that amounts to a maim or that is “likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member, or sense.”

“Maim” means the distraction or permanent disabling of any external organ, member, or sense.

NOTE- If in opinion of the Medical Officer, any harm which is List “dangerous” or “grievous” at the time of examination eventually becomes “dangerous” or grievous.” Note to that effect should be made under “Remarks

Remarks

Medical

Officer

Appendix 2: New Police Form (PF3)



Police Form

PF 3

TANZANIA POLICE FORCE
MEDICAL EXAMINATION REPORT
PART I: REQUEST FOR MEDICAL EXAMINATION

(To be completed by Police Officer requesting Medical Examination)

CASE FILE NO,
.....POLICE
STATION.....

TO: THE MEDICAL PRACTITIONER

Dear Sir/Madam,

I have the honour to request for Medical Examination
of..... (Male/Female)
Age..... who is sent to hospital/health center/dispensary on this day
of

20..... Please furnish me with brief examination results and/or findings of the nature
and extent of bodily injuries
sustained by the person named herein above.

Date and details of the alleged
offence.....

.....
.....
.....
.....
.....

.....
Name, Signature of Requesting Officer and Stamp

N.B: The investigating officer should sign for all specimens or items collected and sealed by the Medical Practitioner.

PART II: MEDICAL DETAILS OF THE ALLEGED CASE

(To be completed by Medical Practitioner carrying out examination)

Personal/Patient/FileNo.....Date...
.....Time.....

GENERAL INFORMATION:

(i) Nature of complaints.....
.....
.....

(ii) Estimated age of the person
.....Gender.....
.....

(iii) General physical/mental examination (e.g. general appearance, bruises, bites, use of drugs, alcohol and demeanor).....
.....
.....
.....
.....
.....

(iv) General Medical History (including details relevant to the offence).....
.....
.....
.....

.....
.....
(v) Condition and appearance of clothes including inner garments (e.g. presence of tears, blood stains, fluid)
.....
.....
.....
.....
.....
.....

(vi) Name of the guardian and Relationship with the person examined (for a minor or mental case)
.....
.....
.....
.....

Police
PF 3

Form

PART III: ASSAULT, ACCIDENT AND OTHER CASES

(To be completed by Medical practitioner)

(i) Approximate age of injuries (e.g. hours, days or weeks).....
.....

(ii) Treatment (if any received prior to examination).....
.....

(iii) Description of site, situation, shape and depth of injuries sustained.....
.....
.....

.....
.....
.....
.....

(iv) Type of weapon or object used.....

(v) Immediate degree of the clinical result of the injury sustained (e.g. whether injury amounts to “harm”, “grievous harm” or “maim”*)

(vi) Details of specimen collected.....

Comments:

.....
.....
.....
.....

*Definitions:

“Harm” means any bodily hurt disease or disorder whether permanent or temporary.

“Grievous Harm” means any harm which amounts to maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, member or sense.

“Maim” means the destruction or permanent disabling of any external or internal organ, member or sense.

PART IV: SEXUAL ASSAULT CASES

(To be completed by Medical Practitioner after Part II & III)

A: (i) Nature of complaints

.....
.....

(ii) Estimated age of person examined.....

.....

B: FEMALE

(i) Describe the physical state of and any injuries to genitalia with special reference to labia majora, labia minora, vagina, cervix, anus and establish evidence of penetration.....

.....
.....

(ii) Note the presence of venereal infections or any discharge, blood from genitalia/anus.....

.....
.....

(iii) Details of specimen or smears collected including pubic hairs, and blood.....

.....
.....

C: MALE

(i) Describe the physical state of and any injuries to genitalia including anus and establish penetration in case of

anal

intercourse.....

.....
.....

(ii) Note the presence of venereal infections or any discharge around anus and penis.....

.....
.....

(iii)Details of specimen or smears collected including pubic hairs and blood.....

.....
.....

MEDICAL PRACTITIONER'S REMARKS:

.....
.....
.....
.....
.....
.....
.....
.....
.....

Name and signature of Medical Practitioner:

Name.....Qualifications.....

.....Registration Number.....

Signature.....Date.....

..... Official Stamp