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**SEXUAL VIOLENCE AND THE CRIMINAL JUSTICE SYSTEM IN GHANA:
EXPLORING THE ISSUES OF VICTIM PROTECTION AND CONFIDENTIALITY
IN THE COURTS.**

(23,985 Words, excluding references and appendices)

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DEDICATION

I dedicate this dissertation to God the Father Almighty for protecting me throughout my study period. I also dedicate this work to the Mastercard Scholars Foundation for their immense support financially and other means, and to my parents. For their endless love, prayers and encouragement, I am very grateful. Finally, I dedicate this work to Rashieda Khan of the Survivors Support Unit (OIC -UCT) and all Student Support Officers at the Survivors Support Unit (OIC -UCT)

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LIST OF ACRONYMS

ACHPR – African Charter for Human and Peoples Rights.

BC – Before Christ.

CASA- Coalition Against Sexual Abuse.

CCTV- Close-Circuit Television.

CHRAJ- Commission for Human Rights and Administrative Justice.

DOVVSU- Domestic Violence and Victims Support Unit.

ICC- International Criminal Court.

LGBT- Lesbian, Gay, Bisexual & Transgender.

MINUSCA- Multidimensional Integrated Stabilization Mission in Central African Republic.

NGO- Non-Governmental Organization.

SAQA-V South African Qualifications Authority.

USA- United States of America.

UN- United Nations.

UNICEF- United Nations International Children’s Emergency Fund.

WHO- World Health Organization.

ABSTRACT

The protection of survivors of sexual violence during court proceedings is as important as the court proceedings themselves, as any mishaps may impact greatly on the well-being and future engagement of these survivors with the criminal justice system. The issue of secondary victimization remains a problem faced by many survivors of sexual violence who try to seek justice for their ordeal. It is against this background that several international, regional and national documents have been enacted with hopes of mitigating the issue of secondary victimizations from the criminal justice system and its actors.

The court as an institution within the criminal justice system is established to handle all criminal and civil cases within a defined jurisdiction and as such is charged to handle all cases of sexual violence filed before it. However, the role of the court in protecting victims especially victims of sexual violence is increasingly being questioned.

Therefore, the dissertation seeks to explore the issues surrounding the protection of survivors of sexual violence in the Ghanaian court. To adequately explore the issue under consideration, a qualitative research approach was adopted, which entailed on-site observations and interviews. As a case study, the gender court was selected as the site for the research.

The findings of the study support a strong argument for an expansive approach from the court and all stakeholders of the criminal justice system, from both structural and legal approaches as well as the need for an attitudinal change to harness the protection of survivors of sexual violence who seek justice for their ordeal.

Thus, the findings point to the need for urgent attention to help reduce the risk of secondary victimization in the court.

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CHAPTER ONE

Introduction

Ghana is often described as one of the safest countries in Africa,¹ as shown by seven consecutive peaceful and democratic elections over the last few years. The peaceful transfer of political power from successive governments can also be said to have contributed to this perception about Ghana. However, the reality is that, in a country perceived by others to be safe, the “vulnerable” portions of the population, the women, children and the aged, remain ‘unsafe’. The feeling of vulnerability experienced by these groups could be attributed to inter alia, the threat of sexual violence prevalent in the country, indicating that Ghana is not and cannot be exempted from the global menace of widespread sexual violence in both developing and developed countries. Consequently, the present study has been motivated by three major factors: my experience working with victims of sexual violence, by and gaps in the relevant literature on sexual violence, and the ways in which cases of sexual violence are treated in the Ghanaian context, especially within the criminal justice system.

A survivor of sexual violence I encountered while working as an intern with an NGO said,² *“I would have rather preferred to sleep at home and let the rapist walk free, than to have wasted my time in court if I knew this is how I would be treated at the court and the people there”* (quoted verbatim). Such a statement accords with the findings of studies that have explored secondary victimization and its impacts.³ In many African countries, the response to the needs of victims has been slow, while reforms have been disjointed and not comprehensive.⁴ Thus, the purpose of this study was to explore and describe in detail, the issues surrounding the protection and confidentiality of survivors of sexual violence in the Ghanaian court system, from the perspective of key players within the justice system. It is clear from the foregoing account within the field of victimology that, victims of sexual violence are a section of the

¹J Campbell ‘Violence against Women in Ghana: Unsafe in the Second Safest Country in Africa’ (2016) *The Council on Foreign Relations*. [Retrieved from <https://www.cfr.org/blog/violence-against-women-ghana-unsafe-second-safest-country-africa> on 8 August 2018].

² I was an intern at the Child Soul Foundation in Accra, which provides counselling and educational services to victims of rape and other forms of sexual assault. During my period as an intern, I assisted in providing court preparatory services to victims and their support group.

³ L Zedner ‘Victims, victimisation and criminal justice. In Maguire, M., Morgan, R. & Reiner, R. (Eds), York: Oxford University Press, 461-495.

⁴ C Mbazira & J C Mubangizi ‘The victim-centred approach in criminal prosecutions and the need for compensation: reflections on international approaches and the legislative and policy frameworks in Uganda and South Africa’ 2014. *Comparative and International Law Journal of Southern Africa*, 47(2), pp.206-224.

population who have had traumatic experiences and need special attention and a sensitive approach from the justice system. One which can help mitigate the well-known experience of victims re-living their ordeal or secondary victimization.⁵ Thus, in this study, I argue that the necessary sensitive and humane approach has seldom been the case in Ghana.

Sexual violence is a worldwide problem with a long history. Tracing its history takes us back to when societies including African societies, began differentiating roles between males and females.⁶ Additionally, in African societies, where the effects of colonisation in the 19th and 20th centuries were particularly devastating, the issue of sexual violence can be traced to the 'colonisation of gender'.⁷ Thus, historically, colonial rule can be said to have reshaped notions of masculinity and femininity, thus aiding and abetting already existing patriarchy and male dominance, disempowering women, and increasing female vulnerability to gender-based violence. According to a 2012 report by the World Health Organization (WHO), one in every three women will experience either sexual or physical violence in their lifetime, usually before the age of 15.⁸ WHO further reported that 23% of women around the world had experienced sexual violence either from their partners or from other men during their lifetime.⁹ Moreover, studies indicate that rates of sexual violence are high in societies where power differentials and gender inequalities exist.¹⁰ Also, in societies where violence is widely accepted as the norm and male sexual entitlement is upheld and normalised, sexual violence tends to be widespread.¹¹ Even in societies where gender equality exists in theory, weak legal systems and processes, coupled with the inherent patriarchal norms leave room for sexual violence.¹²

⁵ Zedner, L. 2007. Victims, victimisation and criminal justice. In Maguire, M., R. & Reiner, R. (Eds), *The Oxford handbook of criminology*, 4th ed. New York: Oxford University Press, 461-495.

⁶ Sampa et al 'Gender Bias in the Zambian Court System: A Report on Research Findings' (1994) *Women and Law in South Africa*, 24-36.

⁷ S Ramsay 'Ubudoda & Ubukunzi: African Masculinity and Working Life in Durban, 1900-1907' (1996), 14-19.

⁸ World Health Organization 'World report on violence and health' (2002). [Retrieved from https://www.researchgate.net/publication/11077126_The_world_report_on_violence_and_health on 12 September 2018].

⁹ World Health Organization 'Factsheet' (2013), 239 Retrieved from https://apps.who.int/iris/bitstream/handle/10665/208231/vaw_brochure_eng.pdf?sequence=1&isAllowed=y [Accessed on 4 May 2019].

¹⁰ Men Engage 'Men, Masculinities and Changing Power', A Discussion Paper on Engaging Men in Gender Equality from Beijing 1995 to 2015 (2015). [Retrieved from <https://www.unfpa.org/sites/default/files/resource-pdf/Men-Masculinities-and-Changing-Power-MenEngage-2014.pdf> on 2 October 2018].

¹¹ C Ricardo & G Barker 'Men, Masculinities, Sexual Exploitation and Sexual Violence: A literature Review and Call for Action' (2008). *MenEngage*.

¹² Ibid; R E Barnett 'A new paradigm of criminal justice Ethics, 87 (4): 279-301; H Zehr 'Changing lenses: a new focus for crime and justice. Scottsdale: Herald Press.

In the past ten years, sexual violence has become the focus of political and public concern in both developing and developed countries.¹³ Striking examples include those of former South African president, Jacob Zuma, and Kwasi Kyei Darkwa in Ghana. These are typical instances of high-profile personalities accused of sexual misconduct in patriarchal societies such as those in South Africa and Ghana, and where survivors of the crimes were mistreated and ridiculed both by the defence lawyers and supporters of the accused (in the Zuma case, ironically by the ANC Women's League),¹⁴ and at some point, were abandoned by the court. Consequently, many countries around the world have adopted, or are in the process of adopting, measures to curb the threat of re-victimization of victims.¹⁵ Examples of developed countries that have put in place these protective measures include England and Wales, both of which have tightened their sentencing policies for sexual violence,¹⁶ while the US has adopted the Sex Offender Registration Policy.¹⁷ Considering the profound and far-reaching physical and psychological effects sexual violence has on victims, it would seem both humane and prudent to have in place effective and adequate measures to protect and keep confidential the personal identifiers of survivors. This highlights the need to put structures in place within national legislation, and to support and protect survivors both within and outside the court. As mentioned earlier, many promising efforts are being made to do this in western societies such as the US and UK, and in some African countries, such as South Africa. A leading study has shown that such initiatives need to be directed towards placing victims at the centre of the justice system, in this way protecting their human rights and general well-being,¹⁸ while boosting their confidence in the efficacy of the system.¹⁹ In turn, it is hoped that this would influence reporting rates. In South

¹³ G WoBner 'Women and Children as Victims of Sex Offenses: Crime Prevention by Treating the Offenders?' (2014). *International Journal of Criminology and Penology*, 4, 295-304.

¹⁴ Sport24 'Rape Culture within the ANC' (2011). Retrieved from <https://www.sport24.co.za/ShopBlockAd.aspx?aid=87987de0-ed1b-4543-9967-a4380d2121f3¤tCategoryName=Sport¤tCategoryBreadCrumb> [Accessed on 2 March 2019].

¹⁵ See Note 12.

¹⁶ K Harrison 'Governing Serious Offenders: Developments in legislation in England and Wales' (2014) *Monatsschrift fur Kriminologie und Strafrechtsreform*, 97(1), 10-18.

¹⁷ E J Letourneau, J S Levenson, D Bandyopadhyay, et al 'Evaluating the effectiveness of sex offender registration and notification policies for reducing sexual violence against women' (2010) U.S. *Department of Justice*.

¹⁸ T Ramagaga 'Is South Africa making strides in the participation of victims of crime in parole process? Institute for Security Studies. Available at: http://www.issafrica.org/iss_today.php?ID=1429 [accessed 2 June 2020].

¹⁹ See Note 4 above; A victim-centred approach is one that is tailored at helping to minimize retraumatization associated with the criminal justice process, by providing victims with support in diverse forms such as advocates and service providers, while empowering survivors as engaged

Africa, the introduction of the South African Victim Charter,²⁰ and the sexual offences court have gone some way to advance the human rights of all victims of crimes, including victims of sexual violence, while emphasizing victim-centred justice delivery.²¹ On the international front, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985),²² seeks to protect and enhance victim rights, whilst preventing the re-traumatizing of victims of crime and of abuse of power.

Studies and surveys done on criminal victimization have shown that only a few cases of sexual violence are reported to the authorities. Assessments of under-reporting of sexual violence show from 1 in 9 to 1 in 13 cases being reported to the police.²³ Reasons for the under-reporting of sexual violence can be said to have a direct correlation with the confidence of the citizenry in the criminal justice system.²⁴ There exists an array of reasons that could account for the under-reporting of sexual violence. These include but are not limited to, the threat or intimidation from the perpetrator and/or his family, lack of access to the police and other crucial service provision institutions, cultural practices, stigma or feelings of guilt by the complainant and or his family, and the familial/cultural belief in the taboo against talking about sex or sexual experience.²⁵ These reasons and beliefs have been cited in several studies showing sexual violence to be the most under-reported violent crime in the world.²⁶ It is therefore important to note that, the nature of the contact between survivors and the criminal justice system is very crucial as any maltreatment from the criminal justice system and/or its officials has the potential to lead to secondary victimization of the survivor. Secondary victimization in the literature of victimology denotes the anti-therapeutic effects of legal procedure and criminal

participants in the trial process, and providing survivors an opportunity to play an active role during any phase of the criminal justice system.

²⁰ Department of Justice 'Service Charter for Victims of Crime in South Africa: The Consolidation of the Present Legal Framework Relating to the Rights and Service Provided to Victims of Crime' (2005). [Assessed 18 September 2018].

²¹ J A Nel & H Van Wyk 'Victim Empowerment in South Africa' (2013) In Peacock, R. Second edition, *Victimology in South Africa*. 19(1) 73-98.

²² Article 6b, United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by in General Assembly 29 November 1985.

²³ Artz. L., Burton. P., et al 'Sexual abuse of children and adolescents in South Africa: Forms, extent and circumstances' Optimus Study. *UBS Optimus Foundation*. Available: http://www.cjcp.org.za/uploads/2/7/8/4/27845461/08_cjcp_report_2016_d.pdf [Accessed 17 August 2018].

²⁴ J K Van Kesteren, J D Van & P Mayhew 'The International crime victim's surveys: A retrospective' (2014) *International Review of Victimology*, 20(1), 49-69.

²⁵ *Ibid*.

²⁶ D B Boateng 'Victims of sexual assault: The experiences of Ghanaian Women' (2015) *International Review of Victimology*.

justice actors or authorities on victims of crime.²⁷ This definition highlights the ways in which the justice system potentially contributes to the re-victimization of victims of crime, who often courageously, attempt to seek justice. Therefore, understanding the importance of a victim-centred approach on the part of the justice system contributes to proper and humane delivery of justice, policy/protocols, laws and facilities which make the experience of victims a more humane and just one. This would hopefully lead to increased trust in the criminal justice system and its actors on the part of victims of crime, particularly sexual violence victims. However, this is not the case in most African countries, particularly in Ghana.

According to reports from the Domestic Violence and Victims Support Unit of the Ghana Police Service (DOVVSU), 30,408 assault cases were recorded between 2011 and 2016, the highest proportion of which were rape and defilement.²⁸ However, the report also cited in paragraph 6 that, about 80% of these cases filtered out of the criminal justice system due to a range of possible reasons including reasons such as the insensitive or other insolent or harsh conducts from officials of the criminal justice system. Statistics such as those from DOVVSU could highly be unrepresentative of the reality because of case attrition and other factors that influence reporting and case management in Ghana, and as such should be taken with maximum caution as an accurate measure of either the trend or extent of this crime.²⁹ Here, record keeping by the Ghana Police Service has often come under serious critique from stakeholders of the justice system and the media, due to many instances where police were unable to produce requested records either due to improper capturing or simple record lose.³⁰ The DOVVSU statistics further make it impossible to categorize the victims into children, elderly, male and female as they were not broken down by age and gender groups. Therefore, I further argue that obtaining a nationally representative data on sexual violence in Ghana would be a vital step in tackling the issue as such an data will help stakeholders make informed decisions in safeguarding survivors.

On the other hand, sexual violence with its documented effects, such as severe psychological, emotional and physical health problems for victims, also significantly affects the immediate

²⁷ E Erez, M Kilchiling & J Wemmers 'Therapeutic jurisprudence and victim participation in justice' (2011) *Durham, NC: Carolina Academic Press*.

²⁸ Ghana Police Service 'National data for cases reported To DOVVSU from 2011–2016' (2015) Available at <https://www.graphic.com.gh/news/general> . [Assessed on 10 October 2018].

²⁹ Ibid.

³⁰ R Bachman 'Predicting the Reporting of rape victimizations: Have rape reforms made a difference?' (1993) *Criminal Justice and Behaviour* 20:254-270.

family of the victim as well as the community (secondary victims), both financially and systematically.³¹ Thus, without any doubts, there are economic as well as other impacts on the victim, the family as well as the community.

While punishments meted out to offenders of sexual violence by the justice system may differ from one jurisdiction to another, no type of sexual violence is accepted by the legal system in any democratic nation. Nonetheless, due to the range of definitions that exist, this dissertation considered all of these under a single umbrella phrase denoted as “criminal acts of sexual nature”, for a more nuance reflection and analysis.

DEFINITION OF CONCEPTS

Several terms are employed in this dissertation some of which are used interchangeably. However, as stated above, for a more nuance and encompassing analysis, the terms “sexual violence”, “sexual assault” and “sexual offence” were capture under the umbrella phrase “criminal acts of sexual nature”. Although sexual violence may include issues of verbal abuse and, psychological/emotional violence in addition to physical abuse, this study focuses mainly on physical sexual violence as defined by the Criminal Offences Act of Ghana, - rape, defilement, incest and unnatural carnal knowledge (where unnatural carnal knowledge includes sodomy and bestiality). These descriptions of sexual violence as found in the Act are all physical in nature, hence the decision to focus attention on physical cases. Also, this decision further stems from the fact that available literature on sexual violence globally focuses mostly on its physical forms. On the other hand, the term ‘survivor’ is used frequently in this dissertation to describe the individual on whom a crime (sexual offence) is perpetrated or the person who experiences sexual violence.³² The word ‘survivor’ was deemed appropriate due to critical issues raised by feminist scholars and activists concerning the negative connotations of the word ‘victim’, which is highly contested by the various schools of feminism.³³ Additionally, due to my personal experience working with individuals who have suffered sexual violence, I see the word ‘survivor’, by virtue of its use for individuals who experience sexual violence, as more empowering and energizing than the term ‘victim’. Thus, this study adopts the word ‘survivor(s)’ to recognise the agency of the individuals in pushing

³¹ Meintjies-Van der Walt, L. 1998. Towards victims’ empowerment strategies in the criminal justice process. *South African Journal of Criminal Justice*, 11(2): 157-172.

³² P Vanja ‘Silent Sin? An investigation into the provisions of community-based non- governmental support services for male victims of sexual violence in South Africa’ (2017). University of Cape Town.

³³ Spalek ‘Victimology: theoretical approaches. In *Crime Victims; theory, policy and Practice*’ (2006) *Palgrave*, 33-46.

through life after their ordeal and to empower those who have suffered the trauma to help them carry on and progress well in their lives.

Sexual Violence

According to the World Health Organization (WHO),³⁴ Sexual violence is defined as:

“...Any sexual act, attempt to obtain sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to school and work.”

Per this definition, sexual violence may or may not include force and is always committed against a non-consenting person by another person in or out of authority. Furthermore, the WHO definition of sexual violence includes, but is not limited to rape, incest, sexual trafficking, sexual harassment, etc. In addition, chapter six of the Criminal Offences Act, 1960 (Act 29), outlines nine sexual offences, which have different legal meanings which plays a role in distinguishing one sexual offence from another. It also determines what needs to be proved in court, and helps the court determine whether the prosecution has proved all the elements for a conviction. As such it became ideal to adopt the umbrella phrase “crimes of sexual nature” for this study.

- a) “Any unlawful carnal knowledge of a female of not less than sixteen years without her consent. The victim could be either a man or a woman, indecent assault (man or woman) and incest”.

However, juxtaposing the definition of sexual assault in Section 98 of the Criminal Offences Act of the Republic of Ghana,³⁵ as stated above with the definition by WHO, revelation is made of the ambiguity and narrowness of the definition in the Ghanaian context, thus creating room for some forms of sexual violence to be treated with little or no seriousness. Nevertheless, the law makes provision in Section 97 of the Criminal Code Amendment (Act 554) for the sentencing of whoever commits such offence to a jail term of not less than five years and not more than twenty-five years.³⁶ In spite of the existence of such laws, a recent report highlights sexual offences as being a major social challenge in Ghana that women are not the only victims,

³⁴ World Health Organization (note 5).

³⁵ Republic of Ghana Criminal Offence Act 29 of 1960.

³⁶ *Ibid.*

but that offences extend to other minority groups.³⁷ Media reports indicate growing incidents of various forms of sexual offences including rape, defilement and sodomy as referred to in the Criminal Offences Act (Act 29 of 1960).

Victim/Survivor

Research done on sexual violence in Ghana is relatively sparse despite the high prevalence of this crime. The few existing but limited studies conducted in Ghana have either looked at the broader area of sexual violence in the country in terms of its prevalence, or at sexual offences in relation to minors,³⁸ with little attention being paid to the actual experiences and sensitivities of victims who seek justice. The adversarial procedures conducted in Ghanaian courts just like the situation in many states – for jurisprudential and philosophical reasons, positions criminal acts as crimes committed against the State rather than against the victim who has suffered directly from the crime. As such, belittling the aim of a victim-centred approach which gives the victim of the crime direct access and right to be part of the trial process at any given period breaches both international and national standards. Thus, I argue that survivors who suffered directly from the crime (primary victims) are often side-lined, and unfairly/insensitively treated. The structure of the system contributes to the insensitive ways in which survivors of sexual violence are handled when they are brave enough to seek justice. Such instances further lead to an increasing desire of Human Rights groups and victimologists to know how confidentiality is maintained and how the victim is protected in court.

Additionally, in the Ghanaian context, due to the unfair and deeply flawed system currently in place both within the law and in practice which allows the media access to court as a means of ensuring judicial checks, room is created for the media to abuse such privilege often through the release personal identifiers of survivors of sexual violence into the public domain, a situation which erodes the right to privacy and confidentiality surrounding individuals involved in such sensitive cases.³⁹

The current study explores the issues that arise in court as survivors of sexual violence in Ghana attempt to seek justice from the criminal justice system. This research focuses on uncovering

³⁷ E N B Quarshie, J Osafo, C Akotia, et al ‘Some Epidemiological characteristics of perpetrators and victims of incest in contemporary Ghana: Analysis of media reports’ (2017) *Journal of Child Sexual Abuse*, 26(2), 121–139.

³⁸ See generally I M Amoakohene ‘Violence against women in Ghana: A look at women’s perception and review of policy and social response’ (2004) *Social Science and Medicine*, 59: 2373-2385; E Y Tenkorang, A Y Owusu, E H Yeboah, et al ‘Factors influencing domestic and marital violence against women in Ghana’ (2013) *Journal of Family Violence*, 28(8), 771-781.

³⁹ This is further discussed in Chapter 2, page number 19.

the issues of confidentiality and victim protection in the Ghanaian court system that is, the study explores the current state of affairs surrounding confidentiality and victim protection in the court on matters involving sexual violence. This includes an in-depth exploration of the court structures/systems and facilities, of the factors within the court that may compromise the conduct of actors both within and outside the criminal justice system that in turn compromise confidentiality and victim protection. Additionally, this study focuses on a range of cases of sexual violence in Ghana, regardless of the sexual orientation, gender, nationality, age or social status of the people involved. This is in order to generate a comprehensive description and analysis of the phenomenon under study for the ultimate purpose of informing policy formulation and legal amendments geared towards a more equitable and sensitive treatment of all victims of sexual violence. Thus, the study moves from the common-sense assumption that females are the only victims of sexual violence to encompass everyone who has been and is vulnerable to being a victim. This approach is in accordance with the definition of ‘victim’ by the Criminal Offences Act of Ghana (Act 29 of 1960), which defines victims as either males or females. Finally, the study seeks to raise the status, and increase the visibility, of these survivors: survivors of sexual violence in the Ghanaian criminal justice system.

PROBLEM STATEMENT

For many years survivors of sexual violence have had to endure a series of processes in seeking justice for, and closure from their traumatic experience. A journey which is not devoid of stigmatization, victim-blaming, among other negative treatments especially in Africa, and more specifically in Ghana. Consequently, many of the survivors report feeling helpless within the criminal justice process. In fact, many have reportedly been compelled to withdraw their case, and abandon their charge simply to escape the traumatic experience and the stigma.⁴⁰ A situation which could be attributed, at least in part, to the lack of a victim-centred approach to justice delivery within the criminal justice system, especially when it comes to victim protection and confidentiality. Therefore, critical questions emerging from these experiences would include: what are the issues surrounding victim protection and confidentiality in the court? Are survivors well protected in their quest for justice?

This research is therefore informed by the researcher’s perception, experiences and exploration of the literature, that survivors of sexual violence in Ghana are often belittled and seen simply

⁴⁰ See Note 29.

as witnesses in a case. Thus, they are not well protected or given the privacy they both require and deserve.

RESEARCH METHODOLOGY

The aim of this study was to explore survivor protection and confidentiality in cases of sexual violence in the Ghanaian courts. As such, a purely qualitative approach was employed to explore the topic in depth. Qualitative research, as defined by Creswell,⁴¹ is “an investigative process of understanding based on a distinct methodological practice of inquiry that reconnoitres a social or human problem, and where the researcher seeks an in-depth understanding of social or human phenomena within their natural setting or context”. Therefore, the purpose of qualitative research is to gather in-depth information about a social or human phenomenon rather than collecting a quantity of quantifiable information.⁴² Thus, as a qualitative tool, this current study involved the use of both court observations and interviews of study participants who are key role players in the criminal justice system. A qualitative research design is both appropriate and viable when it gathers data from participants who experience or are directly involved in the phenomenon under study.⁴³ Accordingly, qualitative research affords a researcher the opportunity to understand and discuss the research topic in-depth because, in the process of the research, ideas, themes, words and observations are thoroughly examined. Through observations at the court, I gathered first-hand information and an insider’s perspective while the interviews afforded me the opportunity for gathering in-depth information from key players in the criminal justice system, including state prosecutors, the staff of NGOs, presiding officers, legal practitioners, and court staffers. In other words, the interviews allowed me to gain data from the participants’ insights, viewpoint and involvement with the criminal justice system regarding the protection of survivors of sexual violence as well as the degree of confidentiality within the court. The study further took on some elements of exploratory and descriptive research design to collect and analyse the data. This was to gain insight into an area that, as has already been mentioned, remains minimally explored in the Ghanaian context. The descriptive nature of the study also helped provide as precise, a description as possible of the setting in which the study was conducted. In addition, the

⁴¹ J W Creswell ‘Research Design: Qualitative, Quantitative and Mixed Methods Approaches’ (2003) 2nd ed, *Sage Publications Ltd*.

⁴² K Klenke ‘Qualitative research in the study of leadership. Bingley’ (2016) *Emerald Group Publishing*.

⁴³ See generally Mathosa & Mofokeng ‘Policing Illicit Drug Abuse Amongst the Youth In Soweto’ (2017) *Southern African Journal of Criminology* 30(1)/2017.

descriptive element further assisted in answering *how* and *who* questions in relation to survivor protection and confidentiality.

Population and Sampling

For the purposes of this study, I recruited and interviewed key players who work within or are privy to the workings of the criminal justice system. This sample comprised of five state prosecutors from the Domestic Violence and Victims Support Unit of the Ghana Police Service (DOVVSU), two presiding officers of the gender court, three court staffers, five legal practitioners and three members of staff of NGOs who work with victims and are interested in the wellbeing of survivors of sexual violence. These numbers, together with the range of participants recruited, were deemed appropriate for this exploratory study to gain multiple views and perspectives. Also, the purpose of including participants from diverse backgrounds was to help create fairness and a variety of responses that could represent the voices of both survivors and of players in the justice system. Moreover, the narratives, work experiences, understandings and insights of the participants varied, and were thus considered essential in deriving a clear and thorough analysis of the topic. However, due to excessive bureaucracy and limited time both of which were beyond my control, only 15 of the proposed 18 research participants were recruited. It would have been unethical to pursue or recruit participants to partake in the study without approval from their various units. The selected participants were chosen because they were deemed to be well-informed and experienced within the criminal justice system as well as informed about issues of interest to the researcher. Recruitment for the study was done using convenient and purposive sampling approach. Convenience sampling was employed because the research participants were drawn from the extensive population that was close to where I (researcher) was situated, in other words, based on easy accessibility and proximity to me (researcher). Purposive sampling was also adopted to save time and money during the data collection process. At the later stage of data collection, a snowball sampling technique was utilized as I was referred by some participants to the legal practitioners who specialized in sexual violence, thus facilitating gaining access to them.

Table 1: Tally of Research Participants.

Participants	Number
State Prosecutors	4
Staff of NGO's	4
Legal Practitioners	3
Court Staffers	3
Presiding Officers	1
TOTAL	15

Table 1 shows the tally of participants recruited for the study from the different units within the criminal justice system in Ghana.

Ethical Consideration

For ethical reasons, ethical clearance permission was obtained from the University of Cape Town (UCT) - Law Faculty Research Ethics Committee, after which permission was sought from the various units in Ghana from which participants were recruited: The Judicial Secretariat, DOVVSU Regional Command, private law firms and NGOs. Three weeks before the commencement of the study, letters requesting permission to conduct interviews and observations were forwarded to the respective units for approval.

In addition, participants' confidentiality was guaranteed and participation in the study was specified as being entirely voluntary, that no participant was coerced into taking part in the study. Anonymity was similarly ensured by not naming the court or any of the research participants. Additionally, research codes were assigned to the various participants recruited for the study. Further, participants were assured that no personal identifiers or any information about their organization would be used in the dissertation, nor any publication generated from the study. Subsequently, no money was paid to the participants who part took in the study. Lastly, participants were fully informed of the objectives of the study and the purpose and use of the data being collected – this was done at both the beginning and end of every interview session.

Data collection

Data from the field were collected using a purely qualitative research approach. That is, the topic was explored through direct observations at the court which was the study site and through interviews with participants. As a data collection tool, the interviews were designed using an open-ended semi-structured interview format which was conducted face-to-face.

Thus, the purpose of the open-ended interviews was to create room for capturing substantive responses from participants. Likewise, in face-to-face interviews, participants are more likely to disclose information and provide amplification of their responses than when completing questionnaires. The interviews allowed me to use follow-up questions for clarification, as was argued by Rubin and Rubin, who advocate for the flexibility of semi-structured interviews by arguing that, such interviews enable the researcher to follow-up on initial questions and probe with appropriate questions for clarification and amplification of responses.⁴⁴ Open-ended interviews on the other hand also provided the opportunity for me to draw comparisons between participant responses and the information gathered from the court observations. Further, the interviews also afforded the gathering of detailed information without limiting participants to a rigid set of options or answers, which in turn aided the gathering of multiple perspectives and diverse views. Finally, this interview format made for a relaxed conversation between me and the research participants. The various sets of participants were asked slightly different questions due to the differences in their roles within the justice system. The rationale for this strategy was the eliciting of diverse perspectives and views for a thorough, multi-faceted analysis.

Data collection from the court in the other sphere involved walking around and passive observations within the court without directly involving any individual.

Participants selected for the study signed a consent form to indicate their agreement to participate in the study. All interviews were recorded with the permission of the participants (through the signing of the consent form). Each interview session lasted approximately 45 minutes. Furthermore, the interviews were conducted using English for ease of transcription. Responses from participants were captured using filed notebooks and an audio recorder. Direct observations lasted from 9 am to 1 pm each day over two working weeks.

Rationale for the Research

To date, no literature exists which deals specifically with the position of survivors of sexual violence within the criminal justice system in Ghana, in particular during court proceedings. Neither the Ministry for Women, Gender and Social protection nor DOVVSU provides comprehensive reports that speaks to the status of survivors of sexual violence in the country in terms of their protection and privacy. Most reports that are churned out speak only to the statistics of the number of cases reported, how best the various units/departments have worked

⁴⁴ J H Rubin & S I Rubin 'Qualitative Interviewing: The Art of Hearing Data' (1995) *Sage Publications*.

to “reduce” the prevalence of sexual violence, and steps being taken to further handle this social challenge. In addition, the issue of victim protection and privacy has generated little discussion and public concern in Ghana. Thus, I argue in this study that an appropriate, informed, and thorough understanding of the stance of key players of the criminal justice system at first hand could make a valuable contribution to improving justice delivery as well as other services to survivors of sexual violence in Ghana. Thus, the contributions made in this dissertation is to point out that all role players including survivors of sexual violence must be considered. Furthermore, such an understanding would contribute to the steadily growing field of victimology in Ghana. It is crucial to note that this dearth of information and understanding from the perspective of survivors who suffer directly from the crime, and at the hands of key actors of the justice system, makes it difficult for anyone, including those within the criminal justice system, to fully comprehend the crime, which in turn affects the kinds of treatment provided and the quality of justice delivery.

The intention of this study is to explore and provide a detailed description of the issues surrounding confidentiality and survivor protection in one gender court, with the purpose of obtaining a better understanding of the obstacles to victims and to influence the delivery of justice to survivors. This dissertation only canvassed the other role players excluding survivors, and thus only have their perspectives and experiences to conclusively draw on which constituted a limitation to the study, I thus believe a well-documented account of survivors' experiences and perceptions is necessary for future studies.

Research questions

The fundamentals of this dissertation revolve around the empirical component of the study, the focus on sexual violence survivor protection and confidentiality in the court. Thus, the main research questions set the parameters for conducting the study.

1. How are victim protection and confidentiality ensured or not in the Ghanaian criminal processes?
2. What can best be done to protect survivors of sexual violence as they seek justice in the court, while at the same time ensuring confidentiality?

Significance of Study

The study is seen to contribute to the field criminology and/or victimology in several ways. The dearth of research on victimology of sexual violence in the Ghanaian context has been noted, and this is the main input and theme of this study, in addition to the study adding up to

existing knowledge within the field. Second, as an advocacy tool, this study anticipates influencing policy formulation and implementation regarding the treatment of survivors of sexual violence, especially within the court, as well as a possible legal reform. It is hoped that the study may influence the establishment of a specialized, sequestered court, with the availability of modern facilities tailored at a victim-centred approach in justice delivery in Ghana. Furthermore, the study is intended to stimulate the government and criminal justice actors as well as other stakeholders to improve the criminal justice system. It also seeks to make survivors of sexual violence aware of their rights, as well as of sources of help and support available. These initiatives would strengthen the ability and confidence of survivors to seek justice. Finally, the study hopes to generate other researches and fuel public discussions about the state and role of victimhood in the criminal justice system in Ghana.

Delimitation of the Study

As highlighted by Schwandt,⁴⁵ a researcher considers a combination of conditions such as availability, accessibility and representativeness in choosing a site for research, known as the research demarcation. Accordingly, the research demarcation is crucial in obtaining the necessary information with a fair balance.⁴⁶ Thus, the selection of the research site for this study was guided by initial background checks I conducted on the site of interest for data collection. Key criteria for selecting the location for me were representativeness, convenience to me (researcher), and the availability/accessibility of both the site and research participants. With such criteria set, I selected Accra as the broader research location but narrowed down the data collection site to the gender courts in the region. Accra is a cosmopolitan city, which serves as both the administrative and business capital of Ghana, with a population of about 2.27 million people from diverse political, economic, religious, and social backgrounds.⁴⁷ The economic activities in Accra are dominated by both formal and informal engagements. Due to time limitation and bureaucratic constraints, the data collection was restricted to one gender court in the region. The gender court falls under the circuit court category and serves major parts of Accra in terms of its case adjudication. Gender courts in Ghana have the original jurisdiction in all criminal matters that have to do with domestic and other gender-based

⁴⁵ See T A Schwandt 'Qualitative inquiry: A dictionary of terms' (1997). Sage Publications.

⁴⁶ L Masike & J Mofokeng 'The Effects of Alcohol and Drugs on Student Academic Life' (2017) Southern African Journal of Criminology. Special Edition: Illicit drugs: Local and International realities,116.

⁴⁷Ghana Statistical Service 'Projected Population (census 2016-2018)' (2018). [Retrieved from <http://www.statsghana.gov.gh/>] [Assessed on 8 October 2018]

violence, including sexual assault and offences other than those of treason and offences punishable by death.⁴⁸ Currently, female presiding officers head these gender courts.

It is prudent to note that, the gender court in its case arbitration is mandated to refer a matter to a family tribunal where a person under the age of 18 is brought before it, and where a child is the alleged offender, the matter is referred to a juvenile court.⁴⁹

Structure of Dissertation

For a nuanced and in-depth understanding of the phenomenon under study, the first chapter of this dissertation provided the introduction, problem statement and background to the study. It also provided some operational definitions of the terms and concepts as used in the study and ends with the general structure of the dissertation.

Chapter two reviews existing literature in the areas of sexual violence, victimology, and victim protection at both the international and regional/national levels. Also discussed are existing international, regional and national policies/legal instruments that has direct bearing on human/victims' rights.

Chapter three highlights the research methodology and methods utilized in the study. It also addresses the issue of analysis of the data gathered during the interviews and observations.

The research results are presented and discussed in Chapter four, revealing the overarching themes emerging from the interviews conducted with the various research participants on the issue of victim protection and confidentiality. The chapter also presents a discussion of the findings from the observations conducted during the visits to the gender court. The chapter concludes by juxtaposing and comparing the findings with international best practices, national laws and policies on handling survivors of sexual violence.

The final chapter includes a comprehensive summary of the study's findings, the limitations and contributions of the study, and various recommendations for effective, efficient and inclusive protection of victims of sexual violence. The chapter ends with my final reflections, conclusions, and recommendations for policymakers, stakeholders of the justice system, and

⁴⁸ The Republic of Ghana Judiciary: The Circuit Court. Available at <https://www.judicial.gov.gh/index.php/about-the-judiciary/associations/association-of-judges-and-magistrates/100-law-courts/268-circuit-courts-in-ghana> [Assessed on 15 November 2018].

⁴⁹ See <https://www.modernghana.com/news/418378/gender-based-violence-court-for-kumasi.html>

future academic research. However, the accompanying discussions and policy implications in the discussion and conclusion sections are by no means exhaustive.

The following chapter provides a review of existing literature, laws, policies, and Acts from international, regional and national sources.

CHAPTER TWO

LITERATURE REVIEW ON SEXUAL VIOLENCE, SEXUAL VICTIMIZATION AND RELATED STUDIES

Introduction

The introductory chapter provided a background to the phenomenon of sexual violence in the Ghanaian context and the secondary trauma that victims endure, both after encountering such a traumatic experience and when attempting to seek justice from the court. Due to the scarcity of research in this area, in Ghana, this study focuses on exploring victim protection and confidentiality during the court process in the context of sexual violence in Ghana. The chapter presents a review of existing literature and empirical research on sexual violence and victim protection/privacy.

The first sections of this chapter review literature which focuses on victimology and gender, the scarcity of research on sexual violence in Africa and Ghana having been noted. The second section reviews the literature on sexual violence in the Ghanaian context, together with related studies from other parts of the world especially in developed countries. The third section reviews source documents from international, and regional sources and includes the Ghanaian legal instruments in handling and prosecuting sexual violence. The legal and para-legal instruments and institutions discussed include state-owned institutions and non-governmental organisations that work in the combating of sexual violence in Ghana. The fourth section focuses on reviewing literature and studies done on the consequences for survivors of sexual victimization. The last section tackles empirical research on victim protection. These identified pieces of literature provide the framework for this current study by setting the parameters for the research and exposing the gaps and contradictions available in the literature. However, it should be noted that the aim of this research is not to provide a complete literature review on the phenomenon under study. The main aim of this study is to answer the research questions presented in Chapter one. To answer these questions, it is necessary to conceptualise and contextualise the notion of victim protection and confidentiality, which I attempt to do, based on the literature reviewed. This review thus provides both the framework and foundation for discussions of the phenomenon under study, as well as for recommendations arising from the findings.

Victimology and Gender

Within the broader scope of criminology, the area of victimology is seen as the discipline that concerns itself with the study of victims of crime. The term and concept 'patterns of victimization' represents a relatively recent field dating back to the 1960s and 70s. For a long time, before the emergence of the notion and adoption of victimology, victims of crime were often ignored in criminological studies.⁵⁰ Even in situations where victims of crime have been considered, studies have tended to focus on the contribution of the victims to their own victimization and not on their experiences as victims, nor on the impact of the crime on them.⁵¹

The emergence of the discipline of victimology has played a key role in assisting researchers towards a more comprehensive understanding of criminal victimization. The discipline has further contributed to the repositioning of victims of crime both during case trial and within scholarly studies. The effects of this can be seen in the shift in policy frameworks and service delivery, which now focus more on a victim-centred approach in justice delivery, especially in the developed worlds. Questions about who and what victims are, and the needs of victims, have gradually changed since the emergence of the discipline of victimology.

The academic and justice landscape has been significantly influenced by 'political activism', which arose out of the field of victimology in the 1970s by way of advocating for victims' rights and victim-centred justice delivery.⁵² Extensive research conducted on the experiences of victims within academia in western societies has contributed to addressing and raising awareness of the issue of secondary victimization within those settings and beyond.

To consolidate the field of victimology and the position of victims in the criminal justice system, efforts have been made at improving the status of victims at international levels by bodies such as the UN. These efforts are also seen at national levels in various countries through several policies and Acts such as the South African Victim Charter in South Africa. Subsequently, these efforts have emphasised the kind of victim-centred approach now adopted in most western societies and in some sub-Saharan countries, such as South Africa. The UN adopted the United Nations Declaration of Basic Principles of Justice for Victims of Crime and

⁵⁰ L Zender 'Victims' (2002) *Oxford Handbook of Criminology*, 3rd Edition, Oxford University Press, 419-456.

⁵¹ E M Wolfgang 'Victim Precipitated Criminal Homicide' (1957) *Journal of Criminal Law and Criminology*, 48(1).

⁵² See E A Fattah 'Victimology: Past, Present and Future' (2000). *Criminology*, 17-46.

Abuse of Power in 1985.⁵³ A Declaration that sought to create a framework to guide member states on how to treat victims of crime. The South African Victim Charter,⁵⁴ with its adoption in 2004, placed victims of all crime, including sexual violence, at the centre of the justice system as well as the delivery of justice.

Any discussion on crime victimization and the field of victimology must include gender, an aspect formally non-existent in the focus of victimological studies. The 1970s saw the introduction of gender in academic victimological studies because of the activist struggles of feminists.⁵⁵ The prevalence and/or increase in awareness of the social problem of sexual violence by the 1960s formed part of the basis of the debate of feminists, which saw the acknowledgement of gender within the discourse of victimological research. Even though both genders face the risk of being victims of sexual violence in modern societies globally, being a female, particularly in societies characterized by patriarchy and poverty, puts one at greater risk of vulnerability.

It is now increasingly imperative to acknowledge gender as an element in establishing the risk of criminal victimization.⁵⁶ Thus, when discussing the issue of sexual violence, gender cannot be overlooked. It also needs to be and is increasingly acknowledged that all genders, including transgender persons, are at risk of being victims of sexual violence in one way or the other. However, studies have shown that, for most forms of sexual violence, victims are more often women. Therefore, for this dissertation, the concept of gender was adopted and used in its traditional, pre-transgender, form to refer to males and females. As has been noted, although men may also be victims of sexual violence, the overall rate of sexual victimization for both genders differs greatly.⁵⁷ A 2017 UNICEF survey indicated that almost 15 million adolescent girls between 15 and 19 years have experienced one form of sexual assault, while their male counterpart had lower prevalence even though they are also at risk.⁵⁸ Further, the report cited

⁵³ Universal Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Adopted 29 November 1985 UNGA A/Res/40/34)

⁵⁴ South Africa Victim Charter, 2004.

⁵⁵ Vanja (note 25)

⁵⁶ L Artz. L 'The troublesome 'gender': (re)considering gender-based violence' (2013) *In Victimology in South Africa*. R. Peacock, ed, 157-59.

⁵⁷ J A Wemmers & K Cyr. K 'Gender and Victims' Expectations Regarding Their Role in the Criminal Justice System: Towards Victim-Centred Prosecutorial Policies' (2016) *Springer International Publishing*.

⁵⁸ United Nations Interregional Crime and Justice Research Institute (UNICRI) 'International Crime Victim Survey' (2007). Available on http://www.unicri.it/services/library_documentation/publications/unicri_series/ [Accessed on 14 August 2018].

that, in 38 lower-and-middle income countries surveyed, close to 17 million women reported having suffered the same fate.⁵⁹ Ironically, though females bear a higher risk of sexual victimization, a survey from 30 countries alluded to the fact that only 1% of all victimized girls reached out to professionals.⁶⁰ In this context, and over the past decades, and from the many existing studies/surveys, it can be argued that women and children while not being the only victims, have been the main victims of sexual violence in the global north and south.⁶¹

Secondary Victimization

The issue of secondary victimization runs parallel to the scope of this current study. According to Campbell et al.,⁶² secondary victimization refers to “behaviours and attitudes of social service providers that are victim-blaming and insensitive, and which traumatize victims of violence who are being served by these service providers”. Primary victimization of the survivor is the offence itself perpetrated on the victim. However, secondary victimization arises when institutions and actors charged with the responsibility for managing the society in terms of what Hobbes called ‘the social contract’,⁶³ further victimize survivors through their institutions’ and actors’ actions or inactions. According to the conceptualization of the victimization process, secondary victimization is always a post crime effect, which results from a victim’s contact with the criminal justice system and/or its actors. As such, secondary victimization is implicated in situations where institutions, and/or their actors within the criminal justice system, place the institutional ideals and practices above the needs of victims of crime and thus “manhandle” them in their quest for justice.⁶⁴ In other words, when institutions within the criminal justice system and/or its actors place a higher value on their practices than they do on both physical and psychological wellbeing of survivors, survivors feel violated. Scholars such as Raja and Campbell argue that when these institutions and/or actors behave in ways that place the needs of sexual violence survivors second to the values/practices of their institutions, the actual rape or violent experience of the survivor is mirrored, and survivors end up feeling re-victimized.⁶⁵ Thus, not only can the process of justice

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ WoBner (note 8).

⁶² R Campbell & S Raja ‘Secondary victimization of rape victims: Insights from mental health professionals who treat survivors of violence’ (1999) *Viol. Vict*, 14: 261–275.

⁶³ T Hobbes ‘Leviathan’ (1985) *Penguin Books*, 1651a.

⁶⁴ Campbell et al (note 48) 14 (3).

⁶⁵ *Ibid.*

seeking be taxing, but survivors might be met with principally challenging response by officials.

Sexual Violence in Ghana: Overview, Cultural, Legal & Institutional backdrop

There has been a limited study of sexual violence in Ghana, even though sexual violence is the second most frequently committed crime in the country.⁶⁶ A few studies have focused on the treatment of consent in sexual assault cases,⁶⁷ violence against women,⁶⁸ and victims of sexual assault: the experiences of Ghanaian women,⁶⁹ just to mention a few. In the Ghanaian society in general, gender-based role discrepancy, discrimination, male ascendancy and male sexual entitlement appears to have remained entrenched,⁷⁰ a situation which perpetuates patriarchal beliefs and practices. Thus, domestic violence, especially sexual violence, persists in the society.⁷¹

In the Ghanaian legal context, as in other jurisdictions, incest, rape, defilement/child sexual abuse, and sexual harassment are recognized by law as criminal offences and attract firm punishments. The Criminal Offences Act stipulates a jail term of not less than five years and not more than 25 years if a perpetrator is found guilty and convicted of this first-degree felony (perpetrator of sexual assault).⁷² In Ghana rape is the most reported sexual offence, followed by defilement. The Criminal Offences Act of 1960 (Act 29 as amended) of Ghana defines rape as ‘carnal knowledge’ of a female of sixteen years or above.⁷³ Therefore, this definition excludes male rape. Furthermore, vulnerability to sexual violence within the Ghanaian society is even greater due to the impression of shame in discussing issues related to sex or sexual violence, the remoteness of the vulnerable from sources of support, and the possibility of the perpetrators’ awareness of the minimal options available to victims.⁷⁴ Within the last decade

⁶⁶ Ghana Police Service ‘National data for cases reported To DOVVSU from 1999–2014’ (2014).

⁶⁷ E Archampong & B J Baidoo ‘The treatment of consent in sexual assault law’ (2011) *The Equality Effect*. Retrieved from <http://theequalityeffect.org/wp-content/uploads/2013/04/consent-paper-Ghana-EA-JB.pdf> [Assessed on 14 September 2018].

⁶⁸ Tenkorang (note 27).

⁶⁹ Boateng (note 18).

⁷⁰ I Dery ‘Domestic Violence against Women in Ghana: An exploratory Study in Upper West Region, Ghana’ (2014) *International Journal of Humanities and Social Science*, Vol.4, No.12.

⁷¹ A A Ampofo & J Boateng ‘Understanding masculinities, empowering women: what have boys in Ghana got to do with it? In C. M. Elliot (Eds.), *Global empowering of women: responses to globalization and politicized religions*’ (2008) *Routledge: Taylor & Francis Group*, 247-263.

⁷² Republic of Ghana Criminal Offences Act 1960 (Act 29) As Amended (2012).

⁷³ *Ibid.*

⁷⁴ M Abraham ‘Sexual abuse in South Asian immigrant marriages’ (1999) *Violence Against Women*, 5, 591-618.

the Ghanaian government, with the technical support and expertise of advocacy groups and international organizations, has drafted legal tools such as the Domestic Violence Act (Act 732 of 2007), the Gender Equity Act, and the Child Protection Act to help fight the rising numbers of cases of sexual violence, a move that could be described as a first step in the right direction. However, most of these policies and protocols have sought only to reduce the prevalence of incidences of sexual violence without paying much attention to the victim who suffers directly from the ordeal, nor to providing support to the survivors.

Definition of Rape/Defilement in Ghana

Both the Criminal Offences Act 1960 (Act 29, as amended) and the Domestic Violence Act (Act 732) define rape as “the carnal knowledge of a female of sixteen years or above without consent”, while defilement is defined as “the act of having sex with any child under 16 years with or without her consent”. Firstly, the age range of victims is crucial. Thus, a person can be convicted of rape if the prosecution establishes that the victim is a female aged 16 years or above, the accused had carnal knowledge of the victim, and the carnal knowledge was without the victim’s consent. For the prosecution to establish defilement, they must prove that the complainant is younger than sixteen. Therefore, it is important to note that lack of consent is crucial to a rape charge. The accused will have a defence if he is able to prove that the said rape victim consented to the sex. However, according to Section 14 of Act 29, consent is void if it is gained by deceit or coercion, given by reason of a fundamental mistake, or if the victim was experiencing a permanent or temporary incapacity resulting from intoxication or any other cause, rendering her incapable of understanding the nature or consequences of the sex to which she has purportedly consented.

Subsequently, from the common law explanation of rape and defilement as outlined in the Domestic Violence Act (Act 732),⁷⁵ and Section 98 of Act 29, rape is defined as “a man having unlawful, intentional sexual intercourse with a woman without her consent”. Hence, gleaned from the way courts have tend to interpreted the statutory provisions, a charge of sexual assault in the Ghanaian court requires proof of the absence of consent, intention, penetration, force and/or threat, with a woman or a minor (a child of 16 years or below).⁷⁶ These various components of sexual assault are briefly discussed below as found in the Domestic Violence Act (Act 732) of the Republic of Ghana.

⁷⁵ Ghana, Domestic Violence Act 732 of 2007.

⁷⁶ G/CPL Valentino & EC/1 Abdulai Aziz Atiso v The Republic Supreme Court of Ghana Application no. J3/4/2009. Appeal on the Decision for proof of allege rape.

Sexual Offences and the Court

Courts are established and charged primarily with the duty to adjudicate all criminal case of which sexual violence is included.⁷⁷ However, this is not always the case for various reasons, especially in Ghana, where families often prefer to settle sexual violence cases at home as a ‘family matter’, especially when the perpetrator is known to the family.⁷⁸ Besides, the widespread myths around sexual violence in various societies are often projected into the court and during court proceedings. These myths often surface in the way survivors of sexual violence are treated within the criminal justice system. Some commentators report that these myths and particular attitudes held by actors in the criminal justice system play a key role in victims’ experience of secondary victimization.⁷⁹

A study by Acheampong,⁸⁰ examined the notion of consent in sexual offences under the Ghanaian Law. She explored how the courts handled consent and its implications for women and girls in Ghana. The researcher considered the relationship between various sexual offences, customary law, and practice. The findings demonstrate that Ghanaian courts at the time considered “credible” accounts from witnesses and victims by basing these on, or situating them within, customary beliefs and assumptions about sexual violence. In the Ghanaian context, when rape or other forms of sexual assault occur, typical and widespread beliefs exist that there should be a witness who either witnessed the assault occurring or heard the victim cry for help,⁸¹ rather than them being acceptance of the victim’s testimony. Acheampong found that such beliefs tended to influence the court when adjudicating cases of sexual assault. Thus, the absence of such witnesses can represent for the presiding officer a flaw in evidence as presiding officer tend to rely heavily on witness testimonies, rather than accepting the prima facie evidence of the victim. What also emerged from the study was that consent is poorly defined in the penal code/law of Ghana, leaving presiding officers to rely on or resort to their own presumptions and assumptions about what consent should be. This results in situations where most survivors of sexual assault are denied justice due to what the presiding officer may define as consent. A critical review of Acheampong’s study shows an interesting revelation

⁷⁷ T W Bennett T.W ‘Traditional courts and fundamental rights’ (2006) In: Hinz MO, Patemann HL, eds. *The shade of new leaves, governance in traditional authority: a South African perspective*, 157-166.

⁷⁸ Boateng (note 18).

⁷⁹ S Y Lai & E R Regan E.R ‘Female sexual autonomy and human rights’ (1995) *Harvard Human Rights Journal*, 8: 201-227.

⁸⁰ Acheampong & Baidoo (note 52).

⁸¹ *Ibid.*

about how sexual offence cases are handled in courts, where lack of legal definitions together with social and traditional beliefs, are influencing justice delivery for survivors of sexual violence.

Reports submitted by the South African Ministerial Advisory Task Team on “The Adjudication of Sexual Offences Matters”, came up with interesting revelations about the sexual offence courts model in South Africa⁸². The Task Team, set up to investigate the feasibility of the re-introduction of Sexual Offence Courts within the existing legal framework, pointed to sufficient grounds and a compelling need for the re-introduction of the sexual offence courts, an action which was argued, would be in line with the ethos of the Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007. The report again pointed to the role the re-introduction of the court would play in establishing a victim-centred court system in South Africa which would be prompt, responsive and effective.

Thus, with such a court in existence, secondary victimization was expected to be reduced to its barest minimum while helping to protect victims and enhance confidentiality.

Source Documents and legal/states commitment in handling sexual offences

The high rate of sexual violence in Ghana was identified and formed part of the basis for the introduction of legal acts such as the Criminal Offences Act of 1960 (Amended Act of 2012), and the already mentioned Domestic Violence Act of 2007 (Act 732). It also formed the basis for the establishment of institutions such as the Domestic Violence and Victims Support Unit, and the Ministry for Women, Children, Gender and Social Protection. The formulation of these acts was informed by a process of consultation with several stakeholders within the criminal justice system, traditional leaders, opinion leaders, religious leaders, and politicians. On the international and regional front, there currently exist several instruments and declarations that speak to the issue of human rights and victims’ rights directly or indirectly, some of which are highlighted in the following sections.

The Criminal Offences Act (Act 29) as amended

The Criminal Offences Act of Ghana was adopted in 1960 to set the legal parameters for addressing several criminal law issues in Ghana, including sexual offences. The Act in its entirety was also intended to consolidate and amend the laws of the land in relation to criminal offences. In January 1961 the Criminal Offences Act received its official assent and came into

⁸² See Acheampong 7 Baidoo (note 52); Department of Justice and Constitutional Development MATTSO ‘Report on the re-establishment of sexual offences court’ (2013).

operation. In 2012 the Act was amended to include other criminal offences previously omitted from the Act of 1960, or not explicitly stated as constituting a criminal offence in the republic. This amendment saw the inclusion of, among others, unlawful use and trade of human parts, sexual exploitation, and illicit trafficking of firearms/explosives. Both the Acts of 1960 and 2012 emphasize the criminal illegality of sexual offences and set stiff punishment for such offences. However, both Acts tend to echo the adversarial/insensitive nature of the criminal justice system in Ghana, where victims of sexual violence are only seen as a witness to the cases which are handled by the state (represented by the state prosecutor) and the accused. Additionally, the victim is accorded no right to participate in the trial as a dominant stakeholder or complainant, a situation which goes a long way towards protective measures in place for them. Thus, a victim is only needed to provide testimony during the trial. Hence, the approach cannot be said to be victim-centered but should rather be seen as having a state versus the accused bias. This is a major flaw in both the Criminal Offences Acts of 1960 and the amended act of 2012, as well as a flaw in the entire criminal justice system especially in its treatment of such violent cases.

The Sexual Offences Act (Act of 2009)

The Ghanaian Sexual Offences Act came into operation on the 11 June 2011 to further highlight and appropriately amend the standing law regarding sexual violence. The Act works on the operating focus of setting the framework for better defining what constitutes sexual violence, the functions/duties of the state and its actors in dealing with both sexual violence and the sexual offences register. Furthermore, the Act operates on the basic principles of equality, accountability, and fairness.

National Gender Policy

This is a recent policy document adopted by the Ghanaian government with a commitment to further address the issues of gender disparity and violence in the country. The policy's theme and purpose are '*Mainstreaming Gender Equality and Women Empowerment into Ghana's Development Efforts*'.⁸³ This policy acknowledges and highlights the existence of social gender inequalities that create room for the violation of women and children. In Ghanaian society, as has been described by Boateng,⁸⁴ patriarchal ideology and male entitlement are strongly upheld and can be seen to have contributed to widening the gap between gender groups in terms of

⁸³ Ministry of Gender, Children and Social Protection *National Gender Policy* (2015) 3.

⁸⁴ Boateng (note 18).

social status and power differentials. Male entitlement can be said to contribute to the increasing prevalence of sexual violence. Thus, this policy sets out strategies for reducing gender inequalities and social injustices, among other factors harmful to vulnerable groups in society. The policy further recognizes that most of the victims of sexual violence in the country are women from disadvantaged backgrounds, hence the adoption of measures to help address these issues and to bridge the socio-economic gap. The policy identifies most survivors of domestic violence as being from poverty-ridden societies, and unemployed backgrounds, and seeks to ensure respect of the human rights and freedoms of all citizens through the attainment of gender equality.

LEGAL FRAMEWORKS

This section does not purport to be a complete comparative study of the legal tools. However, it is intended as a tool to guide further discussions in the study.

The 1992 Constitution of Ghana

The 1992 Constitution is the supreme law of the land. In April 1992, this constitution was approved and came into effect in 1993 after a national referendum. It provides the basic charter that spells out the separation of powers of the legislature, judiciary, executive and the Council of State. It further sets out the founding provisions for the establishment of a democratic state where human dignity is to be encouraged and protected and guarantees the Human Rights of all citizens and individuals within the national borders.⁸⁵ Thus, the Constitution is informed by the values of respect for human dignity and human rights which reflects the ‘motto’ of the country: Freedom and Justice.

Although the 1992 constitution does not explicitly address the issue of sexual violence, some chapters address human rights, and this is directly related to the discussion of survivor protection and confidentiality as well as the rights of survivors. Chapter 5 of the 1992 Constitution addresses the issue of Fundamental Human Rights and Freedoms. These rights and freedoms include, but not limited to, the right to life, women’s rights and freedom of expression. Chapter 5 of the Constitution encompasses entrenched clauses in relation to the

⁸⁵ M Otinkorand ‘Ghana: Of Fundamental Human Rights and Constitutional Amendments’ (2011) *Public Agenda*. Retrieved from <https://allafrica.com/stories/201103150386.html>. [Assessed on 30 September 2018].

issue of Human Rights and Freedoms and has been used in numerous cases involving human right abuses, discrimination and inequalities.⁸⁶

The Courts Act of 1993

The Courts Act, 1993 (Act 459) (as amended up to the Courts Amendment Act, 2004) (Act 674)) was adopted on July 6, 1993, to deal with the manner of court proceedings in general. The Act appears not to be tailored to victim-centred justice as can be seen in Section 102 (1) that ...

“Except as may be otherwise ordered by a court or tribunal in the interest of public morality, public safety or public order, the proceedings of every court or tribunal including the announcement of the decision of the court or tribunal shall be held in public.”

This indicates that the interests of public morality, safety and order take precedence over the interests of victims of such violent crimes as sexual violence are missing even from such legal documents.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in December 1948.⁸⁷ Drafted by representatives from diverse backgrounds with different legal, political, and cultural backgrounds, the declaration was passed and accepted as a common standard for all member states with respect to human rights of all their citizenry. The document highlights the rights to a fair trial, protection, no discrimination, equality before the law and the right to privacy of all people. These rights are highlighted in the hope of harnessing the protection of people’s rights while ensuring the minimization of secondary victimization.

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

This declaration came as a formal approval by the United Nations General Assembly on November 11, 1985, to help address and ensure a universal approach/standard in dealing with

⁸⁶ This was very instrumental in cases of abuse of some members of the LGBT community in Osu, a suburb of Accra. Other Non-Governmental Organizations have utilized the provisions of chapter 5 of the 1992 constitution to champion the fight for equal rights for minority groups and people who have experienced violation of their rights.

⁸⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Art 5.

victims of all forms of criminal activities. The General Assembly sought to recognize and push for the rights of victims or people who have suffered as a result of a crime or an abuse of power. However, this declaration is non-binding on UN member states, setting the standard only for member states towards a victim-centred approach in justice delivery. Nonetheless, with this declaration member states of the UN are charged to ensure a fair and balanced justice system especially when dealing with victims of a crime or an abuse of power. Thus, states who have rectified this declaration are expected to put in place domestic measures, procedures, and statutes that align with their treaty commitment, and thus assuming responsibility and duties to protect and deliver justice for all victims of crime and abuse of power within their jurisdiction under the international law.

The UN Beijing Declaration and Platform for Action (1995)

This United Nations declaration was introduced to reaffirm the basic principle that the rights of women and children are an inalienable, vital, and inseparable part of universal human rights.⁸⁸ The declaration in its present form is non-binding on Ghana. However, it clearly outlines the guidelines for effective legal, governmental, and civil strategies to protect the rights of women and those who have been victimized by crime. It sees violence against women as a hindrance to achieving gender equality and peace and stipulates that the criminal justice and court system in all countries which are signatories to the declaration should implement strategies and measures geared towards providing gender-sensitive centres to survivors of gender-based violence, including, but not limited, to sexual violence.

African Charter on Human and Peoples Rights

Also known as the Banjul Charter, the African Charter for Human and Peoples Rights, 2005 (therein referred to as ACHPR) forms part of the group of international instruments on human rights which emerged under the then Organization for African Unity (now African Union) to promote and protect human rights and basic freedoms on the African continent. A crucial part of the charter presents the civil and political rights of all, which entails the right to a fair trial,⁸⁹ to life and to personal integrity,⁹⁰ and to freedom from inhuman and degrading treatments.⁹¹ However, one thing that seems to have eluded the charter in terms of its coverage is the right

⁸⁸ K Moulton 'The Court doors may be open, but what lies behind those doors; An Observation at the workings of the Wynberg Sexual Offences Court' (2003) *SJPR Publications*.

⁸⁹ See, article 7 and 25 of the African Charter on human and peoples right (2005).

⁹⁰ Ibid (article 4).

⁹¹ Ibid (see also Article 5).

to privacy, as has been argued by some human right scholars.⁹² In the charter, the right to privacy as a civil right of the people living on the African continent is not explicitly addressed according to international standards. Nonetheless, it is noteworthy to know that Articles 60 and 61 of the charter permit member states to draw inspiration from other international human rights laws for the respect and protection of the basic rights and freedoms of all their citizens. In addition, in attempts to rectify the charter's deficiencies, the ACHPR has developed various guidelines and resolutions to help provide clarity and explicitness to its provisions.⁹³

In addition to this, all 53 countries on the continent, including Ghana have made the charter more comprehensive and specific, and are expected, as part of their regional obligation, to work within laws and practices to meet the demands of the treaty which they rectified.

PROTECTING VICTIMS

While many international bodies, non-governmental organizations, and national governments have made strides to give voice to victims of crime, especially victims of sexual violence, much still appears to be needed to be done in the courts. Studies have shown that victims tend to use the law as a tool.⁹⁴ In other words, victims use the law as a tool to determine the course of their future relationship with the justice system.⁹⁵ Thus, the experience they have when seeking justice would to a large extent determine how they relate to and/or trust the justice system. According to Finn,⁹⁶ victim-centred prosecution, which takes into full account the needs of the victim while having the victim at the centre of all proceedings, yields better results for victims of domestic and sexual violence. Therefore, given the traumatic nature of the survivor's experience of sexual violence, they need to be handled with care and to be well protected to prevent further damage which translates, to a state of secondary victimization. Correspondingly, survivors of sexual violence as with other citizens with rights and freedoms, need to be accorded sensitive and sympathetic treatment rather than being used as a means for the prosecution of an accused during case trials. That is, instead of them being reduced to the

⁹² C Heyns & M Killander 'Africa in International Human Rights Textbooks' (2007) *African Journal of International and Comparative Law*, 15(1), 130-137.

⁹³ A Okpechi 'Access to Justice by Refugees and Asylum seekers in South Africa' (2011). University of Cape Town.

⁹⁴ R E Fleury-Steiner, D Bube, C M Sullivan, et al 'Contextual factors impacting battered women's intentions to reuse the criminal legal system' (2006) *Journal of Community Psychology*, 34, 327-342.

⁹⁵ D For 'Prosecution as a victim power resource: A note on empowering women in violent conjugal relationships' (1991) *Law & Society Review*, 25 (2), 313-334.

⁹⁶ A M Finn 'Evidence-based and victim-centred prosecutorial policies. Examination of deterrent and therapeutic jurisprudence effects on domestic violence' (2013) *Criminology and Public Policy*, 12(3), 443-472.

level of mere witnesses during the trial, they should be seen and treated as both crucial and central elements in the case.

In the following chapters, I examine the ways in which victims of sexual violence are, or not, protected and the numerous issues surrounding confidentiality in the Ghanaian court. This investigation considers how best they can be protected and have their information/identify kept confidential as they progress through the criminal justice system.

REVIEW OF RELATED STUDIES

The field of criminology and human rights has in recent years seen an outpouring of publications/reviews on sexual assault. These publications span reviews on child to adult sexual abuse. In his research on victim privacy and the open court principle, Cameron,⁹⁷ reported that there exist tensions between victim privacy and the open court principle, especially in sexual assault proceedings. He found that, despite the edification and advocacy surrounding sexual assault, victims' right to privacy, this often comes up against the open court jurisprudence, which leads to discretionary use of power by presiding officers during hearings in order for them to attain proportionality between the two opposing notions; victim privacy and open court principle.

Further, studies that seek to uncover why some survivors of sexual violence encounter secondary victimization when they seek justice, reported that survivors raped by nonstrangers and ethnic minorities were less likely to be believed by the law enforcement agencies, and as a result have received harsh treatment from the agents of the criminal justice system. A study by Campbell and Raja in 2005 further reported that such treatments meted out to these groups further influenced whether the case would be prosecuted or not.⁹⁸

Conclusion

This chapter has reviewed literature from both western societies and the Ghanaian context. It has also reviewed international, regional, and national resolutions to which Ghana is either a signatory or has rectified, in addition to laws and Acts within the Ghanaian context. Yet for all

⁹⁷ J Cameron 'Victim Privacy and the Open Court Principle' (2003) *Policy Centre for Victims Issues*, Osgoode Hall Law School.

⁹⁸ R Campbell & S Raja 'The sexual assault and secondary victimization of female veterans: Help-seeking experiences with military and civilian social systems' (2005) *Psychology of Women Quarterly*, 29, 97-106.

of these laws, the issue of the protection and confidentiality of victim of sexual violence leaves much to be desired, particularly within the Ghanaian context. It is, therefore, crucial to examine the ways in which these resolutions are or not being operationalised in a real-world setting and how best the gaps between practice and theory can be bridged.

The chapter has provided a comprehensive background to the issue of sexual violence, victimology and the court from the global front down to Ghanaian setting.

From the literature reviewed, it cannot be said that there exists any ambiguity with regards to the expectations of Ghana when it comes to the protecting victims of crime, including and especially victims of sexual violence, as well as keeping their personal identifiers and data confidential. Therefore, a crucial question to consider is, how are victims of sexual violence protected in the court to prevent, and reduce the risk of re-victimization? The following chapter presents the findings of the study from data gathered from court observations and interviews with selected research participants.

CHAPTER THREE

RESEARCH FINDINGS

This chapter presents the results generated from the interviews and observations after transcription and analysis of the data. The themes set out below represent the findings from the empirical research and are supported by selected quotes from participants. The value of including these quotes is argued by Neuman in the sense that, “using direct quotations from participants is common in qualitative research to assist a researcher to support his argument clearly.”⁹⁹ Thus, major themes that emerged are presented, discussed (within the parameters of international, regional and national frameworks), interpreted, and further supported by the literature.

DEMOGRAPHIC CHARACTERISTICS OF PARTICIPANTS

I sought to gather data on the educational level of participants as well as their level of experience working in the criminal justice system. This was to enable me to assess the relationship, if any, between educational level/ level of experience and the quality of interpersonal relations with survivors, regarding survivor protection and confidentiality. Among the fifteen participants interviewed for the study, nine had a postgraduate degree, three undergraduate degrees, and the remaining three were secondary school leavers. On the other hand, regarding their level of experience, measured by the number of years they had worked in the criminal justice system, ten of the fifteen participants had more than twenty years’ experience working in the justice system, while the remaining five participants had between one and five years of experience. All participants were either court clerks, lawyers, presiding officers, NGO staffers or state prosecutors (from the Ghana Police Service).

COURT STRUCTURE/SECURITY

Before embarking on the observations, my perception of the court was that it was a distinguished and august place, where individual activities are well ordered and provided a safe and inclusive environment for all who encounter the court, especially the survivors of a crime such as sexual violence. However, observations at the premises showed a different picture. It was evident through my observations over the two weeks’ period that in reality practice does

⁹⁹ L W Neuman ‘Social Research Methods: Qualitative and Quantitative Approaches’ (2006) *Pearson Publications*.

not reflect what is reported to be carried out by the judicial service and other institutions, or what should be done.

The court is a one storey building with one entrance to the main courtroom. The entrance of the courtroom consists of a wooden door which during the period of my observations, was left ajar throughout the day with no visible emergency exit. Security was provided at the premises by personnel from the Ghana Police Service. However, I found that they are only available on days when there is a hearing. On the various occasion of the visits to the court for observations, I was not subjected to any security checks, and neither were the other people who came to the court. On the occasions of observations at the court, the security personnel were always found either talking on the phone or talking to other people present. These situations leave obviously many concerns about the level of security at the premises. The specific challenge indicated by the current security situation at the court complex is the absence of permanent police personnel deployed to the premises, their presence is seen only when they accompany an accused to the court. A participant saw the state of security at the courts as a matter of concern and cited the below statement:

... *“We have been calling for beef up of security at the court; the courts in Ghana ought to be announced flashpoints and given the most security at all times whether there is a hearing or not because we (the presiding officers and court clerks) are always here.”*
(Participant 06).

This call for an increase in security at the court received momentum after a joint press release by the Association of Judges and Magistrates and the Judicial Service calling on the government/security agencies to improve security after an attack on presiding officers at a court in April 2017 by vigilante groups.¹⁰⁰ The absence or/and lack of security at the court impacts on survivors as well. This is because, they also become susceptible to possible attacks by supporters of the accused or any external attacks in some cases.

On the other hand, in the courtroom, apart from several seats for the public (the public gallery), there is just a long desk with a set of chairs around it on which the court clerk, prosecutor, accused, victim, and defence attorney sit. Before this desk is the desk of the presiding officer. Thus, on several occasions, I observed both the survivor (complainant) and the accused (respondent) near each other, a situation that could lead to possible confrontation and trauma

¹⁰⁰ Ghanaweb online ‘NPP Delta Force Storms Kumasi Court; free 13 suspects’ (2017). Available on <https://www.ghanaweb.com/GhanaHomePage/NewsArchive>. [Accessed on 17 July 2018].

when the survivor comes face-to-face with the perpetrator. I also observed this to be the case where the accused was held in remand and was escorted from the prison to the court by the police and was seated in close proximity to the survivor.

Further, when it came to cases where the survivor (complainant) had to wait, there were no dedicated waiting rooms for them; they had to wait either in the public gallery or stand outside the court until their case was called. As a result, survivors who under the present legislation, are only perceived as witnesses, were often left at the mercy of the accused and/or his supporters. One participant expressed her awareness of the vulnerability of a survivor merely being a witness in her case, rather than central as a complainant:

“...In Ghana, there is nothing like a victim when talking about domestic violence... they are only witnesses to the case”. (Participant 11)

In addition, when the court was in session, I observed that the police officer posted to the court was often not present, leaving the survivor unprotected and vulnerable if the accused or his supporters became confrontational and hostile.

I also observed that, during recess, some media personnel present rushed to the survivors to interview him/her in their quest to get instant stories for their various broadcast stations. In all these instances, I observed the survivor was left alone or with a relative, with no security being provided by the police.

Moreover, the court’s approach towards technology remained slow or at worse non-existent. Within the courtroom there were only four computers available, none of which was in use. The presiding officer often had to write submissions from both parties in addition to recording their testimonies in writing during cross-examination to aid judgement. This was due to that fact that the stenographer had no working computer to capture responses from the parties for further transmission to the presiding officer. This situation contributed to cases running longer than expected or planned for.

“... You see, our courts are very slow towards technological advancement in this modern era. So, when we go to court, the presiding officers have to write everything by themselves. So, if it’s going to take them 2 years to write, we cannot talk” (Participant 07).

The lack of or inadequacies of technology within the court contributes to survivors often given their testimonies and being cross-examined in the open court, as opposed to the system in other

jurisdictions such as South Africa where survivors could testify and be cross-examined in-camera or via video. As such, testifying or being cross-examined in the open court breached the ethics of privacy and confidentiality in such sensitive cases.

CONDUCT OF COURT OFFICIALS

The court's characteristics and behaviour of court officials are as crucial to justice being served as the court proceedings themselves, and thus one would expect a positive and respectful attitude from these officials. Observations at the court included those of the conduct of the court officials towards survivors, both during hearings and recess. The observation would be in relation to ways in which their conduct aided or undermined survivor protection and confidentiality. While it is important to note that Ghanaian courts are working to improve their proceedings overall, there is a huge gap in terms of knowledge of victim-centred justice delivery and survivor protection. In many instances I observed court officials (excluding the presiding officers) engaged in conversations with their colleagues during hearings, and pointing fingers at people in the public gallery, indicating these officials were not focusing on the proceedings, and potentially missing out vital information from parties. On some occasions, I witnessed one court clerk shouting at a survivor who attempted to seek information from the clerk during recess. On another occasion, I observed two court officials during recess engaged in a conversation with the family of the accused in the open court area within my hearing. During the conversation I heard one court official say to the accused:

"...See the girl and her mother just need money from you... can't you see they are poor and just need money from you... so get some money to settle them and be free"
(transcribed verbatim).

Some court clerks, from their general conduct during the hearing, showed a complete lack of interest in the proceedings and some level of hostility, especially towards survivors. From the observations, one court clerk was seen regularly using her phone during the hearing and even laughing out loud during proceedings. I often observed survivors and their relations appearing helpless and bewildered regarding what was happening.

On a more positive note, the presiding officers by virtue of their legal education and experience as well as the training they have received from both the state and non-governmental agencies, appeared much more knowledgeable than the court clerks about victim-centred justice, and as such exhibited positive and sympathetic attitudes towards the survivors through their actions and speech. They in fact exhibited behaviour markedly in contrast to that of the court clerks.

Thus, it became very clear as the observation process proceeded that the problem of negative attitudes towards survivors of sexual violence within the court emanated from the other court officials who served in various portfolios and not from the presiding officers.

I also observed some interesting initiatives undertaken by presiding officers with regards to changing the time and venue of case hearing in attempts to protect the survivor and to keep their personal identifiers confidential. I speculated that this initiative could stem from their knowledge and experience as well as from their commitment to the wellbeing of the survivor. According to some study participants (participants 01, 03, 04, 09, 11 and 15), some presiding officers are known to use their discretionary powers to make changes to rosters from the court registry to safeguard survivors especially minors.

In addition to the negative attitudes of court officials, I observed the apathy exhibited by prosecutors. Observations revealed that prosecutors did not show any concern towards the survivors. It was apparent that they only talked to them when they needed them to testify or be cross-examined. This contributed to the helplessness and bewilderment experienced by survivors. Participants 02, 04,05 and 08 reported that, in some instances, survivors came to court without knowing who the prosecutor handling their case was, and thus were inadequately prepared for trial. This situation I strongly believe has resulted in many survivors feeling overwhelmed by the proceedings and conduct of officials within the space.

Regarding the observed conduct of the prosecutors in the courtroom, it seemed they also subscribed to the idea that survivors of sexual violence are only witnesses in the case. Thus, on some occasions, the prosecutor arrived late, or in some other cases, the presiding officer found the prosecutor ill-prepared for the hearing and therefore either halted or postponed the hearing, while, not surprisingly, the defence had come well prepared to court.

Due to the adversarial nature of the Ghanaian criminal justice system, in which the trial is reduced to the state (represented by the prosecutor) and the accused (represented by a private defence attorney), the survivor is disregarded or reduced to witness status. Thus, due to this precedent, the prosecutor tends not to show much concern for the victim during proceedings. This lack of concern or indifference was seen in the form of:

- The prosecutor sharing little or no information with the survivor/victim.
- His/her failure to make clear the nature of evidence required from the survivor, as well as the reasons for such evidence.

As deeply concerning as the conduct of the court officials were, cross-examinations were also an interesting and disturbing experience. During cross-examinations, I observed defence attorneys ruthlessly posing harsh and aggressive or abusive questions to survivors. I also observed defence councils using words such as “liar” to describe survivors during this phase of the proceedings. This often led to survivors (complainants) breaking down in tears. Additionally, presiding officers were observed to be coming to the rescue of complainants when they perceived the actions of the defence to be harsh and abusive. As was recounted by participant 03: -

“Cross-examinations are the phase of the process where complainants get their protection and confidentiality jeopardized”.

This interesting submission by participant 03 was echoed by participants 05,09,11 and 15, supporting the point of cross-examination being a threatening moment for survivors during court proceedings.

In another instance during my observation at the court, someone from the public gallery was observed taking a video during the court hearing without being stopped or cautioned by the court officials, even though the person was clearly invading the privacy of the parties involved in the case, especially the survivor of the crime.

Another interesting revelation from the observations was how the presiding officers appeared to struggle to find a balance between the open court principle and the right of the survivors to privacy and protection, as well as the right of the media to access the court and its proceedings. In this context there often appeared to be a conflict situation, which made it more difficult to fully honour one party without infringing on the rights of the other party. This situation often led to prolonged submissions and bouts of legal arguments in attempts at getting a ruling on the conflict even before the actual case hearing began.

CASE HEARING IN CHAMBERS

In addition to the court observations, I conducted interviews with several key players in the criminal justice system. These included presiding officers, private legal practitioners, court clerks, the staff of NGOs, and the state prosecutors. Most of the participants stated that currently, even though there is an established gender court in the country that is charged to speedily adjudicate gender-based violence and related cases, all cases brought before the court are subject to the open court principle with only two exceptions. This is despite Section 102 (2) of the Courts Act 1993 empowering the court to have hearings in camera. These exceptions

only applied to cases involving a minor, or to ‘special cases’ – as cited by participant 06. However, in both instances, it is the responsibility of the prosecution or the defence counsel to make an application to the presiding officer for such action to have the hearing in the chambers. Such an application is further subjected to the discretion of the presiding officer to assess whether it meets the condition(s) for a case to be heard in chambers.

Participant 09 remarked on this protocol and the ways in which it can be to the disadvantage of the survivor:

... “In Ghana, all cases are supposed to be heard in open court no matter who is involved in the case...however, there is an exception to that and that is if the case involves a minor then the prosecutor can apply to the presiding officer to hear the case in chambers or the presiding officer can decide personally to hear the case behind closed doors. Also, if the accused is influential or a figure of high repute, the defence can also make an application for the case to be heard in chambers...therefore, in the two instances, it is always left to the discretion of the presiding officer to agree to hear the case in chambers or not”.

Participants also cited the right accorded to any accused by the Constitution in any criminal proceeding, which states in absolute terms the right of the accused to a fair and public trial. This they recounted always leads to contentions between respecting and honoring the survivors right or that of the accused.

The Constitution of Ghana also makes it explicit that the media cannot be prohibited from accessing open courts and publishing their reports, providing their reports are not in contempt of the court. However, it should also be noted that this same law gives the presiding officer the right to close the court to the public/media. The latter power accorded the presiding officer, therefore, needs to be invoked in most cases by any of the parties involved in the case. In-camera hearings were non-existent during the period of the current study observations at the court. One participant describes how ignorance of this right impact on the privacy of survivors:

“...Because most of the victims of sexual violence do not know their rights and also do not receive any form of pre-trial counselling, they are not able to tell the prosecutor to ask that the public is asked to leave the courtroom when they are called upon to testify... as such you see them shaking and feeling intimidated when they are giving their testimony...”. (Participant 05)

Participants 02, 05 and 08 alluded to some initiatives being undertaken by some presiding officers, whom they considered to be ‘pro-victims’. Some participants reported that in recent times some presiding officers, in their quest to close the court, have resorted to holding proceedings at a time and place different from the normal time and place, as was identified earlier. Therefore, considering the statements above as reported by participants, it is evident that there is as yet no clear and documented protocol for cases to be heard in chambers. Thus, the guarding and maintaining of survivor confidentiality and privacy during any trial (for these purposes, cases involving sexual violence) is left to the discretion of the presiding officer. Hence, confidentiality and the right to privacy are undermined to some extent by the provisions of the law requiring all cases to be heard in open courts, a situation which is exacerbated by the unrestricted access of the public and press to the court and its proceedings.

Further, on the ‘open court principle’, participants 03,06,07,09 and 12 reported that this approach is being practiced in preventing the ‘secret trial’ of the accused as well as to enhance public confidence/trust in the criminal justice system. Thus, I observed and perceived the legal system to be double-edged, where both the survivor and the accused stand the chance of losing, in other words, if the court leans towards one party, the other loses.

PARTICIPANTS’ VIEWS OF SEXUAL VIOLENCE AND ITS SCOPE WITHIN THE GHANAIAN CONTEXT

The researcher also sought to gather information on participants’ views of sexual violence, a view that may possibly shape their relationships with survivors. Interactions with participants showed the majority, especially those with some legal background or knowledge, offering interesting definitions of sexual violence. Collectively, they described sexual violence to be a criminal offence in which a victim is sexually abused against their will. They also pointed out that in such cases, the victim could be a male or female, an elderly person, or a child, or he/she could be mentally challenged.

Most participants also alluded to sexual assault being committed without the consent of the victim, in other words, in the absence of consent, any sexual encounter amounts to sexual assault. Additionally, participants highlighted the use of threat, drugs or alcohol in most cases by perpetrators in committing such a violent crime against their victims. Some participants, especially staff of the Domestic Violence and Victims Support Unit of the Ghana Police Service and of NGOs, pointed to men being the main perpetrators of such a crime, and women most often being the victims, as stated by participant 05:

“You know, from statistics that we have periodically, men are often the perpetrators of rape and defilement in this country”. (Participant 05)

A private legal practitioner (participant 08), who was also sampled for this study mentioned the issue of the narrowness of the definition of sexual violence within the Ghanaian context. According to her, because of what constitutes sexual violence has been narrowly defined in the Ghana Criminal Offences Act of 1960 (Act 29), as amended in 2012, many more cases of sexual violence such as sexual harassment and cyberstalking are not captured within the ambit of the current Act (Act 29 of 1960). Thus, this affects what is or is not reported, and what is further prosecuted in court. She added that the trend of sexual violence in Ghana in recent times has increased instances of cyber harassment and therefore called for a review and extension of this Act to encompass changing trends and the widespread use of social media. This she describes as:

“Now people are taking nudes of others and posting them on social media as well as people writing silly comments on the personal post of people especially on Facebook which attacks the sexual integrity of the person”. (Participant 03)

Participants 02, 03, 04 also indicated that having worked within the criminal justice system and with their educational backgrounds, has given them a fair knowledge of what constitutes sexual violence and the channels for seeking redress. However, their major concern was the lack of knowledge among the Ghanaian populace in terms of what constitutes sexual violence, the rights of survivors, and the channels they can resort to in situations where they are sexually abused. Through follow-up questions to probe deeper, it emerged that as in other societies and countries, sexual violence was and is an underreported violent crime in Ghana. According to the collective responses of participants, victims of sexual violence often fear to report their ordeal to the authorities. Participants saw several reasons for this: the structure of the Ghanaian family system, lack of access to the police, and pacification or payoffs from the accused, among other factors. Some of the comments on this were as follows:

“...You see, in Ghana, unlike the western societies where individualistic life prevails, here we practice the collectivist system where all the family members are bonded together. So, whatever happens to one affect the others and as such when a family member is raped, the family tries their best to settle the case among the two families to prevent other people in the community from knowing which would attract stigma to the entire family”. (Participant 09)

Other accounts by another participant threw light on the inadequacies and/ or remoteness of institutions from victims. This can be seen in the below statement as transcribed verbatim.

“...Due to the lack of accessibility to the police stations and other units like social welfare and DOVVSU especially in the remote areas, most cases of sexual violence are not reported. Often the families handle them which creates room for some family members to ask for pacification from the accused...” (Participant 14)

Summing up the views of participants on the issue of sexual violence, in their terms, sexual assault is a violent crime which is committed against the consent of the victim and is often perpetrated by the dominant group in Ghanaian and other societies, that is, by males.

PARTICIPANTS’ STANDPOINT ON VICTIM PROTECTION AND CONFIDENTIALITY

It was important for this study to define victim protection and confidentiality from the standpoint of the research participants. Any shared or ‘common sense’ understanding of victim protection and confidentiality is often reduced to the physical protection of the survivor from physical harm and the concealment of their identity. However, what constitutes victim protection and confidentiality is much broader than what is commonly understood. Thus, I sought to uncover the understandings of victim protection and confidentiality from similar and differing perspectives.

During interviews, participants gave interesting but different views on what they thought victim protection and confidentiality denoted. Two of the definitions selected and captured from participants show this:

- *“...Victim protection simply means making sure that no one including the accused and his supporters do not harm the victim”*- (Participant 02).
- *“...For me, victim protection is all about making sure that the victim of the crime is safe from any harm be it physical or psychological”*- (Participant 06).

From the definitions of the selected research participants, it was obvious how participants linked victim protection and confidentiality to power relations where the survivor/victim is seen as weak and helpless, and thus needing the intervention and or support of the State as they go through the justice system in search of justice for their traumatic experience. Also, because in most cases survivors are from a low educational or poor background, they are often unable to afford the services of a private attorney to look at the brief before and during court

proceedings, as well as to press for the rights of the victim. This is the case even though legal aid is available, but low publicising of it, in fact, renders it non-existent for victims.

While 80 per cent of participants were of the view that victim protection and confidentiality should not be conditional, the opinion of the other 20% was that there should be some conditions for survivors of sexual violence qualifying for and receiving protection. The 20% of participants, therefore, noted the following as the basis on which a survivor of sexual violence could qualify for protection: when the survivor is a minor, and when the accused attempts or threatens the victim or his/her relations. Interestingly, the 20% of participants who justified the need for some conditions to be met before victims of sexual violence are protected had had less than five years of working experience, coupled with low educational level. Thus, it can be said that participant's level of experience and education, as well as the quality of training, influences their perceptions of whether and how survivors of sexual violence should be handled under their care.

Furthermore, participants agreed that the court fails in its quest to ensure confidentiality in the court, as stated by one participant:

"...With the issue of confidentiality, I always say the court fails victims... You know that sexual violence is traumatic and most of the victims of such crime are children and are also people who have never been through anything like court setting before so when they come to court, the court should be able to keep the case confidential and protect them. However, as you can see, everyone is allowed into the courtroom including journalists who tend to publish the names of the victims in their media outlets..."

(Participant 12)

COURTS' APPROACH TO TECHNOLOGY

With the rate of technological advancement globally, technology has contributed substantially, and continues to contribute, to enhancing human life and advancing human rights. For instance, in the Republic of South Africa, and other judicial systems such as that of the United States of America, in-camera hearing is placed together with CCTV cameras and other technology, to protect victims in court. However, this is not the case in Ghanaian courts. Throughout the period of observations at the court, the researcher observed that there were neither CCTV cameras nor opportunities for in-camera hearings or other technological adaptations to protect a victim's privacy. As was stated by one of the research participants:

“...When it comes to technology, our gender court is far away from that... in fact, let me say the inferior courts in Ghana are far away from realizing the need for technology. But when you go to the superior court, they have adopted the use of technology to some extent”. (Participant 11)

Nonetheless, the new court complex commissioned in 2017 is equipped with state-of-the-art facilities and security gadgets tailored to protecting survivors of sexual violence, and for monitoring the public who encounter the court. However, observations at the court further revealed that survivors and/or prosecutors, as well as the defence, had to shout to have their testimonies heard by the presiding officer and the court clerk, a situation that adds to the slow approach of the court towards adopting newer and more effective technology. Thus, in this context, the probability exists of the presiding officer or court clerk not hearing clearly the submission from the parties involved in the case in situations where the speaker is unable to speak loudly. Additionally, due to the lack of or slow pace towards technology within the courts, role players have to rely on utilizing papers and other traditional means during trial which contributes somehow to breaching confidentiality and the privacy of survivors.

EDUCATION AND TRAINING

As most participants were working regularly with survivors of sexual assault and within the legal space, one would assume that they regularly receive training and/or education to keep them abreast with current developments within the field. To test this assumption the researcher asked the participants direct questions concerning the frequency of the training/education they were receiving, given the assumption that adequate and effective training/education is crucial in every institution for its effective functioning. Interestingly, some participants (participants 02, 03, 06, 07 and 09) contradicted this assumption, and admitted that training and education was something they had been longing for to equip them to meet the challenges of their job in dealing with cases of sexual violence, especially those of survivors, but that such programmes were lacking. However, prosecutors participating in the study recounted only receiving such education/training during their law school programme and security academy courses, after which they had not been involved in any form of training/education. Interestingly, other role-players within the court system, such as court clerks and administrators, also reported not having received any form of training (participants 02, 03, 06 and 09). This situation provides some understanding of the reasons for what appeared to be their negative and insensitive attitude towards survivors.

On the other hand, some participants reported receiving regular training/education on sexual violence. This training was often organized by donor and/or affiliated organizations in the form of short courses and seminars on issues pertaining to sexual violence, human rights, and the law. Presiding officers who participated in the study recounted being engaged in several training sessions and workshops, both formally and informally, some of which were state-sponsored, while others were provided by international and non-governmental organizations.

Meanwhile, the same cannot be said of the general population in terms of them having adequate education on sexual violence, the help available to them, and their rights, even when they attempt to seek justice when facing such situations. While most of the selected participants alluded to have received training/education on what constitutes sexual violence as well as the rights of survivors of such a crime, the issue remains that education on sexual violence does not trickle down to the ordinary citizen. According to participants, the Ghanaian culture and tradition see it as a taboo to discuss issues related to sex or one's sexual experience, and this hinders any attempt or agenda to effectively educate about sexual violence and other related offences. Aside from culture being a hindrance to education on sexual violence within the country, participants also alluded to the lack of commitment on the part of schools and religious communities (local faith-based organizations) to sexual violence education. This, respondents reported, was because of the influence exercised by cultural and societal standards on the education, which extends to the formalized school system and religious communities.

Additionally, participants 02,04,09,10 and 12 recounted the lack of such trained personnel as counsellors and court support staff at the court to be a contributing factor to the psychological breakdown of survivors. As was stated by one of the research participants:

“You see... if we had gotten trained people like a psychologist to be with the victim during their case hearing, it will be far better in terms of helping in their psychological protection”. (Participant 10)

Conclusion

Predicated on the belief that the court is an environment where everyone feels safe and able to transact their 'business' without suffering any negative consequence, I proceeded to undertake a series of court system observations coupled with interviews of key players in the justice system under study. The findings highlighted some interesting revelations which tend to echo the idea that what prevails in practice is often different from or even the opposite of what is assumed or reported by people within the system.

Thus, it can be concluded that the state of security at the court, especially the gender court where the study was carried out, did not meet my expectations. The presence of security personnel at the premise was found to be woefully inadequate because security, and security checks and security, in general, were not made a priority at the premises. Practical obstacles, such as the slow attitude of the court towards technology, the apathy and negativity of court officials, conflicting legal provisions, and the lack of education/training were also found to be a hindrance to the realization of effective survivor protection and confidentiality. All these shortcomings suggest urgent attention to be paid to survivor protection and confidentiality to help mend these fractures and inconsistencies before they jeopardize the reputation of the Ghanaian legal system. The net effect of these shortcomings is that survivors of crime, especially of sexual violence, are not well protected within the court system. A situation which often results in secondary victimization, together with loss of trust in the criminal justice system, and in turn influences the reporting of such crimes.¹⁰¹

These findings are discussed in more details in the following chapter.

¹⁰¹ See Note 12 above; Van Dijk, J. 2000. Implications of the international Crime Survey for a victim perspective. In Crawford, A. & Goodey, J. (Eds), *Integrating a victim perspective within criminal justice-international debates*. Dartmouth: Ashgate, 97-121.

CHAPTER FOUR

DISCUSSION AND REFLECTION ON THE FINDINGS, AND LIMITATIONS OF THE STUDY, AND RECOMMENDATIONS

This chapter provides an analysis of the findings of the study alongside the researcher's general reflections on these. In this process, Ghana is contextualized within the broader literature and legal frameworks for a more in-depth understanding of the issue under study. Challenges that emerged as well as various limitations to this study are further discussed. The chapter concludes with some recommendations for practice and policy intervention, taking inspiration from the research findings. The discussions as such centres on the research findings while drawing on international instruments to which Ghana is a signatory, on regional protocols, and on national laws and provisions. The analysis is also done within the parameters of studies found in the existing literature and scholarly materials, with comments on, and evaluations of the main pieces of legislation dealing with sexual violence in Ghana.

The study was underscored by the need to explore current practices and facilities within the criminal justice system, and with a specific focus on the Ghanaian legal context that in turn focuses on the protection of survivors of sexual violence as well as on issues of confidentiality within the courts. This focus involved a series of observations at the selected gender court along with in-depth interviewing of sampled key players in the criminal justice system in Ghana for the collection of data. An assessment of the research outcomes highlights what I consider to be some valuable insights for the current study, policy analysis/formulation and for interventions aimed at the restructuring of the Ghanaian criminal justice system to situate the survivors at the centre of justice delivery.

An analysis of the research results points to many areas within the criminal justice system in Ghana that needs urgent attention through laws and protocols/policies, as well as implementation. In addition to the value of the evidence from the empirical and qualitative approach employed for the current study, the study shows that, despite the various actions and interventions undertaken by successive governments in addition to initiatives from international organizations and NGOs, there remains serious shortcomings in the justice system, with respect to the vulnerable position of survivors and their needs. I hasten to qualify this view as some scholars and practitioners may argue the opposite view. In fact, there have been some improvements made to the justice system in Ghana over the years, and some may argue that Ghana has made impressive improvements and strides regarding the position of

survivors within the criminal justice system.¹⁰² This they may attribute to the establishment of the gender court and the formulation of the Domestic Violence Act (Act 735), among other interventions. However, evidence from this current study indicates that there remains a significant gap when it comes to the protection and wellbeing of victims, especially survivors of sexual violence.¹⁰³ I would argue that the stance of the current study aligns closely with the views of some scholars and from practitioners,¹⁰⁴ for a total shift in the focus of the criminal justice system in Ghana.¹⁰⁵

Subsequently, in a justice system that sees victims as witnesses, rather than as central to a case, or at worse, merely as tools to be used by the State to put offenders behind bars, survivors are often left to maintain their own wellbeing. Shapland,¹⁰⁶ in his work argues that “victims” are vital to the operations of the criminal justice system and as such, the actions of the criminal justice system and the mechanisms of its professionals are highly dependent on the victim and the accused. Thus, by this argument, victims must be made an integral part of the entire court proceedings for the court to achieve maximum cooperation, especially from the victim.

On the other hand, participants in this current study were found to hold similar views of what they thought constituted sexual violence and its prevalence, despite working from different angles of, and places within the criminal justice system and having different education and training backgrounds. Thus, their understanding and knowledge of sexual violence shaped their relationship with survivors. As such, those with higher education and training exhibited positive attitudes towards survivors as compared to those with little education and/or training.

The lack of effective and adequate security has been a constant problem for both the people who work within the court and the public who come into contact with the court or are complainants in criminal cases including but not limited to survivors of sexual violence. During my observations at the court, I found that the entire court complex lacked the necessary personnel, technology, and equipment to ensure adequate security and protection for survivors.

¹⁰² I M Amoakohene ‘Violence against women in Ghana: A look at women’s perceptions and review of policy and social responses’ (2004) *Social Science & Medicine*, 59, 2373-2383.

¹⁰³ See A Ampofo ‘Collective activism: The domestic violence bill becoming law in Ghana’ (2008). *African and Asian Studies*, 7, 395-421; V Ampofo ‘Bill has no clause on marital rape’ (2004) *Daily Graphic*, 3.

¹⁰⁴ This is an example of practitioners like the NGO I worked with, who have been calling for a total shift in the Ghanaian Criminal Justice System.

¹⁰⁵ See Amenga-Etego, 2006; Amoakohene, 2004; Tenkorang et al., 2013.

¹⁰⁶ J Shapland ‘Victims, The Criminal Justice System and Compensation’ (1984) *The British Journal of Criminology*, Volume 24, Issue 2,131–149.

It is therefore imperative that the court creates the impression of a safe and user-friendly environment. There needs to be an ethos of justice being served without fear for one's safety, including the safety of workers within the space. The ongoing failure to provide effective security at the court complex constitutes an obstacle to effectively protect rape and other sexual violence survivors. This failure is one of the factors undermining the direction of the criminal justice system towards a victim-centred approach. I argue that, if security at the complex is made adequate, both survivors and criminal justice actors would feel safer from external and internal aggression, particularly if individuals entering the court premises are subject to scrutiny before gaining access. However, while having only one means of access to the courtroom contributes to security, as it helps control movement in and out of the courtroom, it is also a risk factor. It has the potential to restrict or even impede escape from the courtroom in cases of such emergencies like a fire or physical attacks. In addition, a single access point compels survivors and their support groups to use the same entrance as the accused and their supporters, a situation which places more psychological stress on the victim. Furthermore, the judicial service in Ghana must consider adopting a high-tech security system to eliminate threats such as people concealing harmful tools on themselves with or without any intention to use them.

While it is the principal duty of the court to punish offenders of sexual assault, carrying out of such duty depends to a large extent on the collaboration of the survivor(s). This highlights the importance of the mental and psychological safety of survivors in the context of sexual assault proceedings and the need to factor this into justice delivery. Having sexual violence survivors sitting in close proximity to the accused during the trial causes considerable trauma and poses a threat to the survivor psychologically, causing them to relive their painful experience and making a mockery of the notion of protection, particularly psychological protection. Therefore, to ensure maximum cooperation from the survivor, who is both a victim and a key witness in the trial, their psychological and mental safety should be ensured. Research participants sampled from the NGOs recounted survivors often complaining of experiencing 'faster heartbeats' in court and not being able to avoid eye contact with the accused sitting so close to them (participants 12, 13 and 14). This is another indication of the failure of the criminal justice system to protect survivors of sexual violence. Similarly, using the ICC standards which is

described as the ‘golden standard’,¹⁰⁷ the courts in Ghana are failing to take appropriate measures to protect the safety, psychological, physical and privacy of victims.

From a more elementary legal perspective, the protection of survivors is a basic human right. In spite of the international bill of rights,¹⁰⁸ specifying the requirement of courts and/or tribunals to treat victims of crime with the utmost respect and empathy,¹⁰⁹ a gender and age-sensitive waiting room and the use of CCTV cameras during trials tailored towards protecting survivors while at the court is conspicuously absent in the Ghanaian system. Clearly indicating that the unique needs of the different groups of survivors are not being met nor respected or addressed to ensure confidentiality and protection, particularly protection from coming into direct contact with the accused and his supporters before trial or during recess. Thus, ensuring security at the court should extend beyond the physical facilities to include the mental and psychological safety of survivors within the premise before, during and after a trial. Established units should therefore be available to provide both physical and psychological protection to survivors.

Further, ensuring a fair balance between the rights of the accused (their right to fair and public trial), the open court principle, and the wellbeing of the survivor, together with their rights to privacy and protection, is a much-needed action. This bestows on presiding officers the responsibility to ensure that this balance is ensured, a responsibility unambiguously stated under section 13(1)(2) of the Domestic Violence Act, 2007 (Act 732). Accordingly, the required practice as stipulated by the Domestic Violence Act is there to make sure the presiding officer assesses the potential risk to both parties involved in the trial with much attention paid to that of the survivor as against that of the accused in any decision made during proceedings. Interestingly, there seems to be conflicting arguments and tensions regarding the protection of the survivor as against the open court principle, and this tends to influence the judiciary’s perception of proportionality in any contest between the survivor’s rights and the open court principle. This tension between the laws, or an existing paradox, leaves room for the discretionary changes effected by presiding officers presiding in such cases, where the presiding officer weighs the salutary benefits of protecting a survivor’s privacy and wellbeing against the harmful costs incurred by the open court principle which seeks to highly benefit the accused.

¹⁰⁷ *Ibid.*

¹⁰⁸ Universal Declaration of Human Right (note 70).

¹⁰⁹ *Ibid.*

Additionally, a close reflection on the 1992 Constitution of Ghana, shows how the Constitution is technically silent on the rights and needs of victims of crime, especially victims of sexual violence. Instead, provides in no ambiguous terms the rights of the accused as they go through the court process.

This context has promoted some presiding officers to take the initiative to create a balance throughout the judicial process with the aim of protecting the survivor while upholding the rights of the accused – as cited by some study participants. As has been mentioned, some measures are being undertaken, such as changing the time and location of trial in attempts not to strip the accused of their rights nor expose survivors to avoidable circumstances. In other words, this kind of intervention is to ensure proportionality between victims’ privacy/protection and the rights of the accused in terms of a fair and open trial. Some presiding officers were cited by participants as having initiated policies of changing the original date and location of trial as arranged by the court registry to a time and venue arranged according to their own legally bestowed powers, and initiative. However, when the presiding officer finds no threat or need, appeals for cases to be heard behind closed doors are not granted or no attempt is made to change the venue and time. Thus, subjecting the victim to the open court principle, a situation which comes with its own adverse impacts, especially for victims.

In addition, the prosecutor within the parameters of common law practices has the duty to protect the survivor and to keep their personal identifiers confidential.¹¹⁰ S/he is allowed by law to apply for non-disclosure of a survivor’s identity.¹¹¹ This is usually a ruling given in the court and imposed on the media and/or their personnel who are allowed by the same law to have uninterrupted access to the court and its proceedings. Accordingly, the media and other factions are restrained from publishing the names and personal identifiers of the survivor in any of their reports/news items. If they fail to respect such a ruling, they run the risk of being charged with contempt of court with its inevitable consequences. This runs concurrently with the initiatives taken by some presiding officers in better maintaining a balance between the right of the accused and the protection of the survivor within the court, is the practice of granting orders in the form of “non-disclosure” orders to the survivor to effectively ensure their protection and confidentiality.¹¹² In other words, the court issues orders prohibiting the media,

¹¹⁰ D Bruce & G Morgan, ‘Victims and witnesses – a guide to police on good practice’ (2008). Centre for the Study of Violence and Reconciliation.

¹¹¹ Ibid.

¹¹² N Amegatcher, E Okudzeto, et al ‘Litigation and enforcement in Ghana: overview’ (2018). Available at <https://uk.practicallaw.thomsonreuters.com/0-619->

clerks, the court itself and the parties involved in the case from disclosing certain information or items that may serve as personal identifiers of the victim in any of their reports or analyses. In this way, actors privy to the case are barred by the court from disclosing the personal details of the survivor, which greatly aid in protecting survivors. In addition, issuing this order helps protect and keep confidential the identity and identifiers of the survivor in all phases of the trial process. The order outlines clearly and categorically the procedure for storage, processing, and use of the personal details of the victim by the court and/or by agencies within the criminal justice system should the need be, including medical officials who may be involved in the case as expert witnesses. Concurrently, the order spells out the protocol for the use and/or transmission of data of the victim with full respect to victim protection and confidentiality. This goes a long way towards reducing the risk of survivors encountering secondary victimization through the judicial process by means of their personal data being disclosed to the public or other agencies who are not legally permitted to have access to these. As such, having a carefully crafted and well-informed charter tailored to enhancing the position of victims of crimes would contribute substantially to addressing these conflicts and the displacement of the victim during any criminal proceedings.

The location and site of the court is also a crucial factor in ensuring the protection and confidentiality of the survivor. As was mentioned earlier, the gender court in most parts of the country, including the site of the current study is situated some distance from the centre of town and this provides some level of confidentiality and protection.

In addition, the structural plan and the seating of the court are in theory tailored to provide protection to survivors and to ensure the kind of confidentiality which speaks to the policy of a victim-centred judicial process. However, the current state and structural layout of the court argue, is “old fashioned” and structured to support the old adversarial system where the victim is reduced to the level of a witness and does not have his/her needs and interests met. Thus, the court needs to be restructured to place the victim as a party to the case. A victim inspired and orientated structural design at the court would also ensure that survivors are not exposed to the public during testimony or cross-examination.¹¹³ Due to the traumatic nature of their ordeal, and the traditional/cultural norms surrounding sexual violence, it is always a difficult and

[2168?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](#) [Accessed on 5 June 2019].

¹¹³ Ministerial Advisory Task Team on the adjudication of sexual offence matters (MATTSO) ‘Report on the re-establishment of sexual offences court. Department of Justice and Constitutional Development’ (2013). Republic of South Africa.

painful experience for survivors to stand before others to testify and as such, they need to be better protected during testimony and/or cross-examination.

In addition to the problem of the space in which survivors testify is the problem of the basic judicial practice of cross-examination, which has traditionally/historically provided the opportunity for the defence counsel to institute its defence on behalf of the respondent and/or to cast doubts on the allegations with which their clients have been charged. It is also during this period that survivors run the highest risk of being heckled or having their sexual history probed, often as a ‘slut-shaming’ tactic, particularly when such cross-examinations are extensive and unrestrained. This I argue could expose survivors to the kind of humiliating examination and doubt not generally experienced by victims of other crimes such as theft. Defence counsels often approach cross-examinations determined to make a case strong enough to prevent their clients from being incarcerated and this ruthless determination on the part of the defence in many instances dwarfs the need to protect the survivor or save her from humiliation, as was highlighted by Kweka in her research on victim-witness at the special court of Sierra Leone for sexual violence survivors.¹¹⁴ Kweka argued that “...defence counsel in the quest to establish their case during cross-examination, go beyond their limit to subject victims to harsh and sensitive questions which end up traumatizing victim-witnesses”. Thus, the commission of the crime of sexual violence does not only rob the victim of their integrity and dignity, however the court process as it is currently may unavoidably invade the survivors’ integrity/privacy. My observations at the court reflected such situations where, in some instances, the survivor broke down in tears leading to an adjournment of the trial. Some questions directed by the defence at survivors during this stage of the court proceeding created an impression that the survivor rather than the accused was the one on trial. Thus, I also argue that, this stage of the trial requires a firm approach and decisions from the bench in favour of protecting the survivor from being re-victimized by the defence counsel. Additionally, during my observations, I saw the presiding officer from time to time cautioning the defence counsel when they overstepped the line in their cross-examination of survivors. Also, I frequently observed the presiding officers exercising their legitimate power when the defence counsel posed questions, she considered harmful to the survivor. As well, presiding officers encouraged survivors under cross-examination and often reminded them of their right to decline to answer any question which they considered to be threatening to their personal integrity and privacy.

¹¹⁴ G J Kweka ‘Sexual violence victim-witnesses at the Special Court for Sierra Leone: Have lessons from ICTR been learnt’ (2009) University of Cape Town.

Additionally, as was observed and cited by research participants 02,05,09 and 11, presiding officers often had to suspend the trial proceedings in instances where survivors could not continue because they had been traumatized by the actions or inactions of the defence counsel, or other persons present in the open court. Such action from the bench also served as a strong protective approach for survivors of sexual violence.

The absence of trained personnel to provide survivors with court support services during the trial also surfaced as a factor contributing to the undermining of the idea of psychological protection for the survivors. With trained counsellors by their side during any phase of the trial, survivors would obviously feel safer knowing they have the support of someone who understands them and their plight.

Further, the presence of the court officials openly discussing developments of the case in court with their friends and colleagues breach the ethical issue of confidentiality, non-disclosure, and the legal/constitutional rights of the survivor(s). The participants reported court clerks and other officials are often found discussing hearings with their friends and among themselves, thus undermining any confidentiality surrounding the trial and also risking revealing the personal identifiers of the survivor. This is in direct contempt of court as they defy the non-disclosure order given by the court. The fundamental effect of such attitudes and actions of court officials falls squarely within the category of intersectional injustice,¹¹⁵ and violates the dignity not only of the survivor but of the justice process as a whole.

As already described, studies and reports reveal the low level of education among the Ghanaian populace on the issue of sexual violence, as well as their rights as a survivor in situations when they fall victims to such violent crime.¹¹⁶ Many practitioners and stakeholders have described this lack of knowledge as often being manifested in court during judicial processes that concern sexual violence. Some participants recounted that survivors who appear in court demonstrate gross ignorance of their rights and thus, are not able to fully demand their rights to protection and confidentiality to be respected. Thus, they just 'go with the flow' without knowing what their rights are and what they can do to have these rights respected (participants 05, 09 and 11)

With the country's international memberships and signatories, Ghana has unreservedly rectified and accepted the terms of the United Nations Convention on the Elimination of

¹¹⁵ T B Herbert & C S Dunkel 'Negative social reaction to victims: An overview of response and their determinants' (1992) NJ, 497-518.

¹¹⁶ Boateng (note 18).

Discrimination Against Women (CEDAW) of 1986, particularly regarding women who are victims of sexual violence and thus, some progress has been made and is still being made, in the protection of women from all forms of discrimination. This Convention requires that states put in place measures designed to ensure the wellbeing of women at all times and in all settings. The progress and willingness to address the matter by the state are evident from the actions taken by the government and state institutions in upholding the tenets of the Convention through the Constitution, legal reforms, and policies. However, this study, through its findings, has shown how the court has side-lined the process of eliminating all forms of discrimination against women, arguably those who are most often sexual violence victims.

While the Ghanaian government, through the establishment of the gender court and the formulation of the DOVVSU Act of 2007, has shown its commitment to the above mentioned convention and the UN Beijing declaration as a platform for action, this commitment falls short of several measures deemed best practice within a court in ensuring gender-sensitive and victim-centred justice delivery according to international standards.¹¹⁷ Such shortfalls include ineffective security, and lack of gender and age-sensitive waiting rooms at the court where survivors wait before trial or during recess, among others.

Despite the Constitution's guarantee of the values of human dignity and people's rights, as well as its provisions, the reality is that survivors of sexual violence who seek justice do not enjoy the full 'package' provided by the Constitution. It should be noted that the duty of the State according to the Constitution, is not only to uphold the terms of the Constitution but to also take vigorous steps to protect victims and their rights at all times. It is therefore the responsibility of the State to implement the provisions of the Constitution in all settings, without being selective on which to uphold and which not to.

Thus, based on the literature and on the findings of the current study, there remains much that the State has yet to do to protect survivors of sexual violence within the court from both practice and policies dimensions. What this research has also shown is that most survivors who seek justice for their ordeal continue to experience re-victimization from the criminal justice system. In addition, the fact that sexual violence cases continue to be under-reported and filtered out of

¹¹⁷ See Department of Public Safety, State of Minnesota 'Best Practice Guidelines: Crime Victim Services' (2010); Ministry of Justice 'Getting it right for victims and witnesses' (2012) available at https://consult.justice.gov.uk/digital-communications/victims-witnesses/supporting_documents/gettingitrightforvictimsandwitnesses.pdf. (Accessed on 13 May 2019).

the system indicates a systemic problem which needs to be tackled with all seriousness. While some actors within the legal system, particularly those on the bench, are actively working to ensure a positive and favourable experience for survivors of sexual violence, collective legal, governmental and social interventions may constitute a way forward in protecting survivors more effectively and enhancing their experiences with the criminal justice system.

LIMITATIONS OF STUDY

An in-depth analysis of the research and its findings reveals some major limitations. While some of the limitations identified are practical and could be remedied in future studies, others are symptomatic of the intricate and delicate nature of the research area and would need further research and policy collaborations to rectify.

The individual and specific limitations to this current study are briefly outlined as follows. The study was designed to explore the issue of victim protection and confidentiality in the Ghanaian courts, focusing particularly on court proceedings involving sexual violence. The first major challenge encountered was the excessive bureaucracy involved in obtaining permission from the various institutions and units where the study participants were sampled. This bureaucracy resulted in time constraints that prolonged the data collection process and their subsequent transcription and analysis. The stress in obtaining permission to enter the setting for data collection further led to me being unable to interview the number of participants initially proposed, only being able to interview 15, and not 18 participants, as originally planned.

Moreover, because I did not want to recruit participants without institutional permission, which would have violated research ethics, I was obliged to wait until clearance was obtained from the institutions/units.

Further, another major limitation to this study was the lack of actual victims' perspective. Due to ethical reasons, I was unable to gain access to survivors to be interviewed for the study. This is an issue which I saw to be another major limitation as I sought to get a diverse but representative perspective of all role players of the criminal justice system of which survivors are a crux of, especially in matters of sexual violence. Thus, as stated above, the intricate nature of the study contributed to such limitation. Hence, future studies should attempt to interview survivors as part of the participants for a better and nuanced analysis.

Also, the research being confined to one court, coupled with the random sampling procedure, further hindered the possibility of generalising my findings beyond the research setting. This would suggest that further research is needed around sexual violence and with a similar aim

and conducted in other regions of Ghana to help increase its external validity. In other words, to increase the external validity of the study, it would be expedient to have the study replicated on a larger scale, preferably in all regions of Ghana.

Regarding the interviewing of participants, having to conduct the interviews in their shared offices, which were in most cases shared by more than three people, the provision of a 'safe space' for, and confidentiality of the participants were undermined to some extent. The interview sessions were often disrupted by people walking in and out of the office, while other people interrupted some sessions by interjecting their own comments, even though the session was not intended to be a focus group discussion. This lack of access to a safe space for the interviews was not the aim of the researcher, nor was it anticipated, but was partly due to the unwillingness of some participants to move to a different space for the interviews, or to be the lack of such safe space.

CHAPTER FIVE

CONCLUDING REMARKS

Introduction

This study has provided an insight into the level and quality of protection of victims of sexual violence in the Ghanaian justice system from a victimological perspective, as well as focusing on issues surrounding confidentiality in Ghanaian courts, based on findings from a limited population sample. The findings of the research has in addition revealed a picture of the current situation of survivors of sexual violence in Ghana, especially within the gender court where the study was conducted. In this final chapter, the main contributions of the study are outlined, and a summary of the study is provided, together with a general reflection on the study. The last section highlights some recommendations for policy, practice, and future research.

Summary of Study

Sexual violence was described in Chapter one as a global problem with a range of profound physical, psychological, emotional and economic effects on its victims, and has been the focus of many studies in western societies. Ironically, although there is a high prevalence in Ghana, the issue has not received the attention it needs. Thus, this study sought to close the gap in the literature. The aim of the study was to explore the issue of victim protection and confidentiality in the Ghanaian court during sexual violence case hearings. This exploration was conducted using observations and interviews from a single court complex.

I consider the study to have thrown light on the issue of the victimization of sexual violence survivors and their lack of protection in the court, as well as on the reasons for a perceptible shift in the Ghanaian criminal justice system to one of victim-centred justice. Working within the parameters of international declarations, and national as well as regional laws/policies, I have attempted to highlight the values and risks involved when victim protection and confidentiality is not paramount during court proceedings. In doing so, I have in turn highlighted and advocated for effective survivor protection and privacy as a curative measure to address the chronic underreporting of sexual offences and as a booster of public confidence, particularly the confidence of victims, in the criminal justice system.

The study has found that, despite the purported commitment of Ghana as a signatory of several international and regional instruments, as well as the formulation of some national policies such as the Domestic Violence Act (Act 735), the persisting existence of a weakened criminal justice system, together with administrative apathy, continues to undermine the protection of

survivors of sexual violence who seek justice for their ordeal, especially at the research site where the study was conducted.

RECOMMENDATIONS

Reflecting on the findings of this study, I argue that there are many lessons Ghana can learn from international instruments such as the ICC Statute and other regional policy frameworks. The following exploratory and advocacy-oriented recommendations have been emphasised for possible consideration.

Re-organization/Re-structuring of the court & legal system

One recommendation would be for a substantial and an effective restructuring and re-organization of the court system in Ghana, a process which should incorporate the needs of the different categories of victims of crime, particularly victims of sexual violence. This restructuring should range from improvement of physical facilities, and service provision to the legal framework. The findings from the research site indicated that the court is slow to adapt to the use of technology for security and other business during proceedings, and thus the call for restructuring of the system should have modern technological advancement embedded both in its physical architecture and its proceedings.

In addition, the judicial service should do well to consider moving a step further by establishing a specialized court that only handles cases of sexual violence. This would be similar to other legal systems, such as that of South Africa where there exists a specialised sexual offences court.

However, it is crucial to note that this re-organization/ re-structuring would be rendered useless without the appropriate attitude and mindset on the part of the actors within the criminal justice system. This therefore calls for a reorientation of perspective in the criminal justice system, and a shift from the present narrow focus on increasing conviction rates to a focus on the wellbeing of the survivor of a traumatic experience, one which has severe and long-lasting impacts on the survivor. In other words, there should be a change from “we only care about jailing the accused” to a victim-centred approach, where the victim’s needs are at all times factored in and made central both during and after court proceedings.

Formulation and Implementation of a Victim Charter

Taking inspiration from other models such as the South African model,¹¹⁸ Ghana should also consider adopting a victim charter geared towards addressing the needs of victims of all crimes, especially violent crimes such as those involving sexual violence. Such a charter should also reconcile the existing tension between victims' rights, and notions such as the open court principle. In addition to drafting such a document, the State should review existing policies and Acts, such as the Domestic Violence Act, Sexual Offences Act, among others to incorporate and bring into it a new focus on prevention of re-victimization of victims while they are in the process of seeking justice. This charter should also synchronize long-term plans that would involve a range of participants beyond the traditional criminal justice system to provide crucial services tailored to cater for victim wellbeing and protection. Thus, the charter could be a proactive measure as against reactive measure.

In addition to reviewing existing policies, keen attention should also be given to harmonizing conflicting laws and approaches – those informed by seeking to respect the rights of the accused and those emphasising the protection of survivors' rights. Thus, it is important to find common ground, or a balance, where the best interests of both complainant and accused could be served without disadvantaging or favouring either party.

Through the review of the existing policies, the judicial system with other stakeholders would be able to compare what is written to what is practiced, in order to make the necessary adjustments. Also, in mapping out new intervention strategies, it is important to consider measures that are aimed at reducing the risk of re-victimization and at those who target survivor protection and confidentiality. Thus, with such policies such as the Domestic Violence Act (Act 735) and other laws, one may assume that survivors of sexual violence and other gender-based violence would be best protected; however, disappointingly, many survivors, especially those who had their case hearing at the research site continue to be failed when it comes to their

¹¹⁸ The South African Victim Charter is a very crucial instrument which was adopted and tailored at promoting justice for victims of crime in South Africa. As such, both its strategy and programme is rooted in the unquestionable role victims of crime play within the criminal justice system. The Charter as popularly known takes inspiration from many conventions and declaration such as the Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power, Australian Victims' Charter, UN Declaration on Human Rights, among others. Among the major tenets of the South African Victims' Charter is the right to be treated with fairness and with respect for dignity and privacy, the right to protection, right to offer and receive information, among others.

protection. Thus, such a recommended review of the existing policies and laws would make room for the incorporation of the latest and best practices with victim-centred elements.

The need for research and evaluation

Based on my research, I would further recommend that the State, specifically the judicial service, outlines and adopt a clear research agenda to assess in a careful and systematic manner what projects, strategies, or policies are yielding the best outcomes for survivors' wellbeing, and which area(s) require improvement and prioritising. Careful research and evaluation are recommended so that the efficiency and efficacy of policies and strategies cannot be taken for granted rather than them being regularly subjected to testing and evaluation. For instance, it may have been assumed that having a gender court was sufficient in improving the experiences of the survivors seeking justice. However, such an untested assumption may not be backed by facts.

Empirical research should also be supported by academic research, with more scholars conducting in-depth studies within the area of sexual violence and victimology that may provide an alternative pool of information for practitioners and institutions in designing plans for survivors of sexual violence.

Subsequently, in relation to conducting more research and evaluations, future researchers should also make it a plan to build upon current and existing studies such as this. Such plan should include increasing the sample size for the study and increasing the research delimitation beyond the current site to all regions and districts in Ghana, a move which I believe will provide a much clearer and broader picture of the issues surrounding victim protection and confidentiality in Ghanaian courts.

Resourcing of existing institutions

A final recommendation would be for more effective resourcing of already existing institutions, such as the Department of Social Welfare and the Commission for Human Rights and Administrative Justice (CHRAJ) both of which are currently woefully under-resourced. Adequate resourcing of these institutions would place them in a better position to perform the duties for which they were established, both within and outside of the courts. Increasing resourcing of these institutions has the potential to further position them to perform sensitization and educative roles in the various communities, schools, and religious institutions

in the area of sexual violence. By so doing, the Ghanaian populace would be better informed regarding sexual violence and their rights should they fall victim to such crimes.

CONCLUSION

Victims of crime have over the decades moved from being “forgotten actors” to being an integral part of the criminal justice system. As such, campaigns about victims’ rights at both national and international level have prompted debates about victim’s rights and the setting of standards of service, making victims the subject of many political as well as criminological attention.¹¹⁹ From the common law and victimological perspectives, crime victims have an essential role to play at every stage of the court proceeding. However, even though the role of victims, together with their status is vital to court proceedings, the position of victims in the Ghanaian context (particularly the selected gender court) remains largely reduced to that of third parties in a two-way contest justice system: the state versus accused. Thus, victims’ rights are nearly always fraught with contention.

Added to this serious shortcoming in the criminal justice system, are the actions and/or inactions of actors in the criminal justice system intending to re-victimize survivors based on personal/cultural beliefs, gender projections, and gendered myths. Thus, their actions towards survivors at the selected gender court tend often to be negative, subjective and insensitive. In addition to the trauma from the violence perpetrated against them, survivors tend to experience more trauma during the trial proceedings. Given that, the protection of survivors is a basic right and not a privilege, and the need for efforts to protect and enhance confidentiality for victims is clear. As argued by Okepch, ¹²⁰ “*the worth of human rights, therefore lies not in their recognition, but in the ability to enjoy them and to obtain a remedy when they are violated or in danger of being violated*”. However, the failure of the State to protect and maintain victims’ confidentiality especially in the selected gender court is evident from the findings of this study. Though statutory measures have gone some way towards the protection/ privacy, these have not yet been fully recognized. Survivors of sexual violence continue to have bitter experiences with the judicial process, especially within the selected court, through testifying and cross-examination. Thus, though there are reports of civil, thoughtful and professional service from some officials, this standard is highly inconsistent, as such suggests that the court situation is

¹¹⁹ Zedner, L. ‘Victims’ in Maguire, M., R. Morgan & R. Reiner (eds) *The Oxford Handbook of Criminology*. Oxford: Oxford University Press. 3rd Edition. p. 420.

¹²⁰ A Okpechi ‘Access to Justice by Refugee and Asylum seekers in South Africa’ (2011) University of Cape Town.

not noticeably improving despite efforts from stakeholders, such as presiding officers and NGO's, to protect and maintain the wellbeing of survivors. The above-mentioned tension between victim protection/privacy and the open court principle, adds to the stress and suffering of survivors of sexual violence in the country, particularly at the gender court where this study was sited.

This study provided a discussion of the undermining of constitutional/universal rights if victim wellbeing is not prioritised. The discussion touched briefly on the remedial effects of addressing the chronic under-reporting of sexual offences and encouraging victims to trust the system.

As has been mentioned earlier, due to the very limited sample size employed for this study, the findings cannot to be generalized beyond the research setting (that is, the research is limited to a single court). The findings of this particular study should however even in its limited capacity inform various ministries of the state, in particular, the Ministry of Justice, Ministry for Gender and Social Protection and NGOs in the interest of more humane and holistic reforms. In this context, it has been noted that if survivors experience less trauma as they encounter the criminal justice system and subsequently encouraged to report future incidences of sexual violence, then their predicaments as they encounter the system must be addressed adequately.

Finally, Ghana's continued failure to move towards a victim-centred approach in justice delivery has been the major reason for the lack of adequate protection of survivors of sexual violence as well as failure to maintain full confidentiality of these survivors at all times, as was seen from the research site, in the discussions with, and responses, from research participants. The problem of lack of effective protection and confidentiality for survivors of sexual violence in Ghana becomes more daunting when the standard of ethical behaviour of key actors within the criminal justice system leaves much to be desired, and when international, regional, and national legal instruments are not effectively and meaningfully employed.

One result of this is the failure of law/policy and practice to provide adequate protection to survivors of violent crimes such as sexual violence. Thus, one may describe the Ghanaian criminal justice system as weakened but not weak, given that there is no general absence of rule of law or intentionality regarding respect for human rights. From the responses of participants there exists the need for a shift in the focus of the criminal justice system in Ghana from its current state to a victim-centred system, where victims of crimes become an integral part and focus of the system. Thus, the findings suggest that further improvements needs to be

made to the operations of the court, the behaviour of the actors, and the physical set-up of the court if secondary victimization of survivors is to be mitigated, and a call on criminal justice system in Ghana to urgently rise to the challenge of strengthening its engagement with victims.

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APPENDICES

Note: The full transcripts of the interviews are in the authors' possession in accordance with ethical regulations.

INTERVIEW QUESTIONS

Interview Guide for State Prosecutors

Dear respondent,

My name is Ebenezer Hutchful, a student at the University of Cape Town pursuing a master's degree in Criminology, Law and Society. In partial fulfilment for the programme, students are required to undertake a research project on a topic of interest to them. With my background volunteering with an NGO that worked on sexual violence in Ghana, I developed a keen interest in the area of sexual violence and the law. Hence my research topic "Sexual Offences and the Criminal Justice System in Ghana: Issues of Victim Protection and Confidentiality".

You have been purposively selected as a source of valuable information by virtue of your position as a stakeholder of the Ghanaian justice system.

KINDLY READ THE ATTACHED CONSENT BEFORE THE INTERVIEW.

PLEASE FEEL FREE TO ASK ANY QUESTIONS

QUESTIONS:

1. I'd like to begin the discussion by asking about your educational background and years of working experience in the field as a prosecutor?
2. Can you briefly tell me your duties here in the court?
3. How would you define victim protection and confidentiality?
4. Again, with your years of experience what do you understand by secondary victimization?
5. In general, would you say that the current legal process helps with smooth and effective protection of victims especially relating to issues of sexual offences?
6. Currently, are cases of sexual assault allowed to be held closed from the public including the media or held in-camera?
7. Is there a protocol in place to make this determination if a sexual assault case should be held closed from the public?
 - a) If yes, what does the protocol states?
 - b) If yes, who developed the protocol?
 - c) If no, how is the determination done and who makes the decision?
8. From the standpoint of a prosecutor, will having a specialised court for sexual offences be effective in improving victim protection and confidentiality? Please elaborate.
9. Have you attended any training, or do you receive training on sexual assault?
 - a) If yes, how often and what topics were you trained on?
 - b) If no, why?
10. Have you also participated in joint training or workshops with entities such as prosecutors and victim service providers/advocates?

- a) If yes, how often do you receive such training or workshop?
 - b) And also, which institution or unit organized the training and on what topics?
 - c) If no, why?
11. How do the needs of victims of sexual assault compare to the needs of other victims you have worked/work with?
 12. Is there any discrepancy when requests are being made for sexual assault cases to be held closed from the public in situations involving older people, youth and children or minority groups such as LGBTI's and sex workers who seek justice?
 13. In your opinion what can be done to reduce secondary victimization to its barest minimum in the Ghanaian legal process especially in sexual assault cases?
 14. Do you have any further comment on the issue of victim protection and confidentiality relating to victims of sexual assault that have not been covered in the questions above?

Interview Guide for Presiding Officers.

Your Lordship,

My name is Ebenezer Hutchful, a student at the University of Cape Town pursuing a Master's degree in Criminology, Law and Society. In partial fulfilment for the programme, students are required to undertake a research project on a topic of interest to them. With my background volunteering with an NGO that worked on sexual violence in Ghana, I developed a keen interest in the area of sexual violence and the law. Hence my research topic "Sexual Offences and the Criminal Justice System in Ghana: Issues of Victim Protection and Confidentiality".

You have been purposively selected because of your key position to understand what is working and what is not working so well when it comes to the protection of victims of sexual assault and issues of confidentiality.

KINDLY READ THE ATTACHED CONSENT BEFORE THE INTERVIEW.

PLEASE FEEL FREE TO ASK ANY QUESTIONS.

QUESTIONS:

1. I'd like to begin this discussion by asking about your educational background and years of service in this capacity as a presiding officer?
2. From your years of experience, how often are sexual offence cases dealt with by this court?
3. How would you define victim protection and confidentiality?
4. What do you understand by the phrase secondary victimization?
5. In general, would you say that the current legal process helps with smooth and effective protection of victims especially relating to issues of sexual offences?
6. Thinking back over the last 7 to 10 years, has there been an improvement in the protection of victims of sexual assault as they seek help from the justice system?
 - a) If yes, what are they?
 - b) If no, why is so?
7. Currently, as sexual offence cases are heard in chambers, how is victim protection and confidentiality ensured within the chamber?

8. Is there a protocol in place to make this determination if a sexual assault case should be held closed from the public?
 - a) If yes, what does the protocol state?
 - b) If yes, who developed the protocol?
 - c) If no, how is the determination done and who makes the decision?
9. Are victim protection and confidentiality hindered from being realized in the Ghanaian criminal process?
 - a) If yes, what hinders them?
 - b) If no, how is this achieved?
10. How can these challenges be overcome?
11. From the standpoint of the bench, will having a specialised court for sexual offences with special features like in-camera testimony room be effective in improving victim protection and confidentiality? Please elaborate.
12. Have you attended any training, or do you receive training on sexual assaults?
 - a) If yes, how often and what topics were you trained on?
 - b) If no, why?
13. Have you also participated in joint training or workshop with entities such as prosecutors and victim service providers/advocates?
 - a) If yes, how often?
 - b) And who or which institution organized the training or workshop?
- c) If yes, on what topics?
 - d) If no, why?
14. In your opinion what can be done to reduce secondary victimization to its barest minimum in the Ghanaian legal process especially in sexual assault cases?
15. Do you have any further comment on the issue of victim protection and confidentiality relating to victims of sexual assault that have not been covered in the questions above?

Interview Guide for Staff of NGO.

Dear Respondents,

My name is Ebenezer Hutchful, a student at the University of Cape Town pursuing a master's degree in Criminology, Law and Society. In partial fulfilment for the programme, students are required to undertake a research project on a topic of interest to them. With my background volunteering with an NGO that worked on sexual violence in Ghana, I developed a keen interest in the area of sexual violence and the law. Hence my research topic "Sexual Offences and the Criminal Justice System in Ghana: Issues of Victim Protection and Confidentiality".

You have been purposively selected because of your key position to understand what is working and what is not working so well when it comes to the protection of victims of sexual assault and issues of confidentiality.

**KINDLY READ THE ATTACHED CONSENT BEFORE THE INTERVIEW.
PLEASE FEEL FREE TO ASK ANY QUESTIONS.**

QUESTIONS:

1. I would like to begin the discussion by asking about your educational background and years of working experience in the field of being an advocate for victims of sexual assault?
2. Can you briefly tell me how you and your organization got involved in the issues of sexual assault in Ghana?
3. What are the goals of your organization?
4. What services and/or activities does your organization provide?
5. What other interested parties working to address the issue of sexual assault in Ghana does your organization work with?
6. How and in what capacity does your organization interact with other interested parties working to address sexual assault in Ghana?
7. How would you define victim protection and confidentiality?
8. What do you understand the phrase secondary victimization?
9. Do funding streams and the laws prohibit working with certain group of sexual assault victims' example, LGBTI's and sex workers?
10. With your experience, how would you describe the protection and confidentiality issues of victims of sexual assault in Ghana as they seek justice?
11. Do you receive or have you received training on victim protection and confidentiality?
 - a) If yes, how often?
 - b) If yes, who or which institution organized the training?
 - c) If no, why?
12. Have you participated in joint training with other entities such as prosecutors, presiding officers and law enforcers?
 - a) If yes, how often?
 - b) If yes, who or which institution organized the training?
 - c) If yes, which topics were treated at these training or workshops?
 - d) If no, why?
13. Do you think Ghana should have a specialised court with specialized features such as in-camera testimony rooms and the likes to handle sexual offences? Please elaborate your reason.
14. In your opinion what can be done to reduce secondary victimization to its barest minimum in the Ghanaian legal process especially in sexual offence cases?
15. Do you have any further comment on the issue of victim protection and confidentiality relating to victims of sexual offence that have not been covered in the questions above?

Interview Guide for Court staff.

Dear Respondents,

My name is Ebenezer Hutchful, a student at the University of Cape Town pursuing a master's degree in Criminology, Law and Society. As a partial fulfilment for the programme, students are required to undertake a research project on a topic of interest to them. With my background

volunteering with an NGO that worked on sexual violence in Ghana, I developed a keen interest in the area of sexual violence and the law. Hence my research topic “Sexual offences and the Criminal Justice System in Ghana: Issues of Victim Protection and Confidentiality”.

Kindly note that you have been purposively selected because of your key position to understand what is working and what is not working so well when it comes to the protection of victims of sexual assault and issues of confidentiality.

**KINDLY READ THE ATTACHED CONSENT BEFORE THE INTERVIEW.
PLEASE FEEL FREE TO ASK ANY QUESTIONS.**

QUESTIONS:

1. I would like to begin the discussion by asking about your educational background and years of working experience in the field as a court staffer?
2. Can you briefly tell me your duties here in the court?
3. How would you define victim protection and confidentiality?
4. Are there facilities and services provided currently in court geared towards enhancing victim protection and confidentiality?
 - a) If yes, what are some of these?
 - b) If no, why don't you have such facilities and services?
5. Is the court able to meet all the needs of sexual offence victims or identify other people/agencies who can help meet these needs?
6. From the standpoint of court staff, should Ghana have a special court with special model/ features to deal with sexual offence cases?
 - a) Will it be an effective way to utilize the court's resources? Please elaborate on your reasons.
7. In your opinion, what would help improve victim protection and confidentiality in the Ghanaian courts?
8. Have you received or do you receive training on how to handle sexual offence cases?
 - a) If yes, how often?
 - b) If yes, who or which institution organized this training?
 - c) And on what topics?
 - d) If no, why?
9. Are there entities or organizations who are not involved in the court processes when handling sexual offence cases that, if involved, would aid the protection of victims and confidentiality?
10. Do you have any further comment on the issue of victim protection and confidentiality relating to victims of sexual offence that have not been covered in the questions above?

Interview Guide for legal Practitioners.

Dear Respondents,

My name is Ebenezer Hutchful, a student at the University of Cape Town pursuing a Master's degree in Criminology, Law and Society. In partial fulfilment for the programme, students are required to undertake a research project on a topic of interest to them. With my background volunteering with an NGO that worked on sexual violence in Ghana, I developed a keen interest

in the area of sexual violence and the law. Hence my research topic “Sexual offences and the Criminal Justice System in Ghana: Issues of Victim Protection and Confidentiality”.

You have been purposively selected because of your key position to understand what is working and what is not working so well when it comes to the protection of victims of sexual assault and issues of confidentiality.

**KINDLY READ THE ATTACHED CONSENT BEFORE THE INTERVIEW.
PLEASE FEEL FREE TO ASK ANY QUESTIONS.**

QUESTIONS:

1. I would like to begin the discussion by asking about your educational background and years of working experience in the field as a legal practitioner?
2. We are going to talk about victim protection and confidentiality of victims of sexual assault in the Ghanaian legal process in a few minutes, but can you briefly tell me your duties as a legal practitioner?
3. How will you define victim protection and confidentiality?
4. What do you understand by the phrase secondary victimization?
5. In general, would you say that the current legal process helps in victim protection smoothly and effectively especially relating to sexual offence cases?
6. Thinking back over the last years, has there been any improvement in the protection of victims of sexual assault as they seek help from the justice system?
 - a) If yes, what are they?
 - b) If no, why is so?
7. Currently, are cases of sexual assault allowed to be held closed from the public including the media or held in-camera?
 - a) If yes, how is this done? Through applications or by laid down protocol?
 - b) If by applications, how are these applications done?
 - c) What factors do you consider before making such an application?
8. Do you think Ghana should have a specialised court with specific features/model such as in-camera testimony room to handle sexual offence cases? Please elaborate on your reason.
9. Have you attended any training, or do you receive training on sexual offences?
 - a) If yes, how often?
 - b) And who organizes such training or workshop?
 - c) What topics were you trained on?
 - d) If no, why?
10. Have you also participated in joint training or workshop with entities such as prosecutors and victim service providers/advocates?
 - a) If yes, how often?
 - b) Who or which institution/ unit organized the training?
 - c) And on what topics?
 - d) If no, why?

11. Do you have any further comment on the issue of victim protection and confidentiality relating to victims of sexual assault that have not been covered in the questions above?