

Women and Law in Southern Africa (WLSA) and the Legal Resources Foundation (LRF) and with support from the Spotlight Initiative (to eliminate violence against women and girls) In collaboration with the Legal Resources Foundation (LRF)

An assessment of the efficacy of informal justice systems in addressing sexual and gender-based violence in three districts of Zimbabwe (Hurungwe, Mutasa and Umzingwane)

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Acronyms

GBV	Gender-Based Violence
HP	Harmful Practices
UN	United Nations
SGBV	Sexual and Gender-Based Violence
UNDP	United Nations Development Programme
WLSA	Women and Law in Southern Africa
ZGC	Zimbabwe Gender Commission
ZHRC	Zimbabwe Human Rights Commission
ZRP	Zimbabwe Republic Police

Executive Summary

This Report is based on research centred on the efficacy of the traditional and informal justice systems in addressing Gender-Based Violence (GBV) and Sexual Gender-Based Violence (SGBV) within particular localities in Zimbabwe from November 2019 to June 2020. Three areas were drawn for assessment, namely, Hurungwe, Mutasa and Umzingwane. The main objective of the Research was to assess the efficacy of the informal and traditional justice systems in delivering justice in instances of sexual and gender-based violence in Zimbabwe. In this context, the research assessed how the traditional and informal justice systems are mediated and informed by cultural practices, beliefs and societal norms in Zimbabwe. From this research focus, it is clear that the overarching goal is to inform the content and quality of sexual and gender policies, legislation and other national initiatives as well as their implementation in the broader interests of eliminating discriminatory and violent societal practices especially against girls and women in Zimbabwe.

It is stated that the assessment was conducted against the backdrop of an existing constitutional, legal and policy framework aimed at addressing sexual and gender-based violence and other discriminatory practises against girls and women in Zimbabwe. With this context, the assessment sought to uncover how and in what ways the existing constitutional, legislative and policy changes are meant to prevent and eliminate forms of sexual and gender-based violence that find expression within specific cultural contexts. In addition to this, the research proceeded to explore how cultural beliefs, practices, values and norms obtaining in the chosen localities are related to

legal and policy positions and how and in what ways they enable or constrain certain modes of behaviour and practice in such localities.

A participatory qualitative methodological approach was adopted to conduct the research. This entailed the use of ethnographic approaches with a view to uncovering the pertinent issues and bringing out a nuanced and finely grained analysis. For the assessment, this approach involved the use of different data collection techniques that allowed for close attention to the issues of interest such as in-depth interviews (which, in some instances, took the form of narratives), focus group discussions, observations, participation in the observed practices and events, key informant interviews and archival/documentary analysis. It is stated that the participatory qualitative methodological approach that was adopted was informed and guided by a set of specific research questions that are given below.

SPECIFIC RESEARCH QUESTIONS

1. *How and in what ways are sexual and gender-based violence cases handled or adjudicated within the informal justice system as well as in traditional courts?*
2. *How and in what ways are informal/traditional justice systems (in)accessible for particular categories of individuals?*
3. *What are the underlying cultural beliefs, values, norms and practices that shape and inform the handling and resolution of sexual and gender-based violence cases?*
4. *How and in what ways do cultural beliefs, practices, norms and values mediate the resolution of sexual and gender-based violence cases?*
5. *How and in what ways do policy making institutions, NGOs, formal justice institutions interact with the traditional and informal justice system in order to address sexual and gender-based violence in specific localities?*

Limitations

The use of the two case studies to exemplify an existing phenomenon has its own limitations. In essence, the general motive for adopting this research approach is usually to test the generalisability of certain conclusions underlying, or arrived at in this research. The limited geographical scope of this research means that the generalisability of its conclusions may not adequately reflect general cultural practice in that province, or in the majority of districts in that province.

SUMMARY OF HEADLINE FINDINGS

I. Different Levels of Appreciation of the Meaning of SGBV and HPs

There are different levels of appreciation and awareness of what constitutes GBV, SGBV and HP across different communities. In general, however, understanding of SGBV, GBV and HPs has coalesced around conflicts, disputes and violence between spouses often arising or pertaining to the lack of consensual sex. The understanding of GBV and SGBV is also contextual, being intricately enmeshed not only in the family context but also intertwined with cultural practices, beliefs and norms of a given community.

Related to this position is that SGBV has not manifested in the same way across the various communities under study; different forms of SGBV and HPs have different prevalence rates across the country, clearly showing that they are not homogenous throughout the country.

II. Handling of SGBV and HP cases by the traditional and informal justice system

There is no systematic handling, investigation and management of cases of SGBV and HPs by the traditional and informal justice system. The manner in which cases are handled is rather ad hoc and reactive. Each case is

handled differently and there is no established procedural framework. Finally, there is no specialised adjudicatory mechanism that exist for cases of SGBV and HPs in the traditional and informal justice system.

III. Adjudication of SGBV and HPs underpinned by social norms

The adjudication of cases of SGBV and HPs is shaped, informed and guided by the traditional socio-cultural beliefs and customs that underpins the traditional and informal justice system in Zimbabwe. This means that the justice-delivery mandate of the traditional and informal justice system largely adopts a simple, straightforward approaches that is deeply rooted in a particular culture and a set of social norms. There is however opportunities for complexities to arise in dealing with certain matters through the informal and traditional justice system such as those involving minors and persons with disabilities.

IV. Relevance of Traditional and Informal Justice System

Apart from cost and accessibility, informal and traditional justice systems remain a critical institutional system whose justice delivery mandate is deeply shaped and informed by cultural practices, beliefs and societal norms. These institutions are characterised by their own complexities and intricacies that derive from the patriarchal social system that is ill-suited to protect girls and women to manifest forms of SGBV and HPs in intimate spaces.

V. Institutionalisation of Silence and Abuse

In the context of SGBV and GBV against girls and women, the informal and traditional justice system has long been characterised by silence and subjugation. It is unable to unravel the deep-seated causes of SGBV and HPs, provide fair and just investigative and prosecutorial standards and deliver justice to women and girls.

Crucially, the traditional and informal justice system has been unable to safeguard against a set of violations that continues throughout the life of girls and women such as marital rape, physical, economic, verbal and psychological abuse/violence because of the unequal power relations in society.

VI. The traditional and informal justice system is in a state of flux

The traditional and informal justice system is always evolving and undergoing a permanent state of transformation. The evolving nature of this system means that it offers important opportunities for the transformation of its administrative, institutional and normative framework in the interests of protecting rights and freedoms of citizens.

VII. Imperative to constantly improve law and policy frameworks

Zimbabwe's legal and policy framework targeted at addressing SGBV and HPs is largely informed by international treaty standards and progressive constitutional principles. This notwithstanding, there are still several inconsistencies and gaps in the legislative framework that need to be reconsidered to improve the fight against SGBV and HPs.

VIII. Co-operative relationship between formal and informal mechanisms

There is no formalised relationship between the traditional justice mechanisms and the formal justice systems. This means that whilst this may create several opportunities for interaction between the two systems, there is no direct incentive for a cooperative engagement between the two systems. This can adversely impact on the resolution of cases of SGBV and HPs by the traditional and informal justice systems.

Table of Pertinent Recommendations

Item	Recommendation
1	In the context of SGBV and HPs, informal and traditional justice systems must be revisited, reconsidered and repackaged with necessary administrative and procedural interventions to ensure that they remain a key part of justice at community level. The interventions must be targeted at two major goals: firstly, the goal of building in certain safeguards that enhances accessibility and cost effectiveness to users, and secondly protecting all users against discriminatory practices and other unjust processes inherent in the traditional and informal justice system.
2	There is need for concerted advocacy efforts at a national level for the education of the general public about constitutional, legal and policy initiatives in place for SGBV, GBV and HPs in communities, and the appropriate platforms to approach for redress and resolution. This public educational campaign can better equip users and beneficiaries of the traditional and informal justice system in their quest to resolve issues of SGBV and HPs.
3	One-stop-centres must be established in communities for the purposes of handling, managing and resolving all issues of GBV, HPs and SGBVs. These one stop centres can be constituted by traditional leaders and other community members, community-based organisations and the Victim Friendly Units (VFUs). These can become important, multi-sectoral vehicles for addressing GBV, SGBV and HP especially in cases involving female persons with disabilities and young girls.
4	Programmes must be initiated to support the recruitment and training of community-based members that can continually educate communities on GBV, SGBV and HP and the appropriate mechanisms for redress. These members can become foot-soldiers in information dissemination, awareness raising, education and information sharing on SGBV, GBV and HPs in communities.
5	Advocacy and awareness raising campaigns must clearly identify and package the relevant matters that can be adjudicated by traditional and informal justice mechanisms in the context of GBV, SGBV and HPs. This ensures that these community justice platforms do not stifle nor silence cases of GBV and SGBV. The awareness could be organised around a broader programme of educating communities on key constitutional and legal provisions on GBV, SGBV and HP, among other related issues.
6	Community structures such as village committees that have emerged as important vehicles to mediate GBV, HP and SGBV cases must be strengthened so that they can improve understanding, investigation and resolution of these cases. The strengthening of these institutions can include educational awareness programs and forging formal and semi-formal ties with formal institutions such as the police and prosecuting authorities.

General Context and Background

1. INTRODUCTION

Between November 2019 and June 2020, WLSA and the Legal Resources Foundation commissioned research on the efficacy of Zimbabwe's traditional and informal justice systems in addressing Gender-Based Violence (GBV) and Sexual and Gender-Based Violence (SGBV), focusing on three selected areas, namely, Hurungwe, Mutasa and Umzingwane. In general, the research constitutes a programmatic effort under the Spotlight Initiative aimed at ending violence against women and girls in Zimbabwe. In addition, the research provides a platform to elevate the fight against violence on women and girls in the political and public discourse in Zimbabwe, capitalising on several political, constitutional and legal and policy developments that have an impact on SGBV and HPs in Zimbabwe's communities.

From the given terms of reference, it is clear that the research is rooted in Zimbabwe's social construct that impacts on gender relations and gender dynamics. Indeed, the research was fully aware that social and cultural constructs critically prescribe the roles of women and men, girls and boys in Zimbabwe. This social

construct is critically responsible for the social norms and practices accepted, entrenched and operationalised by the traditional and informal justice institutions. Importantly, Zimbabwe's social system is characterised by patriarchal social norms that inform the structure, shape and mandate of important social institutions such as the traditional and informal justice system itself. In relation to women and girls, gender inequalities are entrenched and consistently re-enforced by this social system through social norms, values, and religious and traditional beliefs which confine the roles and contributions of women and girls within gender norms and values. Apart from this, several other indicators exist as manifestations of deep-seated unequal gender power relations and the intersecting forms of discrimination all women and girls experience, especially those in rural and marginalised communities.⁶

In contemporary Zimbabwe, several forms of sexual and gender-based violence (SGBV) as well as harmful practices have remained pervasive and persistent. Such violence and sexual abuse occur in intimate spaces and is directed at and affects women and girls more than it affects men and boys. The quest to end SGBV and HPs in Zimbabwe is part of the global efforts to eradicate these forms of injustices from the various parts of the world they manifest. Suzanne Williams, reflecting on the work done by Oxfam on gender-based violence in the preface to the book *Ending Violence Against Women: A challenge for Development and Humanitarian Work* (2001: xi) acknowledged that global efforts to address violence against women have often been obscure because:

...it is the nature of the issue of violence against women to be hidden, to be silenced, and to be encircled by fear, shame, and violence. It is a difficult and dangerous

⁶ See Spotlight Initiative: Country Programme Document Zimbabwe (December 2018), 14.

area in which to work. Located as it is, in the majority of cases, within the family or household, it has been regarded as a private and domestic issue, inhabiting terrain where development agencies have feared to tread.

Almost two decades since Williams' reflections significant strides have been made to stem sexual and gender-based violence. Globally, such efforts are anchored on the long-standing Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979. Of particular importance is Sustainable Development Goal 5, which calls for the achievement of gender equality and empowerment all women and girls. This SDG encapsulates and embodies current efforts to eliminate forms of violence and discrimination and it aspires, among other things to: end all forms of discrimination against all women and girls everywhere; eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation and to eliminate all harmful practices, such as child, early and forced marriages and female genital mutilation.

Evidence that efforts to fight forms of sexual and gender-based violence and simultaneously to empower survivors of such abuse is gaining traction is manifestly seen through social movements such as the #MeToo campaign whereby victims of sexual violence allegedly committed by powerful and influential individuals have highlighted such abuse and some of the perpetrators have been prosecuted.

Legislative and policy frameworks

In the context of the global effort, Zimbabwe has taken several legislative and policy steps to address the manifestation of GBV and SGBV in the last decade. Such progress includes the

enactment of constitutional and legislative provisions and the introduction of policies and initiatives meant to address societal ills such as intimate partner violence, sexual abuse, gender inequalities and different forms of harmful practices. Specifically, this includes the 2013 Constitution contains several key provisions,⁷ that are complemented by important legislation such as the Domestic Violence Act (2006), the Criminal Law Codification and Reform Act, the Children's Act, Labour Act and the Trafficking in Persons Act. From a policy perspective, important official policies exist such as the National Gender Policy (2013- 2017), the National Programme on GBV Prevention and Response (2016- 2020), the National Action Plan on Ending Rape and Sexual Abuse, the Broad-Based Women Economic Empowerment Framework, the Multi-Sectoral Protocol on the Management of Rape and Sexual Violence, among others.

In addition to these there are certain pieces of legislation that give effect to the Constitutional provisions and key among these are the Domestic Violence Act (2007), the Criminal Law Codification and Reform Act and the Children's Act. There are also policies and initiatives such as the National Gender Policy, the National Programme on GBV Prevention and Response and the National Action Plan on Ending Rape and Sexual Abuse. Collectively, the legislative and policy framework are aimed at eliminating structural forms and manifestations of violence and harmful, unfair and unequal practices particularly towards women and girls who have historically been confronted by discriminatory and violent practices within both public and private spaces.

As the research confirmed, despite a rather comprehensive law and policy framework at both the global and local levels, several forms

⁷ For instance, section 52 of the Constitution guarantees individuals' rights to personal security whereas section 25 speaks of the protection of families and enjoins the state to adopt measures that prevent domestic violence.

of discrimination, violence and inequality have remained persistent in Zimbabwe's communities. For instance, at a national level, the alignment of laws to the country's new Constitution has remained partial and the pace of reform in terms of the enactment of new legislation has progressed slowly.

The other reasons are subtler and more inchoate. Empirical evidence suggests that there are barriers that hinder individuals and communities from accessing or even seeking justice. These barriers include perceived corrupt practices within the formal justice institutions (including law enforcement agencies), an inequitable justice system that constrains particular categories of individuals such as persons with disabilities, vulnerable women and children as well as the indigent whilst privileging the wealthy, influential and powerful (see for example WLSA, 2000).

In particular localities, the co-existence of both formal and informal legal systems impinges upon the ability of people – individually and collectively – to access justice. This is particularly the case in instances of sexual and gender-based violence as well as other harmful practices where family mediation and other forms of informal engagements and negotiations such as village mediation and mediation by religious groupings may be preferred to formal justice institutions. Often, inequality, poverty (in all its different manifestations) intersects with gender, lack of knowledge, cultural practices, and beliefs and this produces outcomes that are in most instances problematic and collectively, hinder the delivery of justice. WLSA (2000: 13) makes the point that in instances where substantive law exists to address societal ills pertaining to women, restraints come into play 'because many of the problems women face are regarded as social and family-based problems and are seen as requiring family-based solutions. Clearly, this impacts on girls and women since the resolution and adjudication

of their problems is done in family and social platforms that are part of the traditional and informal justice system.

The overarching ambition of this report and of the Spotlight Initiative is to inform sexual and gender policies, legislation and initiatives as well as their implementation with a broader goal of eliminating discriminatory and violent societal practices especially against girls and women.

2. THEORY AND CONCEPT

The assessment examined the multiple ways through which, discourses, practices and interventions (in the form of policies, initiatives, legislation etc.) are expressed and deployed onto local contexts. As such the assessment examined the rationale behind discourses and interventions, how these are produced, circulated and how they find expression within local, socio-cultural and legal contexts. A related focus was to examine how these discourses and practices permeate the lives and experiences of particular groups of people and how these individuals constantly negotiate these discourses in their everyday lives and in contexts largely perceived to be discriminatory and characterised by forms of harmful practices and sexual and gender-based violence and attendant ills. This approach is supported by the core thrust of the Spotlight Initiative which uses 'a multi-sectoral, multi-layered, interlinked community-centred approach to the implementation of the interventions' aimed at addressing SGBV and HPs. Importantly, the approach fully recognises the intersecting forms of discrimination all women and girls confront throughout their lives.⁸

Conceptually, the project drew from among others, Sally Engle Merry's (2006) concept of *translation* in order to bring out the forms

8 See Spotlight Initiative Country Programme, II.

of understandings and contestations that characterise sexual and gender-based violence within specific localities. Merry (ibid: 38) examines how transnational ideas such as human rights approaches to violence against women are adopted in local social settings by looking at the role played by intermediaries such as community leaders, non-governmental organisation participants, and social movement activists in translating ideas from the global arena down and from local arenas up. Whereas Merry focuses on the role of the intermediaries and how they navigate or ‘map the middle’ between the local and global worlds we use the term translation to examine how people at the local level interpret or translate the discourses on GBV and SGBV and the various legal interventions and instruments that are deployed by government departments, human and legal rights organisations.

We argue that interventions in the form of policies and legislation permeate local contexts and articulate with the realities, lived experiences and cultures of individuals and communities but such interaction or interface produces unpredictable outcomes especially when communities perceive it to be at odds with their cultural practices. Indeed, the interface is contested and fraught with differing cultural meanings, competing interests and our research material suggests that in some instances it produces unpredictable outcomes to the detriment of efforts to eliminate forms of violence and discrimination.

In addition, the assessment drew inspiration from feminist theories particularly the work of African feminists⁹ – especially in situating individuals within specific cultural, historical, sexual, class, religious etc. differences (see Mahmood, 2001). Drawing from this approach

⁹ The researchers drew from the work of Ifi Amadiume, Sylvia Tamale, Stella Nyanzi and Everjoice Win, among others, whose scholarship focuses attention on African sexual identities, ‘harmful’ practices and culture, etc. within African contexts.

the report brings out the perspectives of differently situated individuals such as people with disabilities and people of different age categories.

The assessment perceives ‘culture’ as a set of traditions and customs transmitted through learning, guiding beliefs and the behaviour of people exposed to them. According to Raymond Williams (2008: 37),

[C]ulture is a set of practices by which meanings are produced and exchanged within a group” which foregrounds people’s agency in historical and present conceptualisations of ‘culture’.

The task of the assessment was to uncover cultural values, traditions, myths, beliefs and norms that people rely on and use to justify modes of behaviour within informal justice systems concerning sexual and gender-based violence issues.

3. METHODOLOGY

The assessment adopted a participatory qualitative methodological approach that incorporated ethnographic¹⁰ methods with a view to uncovering the pertinent issues and bringing out a nuanced and finely grained analysis. The methodological approach involved the use of different data collection techniques that allowed for close attention to the issues of interest such as in-depth interviews (which, in some instances, took the form of narratives),

¹⁰ Ethnography is a methodological approach often used by anthropologists. It entails a description of the way of life of a culture through a researcher ‘immersing’ themselves in the community and understanding the economic, social and cultural contexts that inform certain behaviour and practice. Researchers typically participate in the lives of the community (see Davies 2008). Given the timelines within which the assignment was conducted it was not possible to adopt a pure ethnographic approach but to the extent possible the researchers borrowed a number of techniques used in ethnography such as writing detailed field notes.

focus group discussions, observations, participation in the observed practices and events, key informant interviews and archival/documentary analysis.

Qualitative research emphasises depth and insight rather than generalisations and brings a lot of detailed and rich data in the form of interview records, group discussions and descriptions of observations, which enable the eventual analysis of the data to be rooted in the contexts as derived from repeated observations, attitudes and experiences (see for example Greenwood and Levin, 1998). Hennink et al. (2011:9) assert that a qualitative methodological approach allows researchers to identify issues from the perspective of the study participants and is ideal for one to gain an understanding of the meanings and interpretations that people give to particular behaviour, events or objects as well as to ‘identify social or cultural norms’. The methodological approach was ideal for this study, which attempted to uncover invisible and inchoate aspects such as people’s cultural norms, values, beliefs and practices that may ordinarily be hidden from view. Issues of sexual and gender-based violence are also regarded as sensitive in some communities and a qualitative approach was appropriate in bringing to the fore underlying reasons, opinions, and motivations that people attach to behaviour (Bernard and Bernard, 2013). Hennink et al. (ibid) further argue that qualitative researchers also study people in their natural settings, to identify how their experiences and behaviours are shaped by the context of their lives such as social, economic, cultural or physical contexts in which they live’. A qualitative methodological approach infusing ethnographic techniques enabled the research team to solicit rich and detailed data relevant to answering the research questions.

The assignment was guided by the following principles:

- Participatory and inclusion
- Diversity
- Gender equity/non-discrimination
- Independence, objectivity and impartiality to ensure credibility and legitimacy to evidence-based results.

The research processes

Data collection for the assessment was conducted by three research teams. The teams were selected purposively, on account of gender, local language competence and familiarity with the study area and cultures. Given the nature of the study the selected team members either have a legal background or grounding in social sciences particularly sociology and anthropology. In keeping with the participatory and inclusive approach, the research teams convened inception meetings at each of the selected districts. Participants in these meetings were officials from the Ministries of responsible for women’s affairs, local government, provincial affairs, Provincial Administrators and representatives from civil society groups operating in the concerned areas. Members of the Zimbabwe Republic Police (ZRP) particularly the Victim Friendly Unit (VFU) who handle SGBV and GBV were also part of the inception meetings. Apart from appraising the officials about the purpose of the assessment and the methodological approach, participants at the inception meetings were requested to identify wards where data could be gathered. These areas were selected purposively as detailed below.

Hurungwe

At an inception meeting in Karoi, Tengwe, Mudzimu and Nyamhunga were selected as the study sites for Hurungwe district. The meeting resolved to focus on these areas on the general subjective consensus that there were high

prevalence rates of GBV and SGBV, the different economic activities obtaining in the areas as well social factors such as religion affiliation. The rationale was to ascertain how and in what ways economic activities such as tobacco farming and the emerging alluvial mining were transforming gender relations in the respective areas. Religion is itself part of culture and as such the assessment considered the ways in which religious affiliations and beliefs inform practices and modes of behaviour within communities and how they affected interpersonal relationships. Another key consideration was the need to attend a traditional court presided by a local chief. Given these considerations participants selected Tengwe (a resettlement area renowned for tobacco farming); Mudzimu- traditionally a communal farming area but where informal/alluvial mining is emerging as a key economic activity surpassing subsistence farming. In Mudzimu informal mining has transformed gender relations primarily through splitting families with the majority of men spending long periods away from home with the consequence of creating conflict with their spouses amid accusations of infidelity and distrust.

Lastly Nyamhunga in Hurungwe East was chosen as the third site. Nyamhunga is a communal farming area dominated by the Johane Marange religious sects and whose economy relies on tobacco farming. In Nyamhunga the research team intended to attend a traditional court session presided over by Chief Nyamhunga. However, the study was conducted in November which time traditional ceremonies and rituals including traditional court sittings are not conducted or held. The research team however, managed to have an in-depth interview with Chief Nyamhunga. In this community, child marriages are rife and polygamous marriage unions are also common creating tensions and conflicts within families and communities.

Mutasa

In Mutasa, the selected field sites were Chavanga, Nyamhuka and Changundu.

Chavanga is communal land adjacent to the big tea plantations in the Eastern Highlands. People subsidise their income by working on the plantation. The area is also right on the border with Mozambique. Some people have land and family both in Mozambique and in Zimbabwe. There is a cross pollination of culture. There are no strict border controls therefore allowing easy movement between the two countries. The area is also renowned for informal gold mining, a key factor that appears to cause conflict and disharmony within families.

Changundu was selected as the second data collection site. This is a communal area bordering on Nyanga. Communities subsidise their income through selling arts and crafts to tourists that visit the Nyanga resort. The area is drier than Chavanga but people in this community grow other crops such as peanuts. There is good access to water, a lot of boreholes and some of the families have irrigation systems in place. There is a relatively good road infrastructure compared to Chavanga.

Nyamhuka was the third research site. A resettlement area, with small and medium sized plots, the area was well irrigated. Set on a formerly white owned commercial farm, research participants stay in housing units referred to as *komboni*, that in the past accommodated farm workers. The houses were awfully close to each other with extraordinarily little privacy for its inhabitants. Instead of it feeding trust, there was a feeling that people did not trust their neighbours. The areas surrounding the komboni however, seemed more dispersed. Women sat on the floor while the men helped themselves to chairs. No one was wearing a mask but there were people covering up with scarfs. There were a couple cars that drove through to the bigger farming

plots, people in this area are able to grow their own food and work on the bigger farms.

Umzingwane

In Umzingwane participants at the inception meeting selected Malungwana, Esihlengi and Habana. The first data collection site was Empisini, a resettlement area located in Ward 14; included, however, were participants drawn from three other areas, namely Malungwane, Bafazi and Bayethe which enabled the team to gather views from diverse individuals and to reach out to as many people as possible. Data collection was also conducted at Esihlengi in Ward 2 – a communal farming area which traditionally had high cases of SGBV but the reported cases have in recent months declined significantly; lastly the assessment team collected data in Habana located in Ward 16, a peri-urban area where economic activities have been boosted by informal gold mining and cases of SGBV have increased exponentially.

In all the districts officials from the Ministry of Women's Affairs mobilised community members to a central meeting point where they met with the research teams. In doing so the officials ensured that the participants were comprised of women, men, youth, the elderly and persons with disabilities in line with the methodological approach and to ensure inclusivity and community participation.

THE RESEARCH CONTEXT

Data collection was conducted in Hurungwe in November 2019 and in Mutasa and Umzingwane concurrently in May 2020. The latter part of the data collection for the assessment was done during a global pandemic occasioned by the coronavirus. In an effort to stem the spread of the virus governments the world over adopted economic lockdown measures that resulted in

the shutting down of economic activities whilst health care systems were being strengthened. During this time individuals were compelled to stay at home except for essential workers particularly in the health care, security and humanitarian sectors. The pandemic and the attendant lockdown disrupted daily life and impacted the assessment in numerous ways. The highly infectious virus and its modes of transmission meant that the assessment teams, in line with the government and World Health Organisation (WHO) guidelines, had to adjust their assessment approaches. This entailed conducting some of the interviews remotely through telephone and other online platforms due to movement restrictions and the requirements for individuals to limit interactions through working from home utilizing enabling technology.

In conducting the field assessment in the communities such technologies could not be utilised due to the unavailability of such technology and infrastructure in the communities located in rural areas. As such the assessment teams had to adopt 'COVID-19' adjusted field protocols that entailed all field staff donning personal protective clothing (PPEs) such as masks and gloves, maintaining social distancing and adhering to strict hygienic standards such as constant hand washing and sanitisation as recommended by health authorities. Similarly, participants were also required to put on PPEs to protect themselves and the assessment teams.

Empirically, the impact of the pandemic on the assessment cannot be downplayed. The pandemic has transformed and restructured everyday life and introduced new ways of relating and interacting. The use of PPEs invariably affected the way participants and the field teams interacted. Some of the participants and researchers falling within the 'at-risk' category could not participate in the assessment, whilst those that did had to do so

taking due precautions.

In qualitative research, researchers observe and consider non-verbal gestures made by participants. The use of masks by both researchers and participants meant that researchers could not see some of the non-verbal gestures made by the participants but in the midst of a pandemic the health of the researchers and participants was of paramount concern and the researchers believe that the participants shared their thoughts and experiences as they safeguarded their health at the same time.

Widespread media reports highlighted an upsurge in the incidence of gender-based violence and SGBV within communities as families and individuals compelled to spend numerous hours in-doors grappled to come to terms with the 'new' ways of life. The assessment team had to mainstream the effects of the pandemic on the informal and traditional justice systems and the ways through which the COVID-19 and the attendant lockdown affected households. These are incorporated in the findings.

Data Collection Methods

DOCUMENTARY ANALYSIS AND ARCHIVAL RESEARCH

The Consultants analysed documents relating to the study. Key documents analysed included the Constitution of Zimbabwe and relevant legislation such as the Domestic Violence Act (2006), the Children's Act. Policy initiatives such as the National Gender Policy and the National Programme on GBV Prevention and Response were also analysed. The researchers also examined documents such as the Convention on the Elimination of All Forms of Discrimination Against Women (1979) as well as the Sustainable Development Goals (SDGs). In addition to these the researchers also analysed newspaper articles, court reports and relevant reports pertaining to the subject under study. The documentary analysis provided contextual information and insights that spoke to the assignment at hand. In essence, the documentary review examined what constitutional and policy arrangements governing sexual and gender-based violence, gender inequality and other harmful practices stipulate, how they are implemented and the ways in which they find resonance in particular localities, enabling or

constraining certain modes of behaviour or practice.

In-depth interviews

The researchers conducted individual in-depth interviews at each of the field sites. A total of fifteen (15) individuals were interviewed at each of the three sites and of these were comprised of eight women and seven men. These individuals were selected randomly in the communities with officials from the Ministry of Women's Affairs and Community Development and case care workers attached to the Department of Social Development responsible for the mobilisation of the participants. A total of 45 individuals were interviewed in each district making it a total of 135 participants in the three research sites. In mobilising participants, efforts were made not only to ensure the inclusion of women but also young people and persons with disabilities. Ultimately, the research teams could only interview participants that were available and willing to participate in the study.

In essence, the interviews addressed three related research questions – how and in what ways sexual and gender-based violence cases are handled or adjudicated within the informal justice system? How and in what ways the informal/traditional justice systems are (in)accessible for particular categories of individuals? Lastly, how and in what ways cultural beliefs, practices, norms and values mediate the resolution of sexual and gender-based violence cases? The interviews followed a series of carefully guided questions, which however allowed researchers room to probe. The aim of the interviews was to bring out rich and detailed data that spoke to the subject matter.

Focus Group Discussions (FGDs)

In order to complement the data gathered through the in-depth interviews, the researchers also conducted focus group discussions in the study areas. A total of four FGDs were conducted in each district and each FGD was made up of 8-10 individuals. Given the sensitivity of the subject matter and its gendered nature the groups were varied in terms of gender composition and age categories. Two groups were constituted of men and women separately, the other was mixed gender whilst the fourth one was made up of young people aged 18-25 years of age. The disaggregation of the FGDs in terms of gender and age was meant to solicit data that was specific to particular age and gender categories.

In these FGDs the researchers sought to find out the underlying cultural beliefs, values, norms and practices that impinge the handling and resolution of sexual and gender-based violence cases. Secondly, the researchers sought data on the accessibility of the informal justice system to different categories of individuals and its efficacy in effectively addressing sexual and gender-based violence in the specific localities. The FGDs were facilitated by a senior researcher and a research assistant who was responsible for taking notes.

Ravindran (1997: 20) asserts that group discussions are especially useful for research related to sensitive topics. FGDs are a highly effective source of data for studies that focus on sensitive and complex issues that are closely tied up with people's social norms, values and beliefs. In FGDs participants are better able to respond to sensitive questions than when interviewed alone. Madriz (2000) argues that FGDs offer a 'safe environment' where people can share ideas in the company of people from the same ethnic, socio-economic and gender backgrounds. FGDs are a collectivistic rather than an individualistic method of data

gathering, and they are a rich source of data as the group interactions stimulate the expression of diverse opinions. Flick (1997: 115) states that in FGDs there is mediation between the different participants, which provides for the correction of both extreme views and views that are not socially shared.

Key Informant Interviews

Interviews were also conducted with key informants. There were two categories of key informants in this assessment. The first category was made up of traditional leaders such as chiefs, headmen and village heads. These key informants were interviewed in the selected study sites. At each of the nine (9) sites three traditional leaders were interviewed. These were mainly village heads and headmen/women. All in all, at least twenty-seven traditional leaders were interviewed, and these were predominantly men. Only seven women were interviewed itself testament to the limited participation of women in leadership positions.

The second category of key informants was comprised of individuals drawn from the civil society and academia. These included Miss Everjoice Win a development practitioner who has over twenty years of experience in community-based women's organisations locally and internationally and recently appointed Professor of Practice by the School of Oriental and African Studies (SOAS) in London, Mrs. Musa Sibindi the Executive Director at the Sexual Rights Centre (SRC), Ms. Barbara Nyangairi, Director at the Deaf Zimbabwe Trust. The researchers also managed to interview Ms. Delis Mazambani the Executive Secretary at the Zimbabwe Human Rights Commission (ZHRC) and formerly the legal and investigative manager at the Zimbabwe Gender Commission (ZGC) as well as Beauty Mutendeleki formerly a staffer at the Zimbabwe Women Lawyers

Association (ZWLA). The researchers also interviewed Ms. Isheanesu Chirisa, the programme's manager at Veritas with close to twenty work experience in organisations such as the Law Society of Zimbabwe (LSZ) and the Legal Resources Foundation (LRF). The purpose of these interviews was to gain an in-depth understanding of the way the country's dual legal system hampers the possibilities of particular categories of individuals in seeking justice and how and in what ways the informal justice systems affects the delivery of justice with particular emphasis on women and girls. In addition, the researchers also sought to find out how formal institutions may collaborate with informal systems to deliver justice or how individuals may navigate barriers in order to access justice. Focus in the interviews was also on sexual and harmful practices prevalent in communities within Zimbabwe.

The research team had initially envisaged interviewing twelve key informants including legislators especially those sitting within the Justice, Constitutional or Traditional Affairs Committees but the imperative to limit interactions and the difficulties in using enabling technologies inhibited conversations with some of the key informants. Consequently, the key informants interviewed at a national level are all female. This is not essentially a weakness *per se* since most of the interviewed key informants spoke representing institutions. For a study drawing from and inspired by feminist standpoints and with a goal to addressing discriminatory practices against women and girls' conversations with female policy makers, academics and activists are a strength rather than a weakness.

Ulin et al. (2002: 80) note that ethnographers have always relied on key informants to help them make sense of their observations and interactions in unfamiliar cultures. Key informants are individuals with special knowledge, status or communication skills

who are willing to share what they know with the researcher (Gilchrist, 1992). Talking to key informants was useful in gaining a grasp of different perceptions of issues.

Data analysis

The interview material was recorded, and transcribed and thematic content analysis was used to highlight key themes emerging from the research material as well as unique and intricate information drawn from field data.

Review of Literature on Sexual and Gender-Based Violence

This section of the report presents the review of literature on informal and traditional justice system in Zimbabwe and the general discussions around issues of SGBV and HPs, the legal and policy framework and the relevance of social norms in the traditional and informal justice system. The review therefore discusses constitutional and legal provisions that have been enacted in Zimbabwe to address sexual and gender-based violence (SGBV) and how and in what ways these have found resonance in communities. Apart from this, this section explores the different policy initiatives that the country has embarked on, their rationale and the how they speak to the beliefs and practices of individuals. In this part of the report, cultural practices are also discussed and the various ways these may enable or constrain the persistence of SGBV are highlighted.

THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

The Government of Zimbabwe is signatory to various national, regional and international instruments on the rights and protection of women and children including the SADC Gender and Development Protocol, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination

against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR). These instruments are embodied in the country's Constitution. In 2013 the Constitution of Zimbabwe Amendment (No.20) Act 2013 was enacted and owing to its founding values and expansive bill of rights and its quest to promote freedoms as well as gender equality it is widely regarded as progressive (Dziva, 2018). For instance, Section 52 of the country's Constitution, speaks to and guarantees individuals' rights to personal security whereas Section 25 states that the State and government agencies must protect and foster the institution of the family...adopt measures for provision of care and assistance to mothers, fathers and family members who have charge of children and the prevention of domestic violence.

Of relevance to this assessment are Sections 17, 56 and 80 on gender equality. Section 17 states that:

The State must take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies.

Section 56 on the other hand asserts that:

All persons are equal before the law and have the right to equal protection and benefit of the law.

Section 80 states that:

Every woman has full and equal dignity of person with men...All laws, customs, traditions and cultural practices that go against the rights of women are void.

These are progressive provisions in the context of protecting the rights of women and girls in various social spaces, particularly in view of the patriarchal social system in Zimbabwe (see for example Machakanja, Jeranyama and Bere, 2016). However, there are several factors that impact adversely against full enjoyment of the protections in the Constitution. The reasons for this are numerous and need to be illustrated. They generally include the

delay to align key pieces of legislation to the Constitution, the failure to enact relevant legislation to complement existing statutes and the problem of social and cultural practices that are at variance with the law and Constitution.

In the first instance, legislation that has not been aligned to the Constitution include the Criminal Law (Codification and Reform) Act. In specific terms, certain provisions that deal with rape and the age of consent as well as the different forms of sexual violence need to be reconsidered. The criminal law legislation that deals with sexual offences against girls and boys must be reviewed to guarantee prosecution and sentencing of offenders.

In addition to the Constitution, there are legislative instruments that speak directly to sexual gender-based violence, i.e. the Criminal Law (Codification and Reform) Act [Chapter 9:23] referred to as the Criminal Code and the Domestic Violence Act [Chapter 5:16]. There are also a number of protective policies, such as the National Action Plan on Rape and Sexual Abuse, which was set up in 2014 after a Cabinet Inter-ministerial Committee on rape and sexual abuse was established. It consists of the Ministries of Women Affairs, Health, Justice and Home Affairs. Another policy is the National Protocol on the Multi Sectoral Management of Sexual Abuse established in 2003 to regulate how different stakeholders, including the police and medical facilities, will deal with sexual abuse and gender-based violence. It was amended in 2012 and revised in 2019. It now acknowledges the marginalisation of people with disabilities and their exclusion from interventions that seek to prevent and end sexual violence.

The Violence and the National Programme on GBV Prevention and Response implemented during the period 2017-2020 through the Ministry of Women Affairs and its partners. Its primary goal is to reduce GBV and end Child Marriages and the Victim Friendly Court

System established in the 1990s by government and women and children's rights activists to ensure that survivors of sexual violence, primarily children are better protected when seeking justice. These policies were to ensure the fulfilment of all children and women's rights and specifically their right to protection from sexual violence and abuse but in reality, these policies and instruments are not being fully implemented to the detriment of women and children.

Barriers and obstacles

Apart from the lack of implementation of the laws, there are other obstacles that hinder women and children from accessing justice, such as poor police response, lack of coordinated efforts by the referral system, lack of knowledge about the legal process, lack of trust in the justice system because of lived, witnessed or perceived experience, corruption and traditional and cultural beliefs (Mashiri, 2013). Culture influences relationships and patriarchy defines the roles of men and women in society. The concept of lobola falls squarely within the patriarchal system, putting women and children under the custodianship of the men leading to the rise of domestic violence, especially when the authority of the man is seen to be challenged (Sithole and Dziva 2019). As women predominantly dependent on men economically, this compromises their ability to challenge these men, they then are forced to remain in abusive relationships for survival or for the sake of their children (Machakanja, Jeranyama and Bere, 2016). Society has legitimised these abusive acts by looking at them as common misunderstandings which women should get used to and are discouraged from seeking external help, the acts are treated as family matters, ultimately leading to the covering up of domestic violence crimes

(Chirawu, 2013).

Access to justice is defined as the “ability of people to seek and obtain a remedy through formal and informal institutions of justice, and in conformity with human rights standards.” (UNDP, 2004).

LEGISLATIVE FRAMEWORK AND SGBV IN ZIMBABWE

Despite being party to regional and international instruments, such as the CEDAW and the Maputo Protocol Zimbabwe's legislative framework fails to capture key elements of sexual and gender-based violence in its domestic laws and to offer adequate protection for survivors. Legislation relating to sexual and gender-based violence in Zimbabwe includes, the Constitution), the Criminal Law (Codification and Reform) Act [Chapter 9:23] referred to as the Criminal and Code and the Domestic Violence Act [Chapter 5:16]. A Mandatory Sentencing for Rape and Sexual Offences Bill is pending before parliament. There are institutions working closely with the government on sexual violence and these include the Anti-Domestic Violence Council and civil society organisations such as the Adult Rape Clinic, Musasa, WLSA and Family Support Trust.

Section 61 (1) (b) of Zimbabwe's Criminal Code defines sexual violence as, “...any act the commission of which constitutes the crime of rape, “aggravated indecent assault”, “indecent assault”, sexual intercourse or performing an “indecent act” with a young person or sodomy. In Section 65 rape is defined in strict gendered terms, as a crime perpetrated by men against women without consent. It places an undue burden on the survivor to prove that she did not consent to the sexual acts and forces her to conform to myths and stereotypes about the

ideal survivor. This contravenes international standards which emphasise coercive circumstances to prove that rape occurred (CEDAW, 2017).

Section 66 and 67 outline offences described as aggravated indecent assault and indecent assault, these offences are classified as rape by international standards (WHO, 2016). Section 69 lays out scenarios in which a court may consider that consent to the sexual act as outlined in sections 65, 66 and 67 is absent.

Section 70 criminalises sexual acts with a young person, defined as one below the age of 16 but it contravenes the Constitution which states in Section 81 that a child is a boy or girl below the age of 18. The age of consent is a contentious issue, compounded by the 2016 child marriage judgement (*Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs and 2 Others* which put the age of marriage at 18 but did not address consent. After advocacy efforts this decision will be implemented through the Marriage Bill which is before Parliament. There have been demands to raise the age of consent to 18 to synchronise it with the age of marriage but this strict point of view directly contradicts the argument for the recognition of adolescent sexual independence, and more specifically, the recognition of non-exploitative sexual intercourse between adolescents. (UNFPA, 2017).

The Domestic Violence Act (2007) in section 3 lists behaviour that can be described as domestic violence as any unlawful act, omission or behaviour which results in death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent and includes sexual abuse. It also includes certain harmful cultural practices such as forced or child marriage, virginity testing and female genital mutilation.

Although laws and policies are in place to protect women and children from sexual and gender-based violence, there is a general

ignorance on the content and scope of such laws. This means that without such publicity processes or educational mechanisms, these laws and policies cannot be understood by those they are meant to protect. (Dzimbahete, 2014). Survivors have complained that police officers do not take the domestic violence reports seriously, thereby diminishing women's right to report and seek justice for the wrong done (Feltoe, 2018). Police officers have been accused of turning away women, telling them to resolve the matter at home or asking them to bring the offending person to the police station. The criminal justice system takes time, and this drains the survivors' resources, both material and emotional as well as the physical energy required may carry disproportionate consequences for women whose daily survival is already a challenge. Survivors of gender-based violence have deep misgivings about the criminal justice system's prejudices, its treatment of survivors and perpetrators, the handling of the case and the types of remedies it can offer. These misgivings are based on selective application of the law (see Prochuk, 2018). In a study of women's perceptions of the Domestic Violence Act some indicated that they did not understand the Act, others stated that they had no confidence in the Act as it went against their Christian teachings (Makahamadze, 2011).

The dual legal system

The Constitution establishes customary law courts whose jurisdiction consists of primarily applying customary law and it states the role of the traditional leaders in resolving disputes amongst people in their communities in accordance with customary law. This is not always adhered to especially in sexual and gender-based violence cases. The Zimbabwean justice system comprises courts with varying jurisdictions but only the customary law courts

have specialised knowledge of the customary law.

The 2013 Constitution recognises customary law courts and in Section 193 it excludes them from courts that have jurisdiction to make judgements on criminal cases such as rape and sexual assault. These courts however have been known to disregard this and because of a lack of knowledge those seeking justice from these courts may not know their jurisdiction and they do not question them as they are seeking remedy. Cases that should go to higher courts are being adjudicated incorrectly to the detriment of the victims.

One of the major problems with the application of customary law is that it is generally unwritten and based on oral history. Customary law is largely dependent on the chief or headman's understanding and interpretation of it. The customs relied upon, however, must be certain, reasonable and have attained the recognition of formal law.

For rural women, going the customary route has pros and cons, it is a faster and more easily accessible (both physically and financially) solution (Chuma and Chazovachi, 2012). It presents an opportunity for them to enjoy greater social legitimacy in local communities. But on the other hand, while their nature varies considerably from place to place, this route is usually gender biased in composition and orientation in favour of men. As in most places the customary courts are manned by male elders who apply a male –oriented interpretation of the customary law.

Women do not ordinarily hold positions in the traditional courts, their role has traditionally been minimal, even before bringing a dispute to the traditional court, women have to inform and consult their male family members. This however was challenged in *Silibaziso Mlotshwa v District Administrator, Hwange N.O and Saunders Mlotshwa* in line with the Constitutional provisions of gender

equality and non-discrimination.

There are social and cultural beliefs that minimise the seriousness of sexual assault and expose survivors to blame, shame, skepticism, and stigma (RAU, 2013). These include beliefs that certain types of women are susceptible to rape, taking into account the place where the assault occurs and what the woman would have been wearing. Immersed in such a culture, survivors may internalise victim-blaming and end up not reporting to the police. Survivors who do not report the assault to police blame themselves for the assault (Prochuk, 2018). Although research shows that false allegations of sexual assault are rare, occurring at a rate of 2% to 10%, (Lisak et al., 2010) similar to the rate for other offenses there is a culturally entrenched skepticism about sexual assault that does not seem to apply to other crimes. Therefore, survivors may fear that they will be met with unsupportive responses if they disclose their experience to others.

The response of the police when reports of SGBV are made contribute to victims not reporting their cases. In instances where a woman has been sexually assaulted she should make her report to the police who should then refer her to the Victim Friendly Unit (VFU) who then gather testimony from the survivor in a manner that recognises the trauma she has experienced, then refer her to a medical facility if she has not already gone to one, as per the National Protocol on the Mutli-Sectoral Management of Sexual Abuse and Violence. This however is not always the case, as some police stations do not have VFUs and the reports are made in public at the charge office not taking into account the sensitivity of the report or where the office exists it is not well resourced (Mutanana and Gasva, 2015). After suffering the humiliation at the charge office many women do not return and resort to alternative means to resolve their problems. The police do not take the reports seriously, especially

domestic violence, they actually persuade and encourage the women to find other ways to deal with the problem, this then diminishes the woman's right to report and seek justice for the wrong done to her (GenderLinks, 2019).

Survivors of SGBV expressed deep misgivings about the criminal justice system's prejudices, its treatment of survivors and perpetrators, the handling of the case and the types of remedies it can offer. These misgivings are based on the attitudes and selective application of the law by the court officials and the police. Many women chose not to report in order to protect the family, especially where the perpetrator is the breadwinner (Shamu, 2018). The criminal justice system also takes time, and this drains the survivors' resources, both material and emotional as well as the physical energy required may carry disproportionate consequences for women whose daily survival is already a challenge, such as survivors who are living in poverty because of the prevailing economic challenges.

Barriers to reporting sexual and domestic violence are often compounded for survivors who experience systemic patterns of discrimination, i.e. age, gender, social status, identity and disability, increase the statistical probability of being assaulted in the first place (Rugoho and Maphosa, 2016). The risk of being blamed or automatically disbelieved in the justice system, and the rest of society decrease the chances of reporting to the justice system. Women with past negative experiences in the justice system, including overt or implicit discrimination or even abuse, may understandably lack trust in the system and feel reluctant to contact police in the aftermath of the assault.

The experiences of the women vary depending on their interaction with the criminal justice system but the lack of confidence in the system, the lack of impartiality remains a big concern. One of the main similarities amongst survivors

is that the rights of complainants are almost always overshadowed by the rights of the accused based on gender and economic status. This then leads them to seek the informal systems.

The Zimbabwean justice system has the capacity to be more responsive to the needs of survivors, it must receive and handle all reports of sexual assault and domestic violence regardless of the backgrounds of all concerned (Marekera, 2019). The handling of survivors of sexual assault especially must be with the seriousness and respect they deserve. This will encourage survivors to use the formal system rather than the informal system.

BARRIERS TO ACCESSING FORMAL JUSTICE

Empirical evidence suggests that there are barriers that hinder individuals and communities from accessing formal justice in Zimbabwe (Siamachira, Johnson, 2016). These barriers include being encouraged to resolve the matter privately within the family or with religious and traditional leader so that it does not become public knowledge. Other barriers include lack of legal knowledge, financial constraints, corrupt practices within the police and court system due to untrained, unqualified and under motivated staff at the courts and lack of faith in the system from past lived or witnessed or perceived experience. Access to justice is also considered to be a challenge where citizens fear the system, the fear is heightened by their vulnerable position in society created by lack of information and knowledge of their rights. In the last 20 years, political affiliation has also created a barrier, crimes perpetrated by members of one political party do not follow due process (RAU, 2010). This perpetuates the belief that not everyone is equal before the

law. Barriers to accessing justice are widely seen in the formal institutions, which tend to be researched more rather than informal institutions and there is a dearth of information on what obtains in the informal institutions.

There is a general lack of understanding of the adversarial legal system and it can be perceived as a deliberate attempt to discredit the survivor, but it must also be acknowledged that an attempt at shaming the victim is still very much prevalent in the court system (Siamachira, Johnson, 2016). The Victim Friendly Court system attempts to minimise re-victimisation but because it was primarily set up to protect child victims of sexual abuse (Chihambakwe, 2016), court officials have to be reminded that any victim who is traumatised is entitled to use the system and give evidence in camera. Wherever possible, all interviews with survivors or witnesses should be done in a private, confidential, and relaxed environment. This is primarily the duty of the police but where they fall short the prosecutor should ensure that the survivor is prepared for the trial, this includes ensuring that the survivor receives a tour of the court and an explanation of the expected court processes. However, pressure of work and conditions of service hamper the prosecutors' role and survivors are often bewildered in court.

There are categories of people that have additional challenges in accessing the justice system, these include women and children, indigent individuals and persons with disabilities (Phiri, 2017). In the same vein there are the wealthy, influential and politically connected who are privileged who have easy access to the system. In 2012 the Zimbabwe government worked with United Nations Development Programme, (UNDP) on a programme entitled 'Enhancing Justice Delivery and Human Rights for All' (United Nations Development Programme) one of the aims of this programme was to ensure access

to justice, consisting of the individual's capacity to seek and demand protection and redress under the legal system. The programme was recognition that many citizens have challenges when they encounter the justice system.

The socio-political and economic crisis that Zimbabwe is enmeshed in has an impact on the justice delivery system as the government is unable to maintain institutions and to adequately remunerate staff leading to collapsing infrastructure, brain drain and demotivated court officials. This has resulted in corrupt practices, backlogs and mistrust in the justice system leading citizens to find alternative means to resolve their cases (Transparency International Zimbabwe, 2020).

The lack of financial means to consult a legal practitioner is one of the biggest barriers to access to justice. On average people cannot afford to pay lawyers for legal services and the situation is worse for women particularly in cases of spousal violence. To alleviate this government set up a legal aid directorate for indigent and vulnerable groups but this is not available country wide leaving many unassisted who then access the informal system to resolve their issues. (Hedlund and Neutel, 2014) . In addition to the government directorate, a number of non-governmental organisations and universities have their own independent legal aid centres throughout the country. The NGOs mostly offer legal assistance based on their organisational mandates and may not cover all the legal matters brought before them, however most of the clients are women with domestic violence, custody and maintenance issues, for example, WLSA, ZWLA, MUSASA and LRF.

The existence of both formal and informal legal systems impacts upon the ability of people, both individually and collectively, to access justice. In instances where people do not trust or cannot afford the formal justice system, they find alternative ways to resolve their matters.

Cases of gender-based violence and sexual abuse are most likely to be resolved through informal systems such as family mediation, religious or village mediation because of issues such as stigma and shame (RAU, 2013).

CONCEPTUALISATION OF SEXUAL AND GENDER-BASED VIOLENCE

This part of the literature review examines socio-cultural practices, beliefs and norms including patriarchal practices and the ways in which they perpetuate forms of GBV and SGBV. This section also discusses how and in what ways societal practices impede the delivery of justice in informal justice institutions and platforms and in some instances in formal institutions as well.

Acts of sexual and gender-based violence (SGBV) are considered some of the most prevalent human rights violations across the globe (UNFPA, 2019). These forms of violence which are defined by the United Nations bodies as “any act that is perpetrated against a person’s will and is based on gender norms and unequal power relations” have both an individual and a cumulative effect which ripples through communities and nations (cited in van Eerdewijk, Kamunyu, Nyirinkindi, Sow, Visser and Lodenstein, 2018: 126). SGBV not only affects individuals by causing harm or by hindering their civic, social, political, and economic participation but also acts as a challenge to public health and an impediment to developmental progress. It also cuts across social, economic and geographical boundaries, manifesting in various ways such as physical, emotional, psychological or sexual coercion or harm (UNFPA, 2019). Additionally, SGBV can also “take the form of denial of resources or access to services” (UNHCR, 2019: par. 2).

Just as statistics on the prevalence of SGBV

vary across regions and countries, so do the ways in which SGBV is understood and manifests in different contexts. As such, it is essential to understand the underpinning issues as far as these manifestations are concerned. This includes the ways in which these issues interact with policies, programmes and laws, creating an environment that either promotes or impedes justice. As it stands, access to justice remains a major problem, even in countries with laws that are supposed to protect women. The world over, many agreements, conventions and treaties have been signed and ratified, resulting in various laws, policies and programmes around GBV and SGBV but these alone, although a step in the right direction, are not enough to make a real change. As noted by the UN Women Secretary General and Executive Director, indeed, significant progress has been made as far as the world-wide response to GBV is concerned but agreements, conventions and laws simply “help us to have recourse, they give us an organising tool, but by themselves these will not address the challenges that we face” (Mlambo-Ngcuka, 2016: para 17). Change requires not only laws and conventions but engaging with the ordinary person for both behaviour change and to also understand the ways in which these laws are implemented on the ground. It is only through gaining an understanding of the forms and drivers of violence, along with the consequences that one can begin to understand how the laws interact with people’s realities (Jewkes, 2002).

Manifestations of SGBV across the globe

Given the various forms of SGBV across the globe, historically, it was the case that data on SGBV was generally incomparable. The humanitarian community struggled as it failed “to collect, classify and analyse Gender-Based-Violence (GBV) – related information in a way that produced comparable statistics” (GBVIMS Steering Committee, 2010: 1). The solution to this problem came in the form of the Gender-Based-Violence Information Management System (GBVIMS). By standardising GBV terminology for data collection purposes, the GBVIMS enables those providing services to GBV survivors to effectively and safely collect, store, analyse and share data related to the reported incidents of GBV (GBVIMS, 2010). The system includes a GBV classification tool which was created by identifying the universally-recognised forms of GBV which do not overlap, that is, are mutually exclusive. The process included focusing on specific acts of violence without bringing in the context in which they were perpetrated or the motivations behind them. The result of the exercise was the acknowledgement of six core types of GBV, namely rape, sexual assault, physical assault, forced marriage, denial of resources, opportunities or services and psychological/emotional abuse (GBVIMS Steering Committee, 2010). By taking the context into consideration further categories of SGBV can then be identified for example intimate partner violence, child marriage, sexual exploitation/transactional sex, sexual slavery and harmful traditional practices abuse (GBVIMS Steering Committee, 2010a). Although the distinct, mutually exclusive core forms of GBV have been useful in collecting data in humanitarian settings, further categorisation can be particularly useful for analysing data on SGBV where overlaps do exist, which is often the case.

As acknowledged by the GBVIMS Steering Committee (2010a: 2) “any incident involving GBV can often involve more than one form of violence (e.g. a woman who is raped, beaten and psychologically abused during the course of an incident)”. Mashiri and Mawire (2013) and others seemingly solve this problem by zoning in on three main types of GBV which have also been acknowledged by the United Nations High Commissioner for Refugees (UNHCR), namely, family violence, community violence and state violence. Family violence is that which is committed within one’s family, whilst community violence is perpetrated by an outsider “that is, an unknown or unrelated person” and state violence is perpetrated “by or condoned by individuals employed by the state” (Mashiri and Mawire, 2013: 97). Each category of violence can therefore hold many different types of SGBV which have been classified based on the context in which they occur. Generally, women and girls are mostly affected by SGBV. This is even more so with women with disabilities as they are likely to be more vulnerable because of their greater levels of dependency on others, which can be disempowering (van Eerdewijk, Kamunyu, Nyirinkindi, Sow, Visser and Lodenstein, 2018).

It is estimated that one in three women worldwide have experienced sexual or physical violence in their lifetime (UNFPA, 2019). Given these facts, it is often the case that SGBV is also referred to as violence against women (VAW). In fact, the ways in which GBV manifests make up the definition of violence against women as embodied in the Maputo Protocol (van Eerdewijk et al., 2018). Although the term SGBV “encapsulates forms of violence against both men and women deriving from unequal power relations and structures between men and women” and is therefore open to the ways that men and boys can also experience SGBV (particularly in conflict areas) much of the

literature focuses on women and as such, this review tends to do the same (van Eerdewijk, et al., 2018: 125).

Manifestations of SGBV in Africa

According to a 2013 World Health Organisation (WHO) report, Africa has the highest prevalence of violence against women. The report posited that in Africa 45.5% of women who are 15 and older have, at least once in their lifetimes been victims of physical or sexual violence at the hands of partners, non-partners or both. The statistics for Zimbabwe are equally shocking with 1 in 3 women between 15 and 49 having experienced physical violence whilst 1 in 4 have experience sexual violence since their 15th birthday (United Nations, 2018). The 2015 State of the World's Women report also showed that Africa was the region with the highest rate of physical violence and sexual violence. Africa was also noted as one of the three regions with the highest level of psychological abuse.

Although experiences of SGBV in Africa are in some ways distinct from those in other regions, research generally shows that at the core of SGBV lies patriarchy. Issues of power, privilege and entitlement are embedded in social norms and values, affecting the ways in which gender relations play out in reality particularly in the lives of men and boys, to the detriment of women and girls, and men and boys themselves (Mashiri and Mawire, 2013; Perrin et al., 2019).

In South Africa, official police statistics show that during the period April-December 2016, there were 109 rapes reported each day in South Africa, which does not take into account the number of unreported cases that happen on a daily basis. Studies indicate that very few women report rape to the police: depending on the study either only one in nine or as few as one in twenty-five. Other studies provide a

sense of the extent of men's violence against women; a 2009 study by South Africa's Medical Research Council indicated that 45% of men reported physically assaulting an intimate partner and 27% self-reported that they had raped a woman in their lifetime. A more recent and widely reported 2016 Sonke/Wits study in Diepsloot, an informal settlement outside of Johannesburg, revealed that 56% of men reported using violence against a woman in the last twelve months, additionally it was noted that whilst other forms of violence such as break-ins and theft were reducing, there was a 110% increase of sexual crimes in South Africa since the last reporting period.

FORMS OF VIOLENCE IN ZIMBABWE

In Zimbabwe, SGBV is widespread and exists in various forms across different races, classes and religions. As damaging as they may be, some forms of violence may not be considered crimes as "legal definitions and terms vary greatly across countries and regions" (GBVIMS, 2010a: 1). Indeed, a lot of the literature mentioned here shows the ways in which there is a lack of consensus around what constitutes violence. According to Mashiri and Mawire (2013) and Damba, Lunga and Musarurwa (2013), the main type of GBV in Zimbabwe comes in the form of family/domestic violence. This position calls for us to acknowledge that whilst families can be nurturing and provide care and an environment for creating positive bonds, families can often also responsible for subordinating and constraining women socially, economically and politically (Pickup, Williams and Sweetman, 2001).

Family violence can include one or more of the following: physical, sexual, economic, and psychological abuse. Being refused access

to an inheritance and child marriage are also common forms of GBV in Zimbabwe. Although the term GBV leaves room for the inclusion of men and boys as potential victims of gender-based violence, as in other localities, in Zimbabwe women and girls tend to be the most vulnerable and the “primary victims” in society. In fact, even in cases where women are at the receiving end of acts of violence, gendered norms and stereotypes lead to violence particularly between intimate partners in the home being blamed on women (and their perceived inadequacies and shortcomings) instead of the men (Pickup, Williams and Sweetman, 2001). This vulnerability is linked to the widespread subordination of women which is embedded within a patriarchal system where “an unhealthy mix of tradition, inequality and even ignorance conspires against women” (Mashiri and Mawire, 2013; Ministry of Women Affairs, Gender and Community Development (MWAGCD) and Genderlinks, 2013). The girl child can in fact be considered the most vulnerable in society as they have a subordinated status in families. This status is linked to their sex as well as their age which leaves them dependent on adults for survival (Mashiri and Mawire, 2013; van Eerdewijk et al., 2018).

The threat faced by women and girls within their own families is further acknowledged by the United Nations Population Fund (UNFPA), which in a Programme Advisory note on reproductive health paints a picture of the way in which girls and women face the greatest risk of violence from members of their household who are in essence supposed to be socially responsible for the protection and welfare of these women and girls. The reality on the ground therefore contradicts conventional wisdom which views the family or extended family as a safe haven of love and support.

Whilst patriarchy and male entitlement lie at the heart of most SGBV incidents in the country,

SGBV does not manifest in the same way across the various provinces. A baseline study carried out by Gender Links indicated that different forms of VAW have different prevalence rates across the country therefore showing that “VAW dynamics are not homogeneous throughout the country” (2013: 116). It goes without saying that in addition to national level responses to SGBV, there is a need for provincial, district and localised approaches to addressing SGBV (MWAGCD and Gender Links, 2013: 11).

Physical violence

Physical abuse is considered by Mashiri and Mawire as “the most obvious form of gender-based violence” (2013: 97). For purposes of this review, physical violence/abuse encompasses the assault and injury of an individual through violent acts including slapping, twisting an arm pushing, burning, hitting with an object, pulling hair, kicking, or beating. Additionally, threatening with a weapon is considered an act of physical violence. According to the State of the World’s Women 2015 report, approximately 30% of Zimbabwean women ages 15-49 had at the time experienced at least one incident of physical violence in their lifetime. A nationally representative study carried out amongst children and adolescents in Zimbabwe showed that even children are not spared from SGBV as “almost two thirds of the females and three-quarters of the males aged 18-24 years experienced physical violence prior to 18 years.” (ZIMSTAT, UNICEF and CCORE, 2013: xxi). This study also showed that where relatives are involved in the physical abuse of children, it is often the case that these relatives are in fact the children’s parents. “About 60 percent of females aged 18-24 years experienced physical violence perpetrated by mothers and 46 percent of males of the same age experienced physical violence perpetrated

by fathers. A similar pattern of physical violence was observed for the 13-17-year age group.” (ZIMSTAT, UNICEF and CCORE, 2013: xxi). Where authority figures were the perpetrators, they were mostly teachers.

Amongst married people, physical abuse is viewed by some as the most common form of abuse (Human Rights Forum, 2011). This is in part because of the fact that culturally, in certain circumstances the beating of wives is sanctioned therefore presenting physical violence as acceptable in some cases for example where the wife has been unfaithful, refuses to have sex, neglects the children, argues with her husband or burns the food (Hindin, 2003; Mashiri and Mawire, 2013: 95; United Nations Statistics Division, 2015). Women and girls are taught that being beaten is a normal part of a relationship and can even be a sign of love (SAFAIDS, 2009). What women are not taught is that some cases can end in death, and indeed it is possible that in some of these cases the use of force is quite excessive and can in fact lead to death. According to Muchuchuti, “over 60 percent of murder cases in the country are linked to domestic violence” (2015: 15). This should come as no surprise in a country where emphasis is placed on a woman’s endurance and her ability to suffer through abusive relationships as this is what is expected because “till death do you part” (Hindin, 2003; SAFAIDS, 2009). The beliefs make women less likely to report cases of abuse as this brings shame upon the woman, not only because questions arise around what she did to her husband for him to respond negatively but also because of her lack of endurance and inability to address household matters privately (Pickup, Williams and Sweetman, 2001).

Although most literature speaks of the physical abuse of women in Zimbabwe, newspaper headlines also show that men too can be victims of SGBV, with domestic disputes driving women going to extremes such as

cutting their partner’s private parts, or burning their partners with boiling water or cooking oil.

Sexual Violence

At the time of the 2015 State of the World’s Women report, close to 30% of Zimbabwean women in the 15-49 age group had experienced sexual violence at least once in their lifetime (United Nations Statistics Division, 2015). For the purposes of this review, sexual violence is broadly defined as unwanted or harmful sexual behaviour directed at an individual. This includes but is not limited to refusing to use a condom, preventing a partner from using birth control, “abusive sexual contact, forced engagement in sexual acts, attempted or completed sexual acts with a woman without her consent, sexual harassment, verbal abuse and threats of a sexual nature, exposure, unwanted touching, and incest” (Mashiri and Mawire, 2013; United Nations Statistics Division, 2015: 144). “Such acts could take a variety of forms which include sexual touching, kissing, grabbing, fondling, sexual penetration, and pressured sex through the use of threats, luring, harassment or tricking.” (ZIMSTAT, UNICEF and CCORE, 2013: 18). Sexual abuse can occur in isolation or can be accompanied by other forms of abuse especially physical abuse. In cases of intimate partner violence (IPV), it is often the case that sexual and physical violence go hand in hand (United Nations Statistics Division, 2015).

Generally, the perpetration of sexual violence is strongly associated with patriarchal beliefs/values around family honour and sexual purity as well as “ideologies of male sexual entitlement and weak legal sanctions for sexual violence” (WHO 2017: para 10). These factors can work together to drive issues such as child marriage, date/marital rape, rape, sexual assault and

sexual harassment. A 2011 National Baseline Study on the Life Experiences of Adolescents revealed that in Zimbabwe approximately 43% of girls aged 13-17 year did not consent to their first incident of sexual intercourse, whilst in the 18-24 age group this figure was approximately 41% (ZIMSTAT, UNICEF and CCORE, 2013). The study also showed that in both age groups, the first incident of sexual violence was mostly perpetrated by boyfriends in the victim's own home or in the perpetrator's home. Following this first incident, 62.7% of the young women aged 18-24 went on to experience sexual violence multiple times whilst the statistics for the males was 7.4%. The percentages for the 13-17 age group were 47.5% and 4.8% for females and males respectively.

Whilst sexual exploitation is thought to be linked with the sexual abuse of children, 98% of children "who reported any form of abuse did not receive money, gifts, food or favours in exchange for sex" (ZIMSTAT, UNICEF and CCORE, 2013).

Turning to married couples, although marital rape is common across the country, it is often not acknowledged as it is believed that husbands are entitled to sex with their wives whenever they feel like it because of the bride price payment (RAU, 2013).

Child marriages

Child marriage refers to the marriage of an individual before the age of majority, which is eighteen years. The burden of child marriage is disproportionately carried by girls as this practice is often a product of patriarchy and the norms, beliefs and values that push for male preference when it comes to educating and investing in one's children (Backlund and Blomqvist, 2014). This ultimately limits the girl child's future and future options as she is systematically neglected in social, economic,

political, legal and educational spheres (Gage, 2007). It is often the case that the neglect is driven either by the common belief that girls are not as valuable as boys and are only useful for child rearing, child care and domestic work, or by the preference for male children as males carry forward the family name (Madzivire, 2015).

Given the links between child marriage and issues of gender discrimination, child marriage is often considered a form of SGBV in and of itself. There is therefore potentially a double burden for those who find themselves in these situations as child marriage often also "triggers a continuum of violations that continues throughout a girl's life" such as marital rape, physical, economic, verbal and psychological abuse/violence because of the unequal power relations (Centre for Reproductive Rights, 2013: 10). For example, a recent report by the United Nations Children's Fund (UNICEF) indicated that over 50% of ever-married girls have experienced IPV, with the highest rates in Equatorial Guinea, DRC, Gabon, Zimbabwe and Cameroon (van Eerdewijk et al., 2018: 129). In some cases, scholars have even referred to child marriage as a form of sexual slavery.

Psychological violence

Psychological violence often comes in the form of emotional abuse (United Nations Statistics Division, 2015). Where adolescents are concerned emotional abuse is often perpetrated by aunts, uncles, mother and teachers, whilst older women often suffer at the hands of in-laws and intimate partners (United Nations Statistics Division, 2015; ZIMSTAT, UNICEF and CCORE, 2013). Humiliation by these parties, along with insults, intimidation and threats of violence often leave victims feeling unwanted. In relationships it is often the case that there is often "at least one instance of

physical assault and injury” which can in the future be drawn on to intimidate one’s partner (Mashiri and Mawire, 2013).

Controlling behaviour is another way in which psychological abuse can manifest in relationships and this includes isolating one’s partner from family and friends by restricting their movements and social interactions, monitoring their whereabouts, controlling the access to the labour market, education or health care, anger and excessive jealousy if the partner speaks to other members of the opposite sex, and “making unwarranted accusations of infidelity” (United Nations Statistics Department, 2015: 152; Mashiri and Mawire, 2013). This type of abuse is often perpetrated by men, with their female partners being the victims. In Zimbabwe, excessive jealousy, which is locally known as *kuchengera*, is in fact one of the well-known drivers of psychological abuse in the form of controlling behaviour that essentially leads to women being held captive in their own homes (Mashiri and Mawire, 2013). All this can occur whilst the partner is in fact cheating, which in and of itself can be considered a form of emotional torture, especially in marriages. More so, when women are aware of the cheating they then live in fear of contracting sexually transmitted infections and requesting the use of condoms can lead to verbal, physical and sexual abuse thus creating a terrible cycle of abuse when one speaks up. This all occurs within a context where women are expected to be submissive and silent where sexual matters are concerned, whilst the presence of multiple sex partners in the lives of men is condoned (Mashiri and Mawire, 2013).

Economic violence

Economic abuse is a major form of GBV in Zimbabwe where men often have the role of the breadwinner. Although considered difficult to define as it differs across cultural contexts, economic abuse or economic deprivation is mainly characterised by the perpetrator deliberately ignoring economic responsibilities, holding back necessary household money, preventing his or her spouse from earning money, confiscating the money that might have been earned, controlling all household spending or spending money only to his or her benefit”, thereby exposing the victim to hardship and poverty (Mashiri and Mawire, 2013: 97; United Nations Statistics Division, 2015). Research has shown that economic violence is often experienced amongst low-income groups, particularly during periods of economic crisis where resources are even more limited. In such cases it is often likely that economic abuse then goes hand in hand with physical abuse as couples fight over the available resources, with men who are deemed the head of the household demanding control over a significant proportion of household resources even though they then use it for personal expenditure in social situations. Conflict arises as women also expect to assume control over a significant proportion of the income so as to make crucial household purchases such as buying food and clothing (Osirim, 2013). In fact, household survival in times of economic hardships and escalating poverty may “depend on women assuming more control of the income” as men’s me-centred expenditure potentially reduces their ability to cater to their families’ material needs (Pickup, Williams and Sweetman, 2001). In cases where the wife is also employed and brings in money, this may be perceived as a threat by the husband who then responds through economic violence which may include forbidding her from working, taking away her

earnings and the use of physical violence which allows domination and the squashing of her supposed independence and usurping of his role as the breadwinner (Pickup, Williams and Sweetman, 2001).

At times, economic violence is also linked to psychological/emotional abuse and issues of infidelity as the man could be diverting his income to his mistress who may or may not have borne him children as well. This occurrence which is referred to by some as the 'small house' phenomenon is common in Zimbabwe where men view it almost as a norm to have a secret family in addition to their main one (Mashiri and Mawire, 2013). However, even without another family in the mix, in Zimbabwe the man is referred to as the head of the family which ultimately puts him in an advantaged position where he can make unilateral decisions around expenditure of the household income.

Economic violence is also considered as occurring by others in cases where women are denied inheritance or the ownership of property. The former is often a result of a widow's in-laws fighting to displace her from the property she lived on with her husband as well as attempting to take away any money or property they shared as she is not regarded as part of the family after her husband passes. Sadly this is made possible by the fact that "few women formerly own the property held in their marriage" and even if having been married for years those who were in unregistered customary unions may struggle to prove this to support their legitimate claims to the land or property as in-law refuse to corroborate the claims (Human Rights Watch, 2017: 3). Each year, thousands of widows in Zimbabwe are evicted from their home and land by their in-laws. These widows are left with no homes, no way of fending for themselves and no social networks to support them. The word *mutorwa* (foreigner) is used to describe widows in cases where in-laws seek to justify their desire to displace

them for various reasons including poverty, greed and traditional/patriarchal beliefs that women cannot inherit or own property (Dube, 2017; Human Rights Watch, 2017). In some cases, attempts to displace the widow can even progress from verbal harassment to the in-laws using physical force (Human Rights Watch, 2017). According to the 2017 report by the Human Rights Watch, property grabbing from widows is more common where older widows are concerned and with those who are unaware of their property and inheritance rights.

Cultural practices, beliefs and customs

Gender based violence which is targeted at women in particular is common in patriarchal societies (Ndikimbela, 2008). In discussing the forms of violence in Zimbabwe above, some of the beliefs which drive violence as well as the silence around it (and ultimately the barriers to seeking justice) were referred to briefly and this section serves to expand on this discussion.

In Zimbabwe there are a number of cultural practices, beliefs and customs with patriarchal roots that not only create opportunities for violent acts against women and girls, but can also be considered acts of gender-based violence in and of themselves. These practices, beliefs and customs in some cases also render the informal justice system unequal and discriminatory because of the non-violent and 'normative' nature in which they are perceived. Included in such a category is the practice of *chiramu*, the payment of the bride price (lobola), various gender norms and stereotypes, forced virginity testing, beliefs around the healing nature of sexual intercourse with a virgin, the discrimination of non-virgins and polygamy.

The payment of lobola has been referenced in many circles as being in some cases a hidden driver of gender-based violence. In Zimbabwe,

marriage involves the payment of bride wealth to the future bride's family. In some cases, the steep payment later creates a breeding ground for the abuse of the wife by a husband who holds resentment towards her family. Additionally, even in cases where the bride wealth was not necessarily considered as steep, some men view it as giving them control over their women and the right to behave in whatever way they desire (Christiansen, 2009; Chitakure, 2016). Such distorted beliefs around the functions of lobola are used to invalidate claims of marital rape as men feel that the payment of lobola grants them sexual rights that a wife cannot turn down. Additionally, scholars posit that "coercive sexual activity is perhaps the most difficult to recognise manifestation of violence against women, both for women themselves and for development workers" (Pickup, Williams and Sweetman, 2001: 15). Furthermore, as with other African cultures, because of gendered norms of sexuality and masculinity, men are hyper-sexualised and viewed as highly virile and are therefore almost always expected to be sexually active, cheat, have multiple sexual partners or become violent when angered as this is viewed as part of their nature (Albertyn and Meer, 2008). In fact, in some cases it is religious, traditional and customary beliefs that form the rationalisation that men are allowed to discipline or punish their wives using physical force in some circumstances (Mashiri, 2013). It is these issues around cultural, religious and traditional norms which constrain people's ability to challenge certain behaviours that contribute to the justification and perpetuation of sexual coercion, and also make it difficult to recognise violence as such in intimate settings (Chitakure, 2016). In some cases men and women themselves do not recognise the [violent] situations they are in and the behaviour being exhibited as violent which influences one's desire to change or report such cases (Pickup, Williams and Sweetman, 2001).

There have been many debates around the

issue of lobola and although some remain in favour of the practice we cannot deny or hide away from the cases where the payment of bride wealth has had detrimental effects on women's health (Chitakure, 2016). The idea of the wife as quiet and submissive in many cases hinders women from seeking help even as victims of violence (Christiansen, 2013; Mashiri, 2013). Furthermore, issues that occur within marriages and the private space of the home are viewed as secret matters that should not be brought out into the public. "The normative framework of 'traditional African marriage' is described as functioning via a code of shame, silence and endurance." (Christiansen, 2013: 158). Speaking out is therefore viewed as breach of a norm and exposing one's troubles in the home brings shame on one's family and so women learn to keep quiet. Ultimately, women are put under pressure to maintain the appearance of a 'good woman', which means holding onto the traditional roles and expectations that deny or limit women's agency. (Albertyn and Meer, 2008). In the words of Pickup, Williams and Sweetman, it is not surprising that whilst women may not consent to violent behaviour, they "may experience coercive sexual relations without physically confronting their aggressor, as a result of normative constraints surrounding – and economic consequences of – dissent." (2001: 15).

Additionally, speaking out means one is ready to bring the families shortcomings into the lights and is ultimately no longer interested in the marriage. Unfortunately, divorce in and of itself is also viewed as a sign of failure which also leads to the humiliation of the divorced woman (Christiansen, 2013). The secrecy which enshrines marital affairs also extends to family issues in general and it is for this reason that cases of incest or other forms of abuse in families are swept under the rug so as to maintain a front of an upstanding family. Other cultural practices like *chiram* which can

also act as a cover for abuse therefore also go unaddressed in many instances.

Chiramu is a practice which bestows a collection of certain privileges on a girl's maternal uncles and brothers-in-law (Kanchense, 2007). The uncle or brother-in-law is "allowed to refer to his wife's young sisters or female cousins and nieces as his wives" (PSAf, 2015: 7). This practice often includes role playing with these 'wives'. The reason behind this practice and the type of role playing allowed tends to vary across literature, with some publications saying that the practice of *chiramu* was "seen as a way to make the females to feel welcome at their female relative's home" (PSAf, 2015: 7). This would occur through the uncle or brother-in-law jokingly calling the girl 'wife' and speaking of how she owns "everything in the house including the property, himself and the children" (PSAf, 2015: 7). Others present a more sinister view of the practice, looking at it as a practice in which an uncle or brother-in-law can fondle or engage in sexual activity with his wife's unmarried nieces (the daughters of her brothers) or his young unmarried sister-in-law (Mashiri, 2013; Muronda, 2006; Kanchense, 2007). This type of behaviour was said to be a way of teaching girls "how a man proposes and how to avoid him. The girl would also learn how to look after a husband, as she would be doing it for the brother-in-law" (Muronda, 2006: 146).

Despite the different ways *chiramu* is presented in various literature, there is a general agreement that this practice has led to the abuse of many girls as men have used this practice as an excuse for having "both forced and consensual sexual relations with their wives' young female relatives" (PSAf, 2015: 7). Where the sexual encounters are forced, these often go unreported as doing so would cause tension within the family and most of all would lead to social shame. In fact, Mashangwa in her article in the Chronicle mentioned a survey which posited that "39% of families kept their

child's experience of sexual abuse a secret" (2014, para 5). In both instances (forced or consensual) some of the men offer to marry the girl and – in some parts of the country – the in-laws agree because traditionally, the girl "is his wife" (PSAf, 2015: 7). Marriage proposals are more likely to come up after the 'affair' has been uncovered, often as a result of the girl having fallen pregnant thus necessitating this 'corrective marriage'. Results from a qualitative study conducted by the Research and Advocacy Unit (2015) support this claim as a number of their respondents mentioned instances in which their younger sisters were raped by their husbands. These husbands then claimed the two were having an ongoing affair and offered to pay *roora* so that the sister could officially become a second wife. It is sad to note that given men's position and privilege in society, they are never truly seen as being the ones responsible for bringing shame on the family. As such, when claims of rape are made against men within the family, the victim is always questioned unsparingly as women and even girls can be viewed as temptresses who enticed the man in question. The guilt and shame that women and girls feel because of these assertions can indeed foster an atmosphere of silence and tolerance (Christiansen, 2013). Despite the various ways in which *chiramu* presents itself, it is clear that this sort of behaviour (which was traditionally centred on relationship building) has been abused in modern day society not only by men who impose themselves on young women but also by young women themselves who may see involvement with the man as a gateway to a better life for example. Stories can be found all over media and social media of modern-day cases of *chiramu* (Sunday Mail, 2014, October 12; Nzenza, 2016; Mpofu, 2018).

Familial hierarchies and expectations in families may also lead to violence in families, with (older) women, maybe in the form of mother-in-laws or sister-in-laws (*tete*) acting

violently towards the daughter-in law. This is sometimes due to the husband's female family members viewing the new bride as a threat to their position in his life. These women may also even encourage the new husband to act harshly or violently with his wife thus creating a rift in his relationship with his bride whilst maintaining or strengthening his relationships with his own family (Pickup, Williams and Sweetman, 2001). This shows how women can also be complicit in driving patriarchal attitudes and also make use of them "to ensure their own survival and security, within a social, economic and political context that is shaped and dominated by men" (Kandiyoti 1988 cited in Pickup, Williams and Sweetman, 2001: 21).

In patriarchal societies where women are expected to be faithful wives and mothers this sometimes ties in which strict controls around women's sexuality through methods such as virginity testing as well as other physical or psychological pressures (Pickup, Williams and Sweetman, 2001). Sadly in some cases in addition to virginity testing being invasive, it can also expose those 'certified' as virgins to abuse and exploitation through forced sex with older men who view sex with a virgin as a cure to their illness, or polygamous marriages to older more esteemed men in religious sects.

Sodomy

According to Mashiri and Mawire, there are cases of sodomy that have been reported in the country. The victims of such acts are often children, with the perpetrators either being adults or other children. In Zimbabwe, such acts, especially when perpetrated by other children, are said to be the result of perpetrators watching pornography and learning this unfavourable behaviour from it. Where adults are involved it is often guardians who are left with children whilst the mother is off making a living (Mashiri and Mawire, 2013).

SGBV POLICIES AND INITIATIVES IN ZIMBABWE

In Zimbabwe various policies and initiatives have been put in place to guide the prevention and response to SGBV as well as to provide support services to survivors of SGBV. This review briefly covers some but not all of these including the National Gender Policy; the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (the Protocol); the National Programme on GBV Prevention and Response (Zero Tolerance for GBV 365) and the National Action Plan on Ending Rape and Sexual Abuse (the Action Plan).

The National Gender Policy focuses on SGBV protection and the promotion of gender equality, in governance, education and training, employment, and health, as well as focusing on SGBV protection. The first National Gender Policy was rolled out from 2004 – 2012 and as the years have progressed this policy has undergone revision, taking into consideration lessons learnt as well as aligning it to major changes such as those in the revised 2013 constitution and various international instruments which require domestication such as the SADC Gender and Development Protocol and Agenda 2063. The most recent version of the National Gender Policy was launched in July 2017. The National Gender Policy over the years has led to the birth of the Action Plan, the Protocol and the Zero Tolerance for GBV 365 programme.

The Action Plan was rolled out in 2014 to curb the high rates of rape and sexual violence (Mashangwa, 2014). This plan was developed by the Cabinet Inter-Ministerial Committee on rape and sexual abuse which was established by the government in the wake of an alarming increase in the incidents of rape. The Action Plan focuses on prevention, service provision,

research and documentation, and monitoring evaluation and coordination. The plan acknowledges the need to address cultural and religious practices that fuel sexual violence and the importance of targeting various spaces such as schools, workplaces, tertiary institutions, and churches (Mashangwa, 2014).

The Protocol was developed after the establishment of the Victim Friendly Unit in 1997 to provide guidance on sector agencies' roles and responsibilities. Over the years the Protocol has been reviewed and further refined as a guidance tool for stakeholders so as to strengthen the holistic, effective and efficient service delivery for survivors of sexual violence and abuse. As of 2012, the Protocol made specific mention to women and girls (Judicial Service Commission, 2012). Although the Protocol previously spoke specifically of sexual abuse and violence, in 2012 it was expanded to include non-sexual abuse and the guidelines within it could where relevant be used to provide support to survivors of other forms of violence. As of 2019, the Protocol makes mention of all forms of SGBV and is also based on an age, disability and gender sensitive approach (Judicial Service Commission, 2019).

Zero Tolerance for GBV 365 is a National Programme on GBV Prevention and Response. This programme has been implemented from 2017 to 2020 with the goal of reducing child marriage and GBV in Zimbabwe. Under this programme community-based GBV surveillance systems have been developed and community-based shelters and SGBV clinics have been funded (UNFPA, 2018)

Gaps in the law

Historically, SGBV has been ignored by communities and some government laws and policies as it was viewed as a family affair. The distinction between public and private spaces

is not only a Zimbabwean or African issue as this separation can even be traced back to the advent of human rights law where the focus was on violations committed by the state without any regard for the 'private' spheres of life as this was beyond the state's jurisdiction (Pickup, Williams and Sweetheart, 2001). According to Mukhopadhyay and Meer, "the pervasive division of life into 'public' and 'private' spheres stems from liberal philosophies that with good reason tried to limit the jurisdiction of the state in the private life of citizens. It was a way to prevent the arbitrary authority of the state impinging on the life and freedom of citizens" (2008: 19). Because of the lack of scrutiny of private spaces, the abuses and human rights violations of women in private spheres went ignored as they were not seen as the concern of the state. It is only in much more recent times that international human rights law obliges the state to take action against act of violence occurring even in households (Pickup, Williams and Sweetheart, 2001).

The public/private dichotomy was particularly evident in Zimbabwe with the heated debate as well as the political and public backlash that came with initial attempts to formulate a bill that addressed domestic violence in 2006. As argued by feminist activists, "the public/private dichotomy is false, and is invoked largely to justify female subordination" (Fenster, 1999: 13). Inherent within the proposed bill were issues to do with gender equality and women's rights, and many in Zimbabwe saw this as a threat to the 'natural' traditional order of society where men held a privileged position of power (in public and private spaces) as compared to their female counterparts.

Within the political sphere, up until the point that the 2006 legislation on gender-based violence came into effect "public debates on gender and women's legal rights [were] suspended between an official government position that largely favoured a narrowing

of women's civil liberties in order to protect "traditional Zimbabwean cultural values" on the one hand and democratic arguments about women's equality on the other" (Christiansen, 2009), but societal discrimination and domestic violence persist". This persistence can often be traced back to cultural values and social attitudes surrounding SGBV such as permissive attitudes around wife beating (United States Department of State, 2014). Additionally, the persisting discrimination and violence may also be related to the poor documentation and publicisation of policies, interventions and response mechanisms.

As noted earlier, in Zimbabwe some forms of violence are still normalised and others are not defined in a legal sense which can make it difficult to even begin the reporting process. Other cases on the other hand, although recognised by the law as being manifestations of SGBV, are swept under the rug by victims and families/communities for various reasons including the fear of being stigmatised, fear of family conflict or the fear of the loss of a breadwinner (Chireshe, 2015). Through such examples we can also see how the private sphere impacts how women's lives play out in the public sphere therefore it is impossible to separate the two and deal with only one aspect. For example, the subordination of women and girls at the household level has an impact on their ability to participate in income generating activities and may result in them being restricted to low-income occupations if any at all (Oberhauer, 1999).

In Zimbabwe the fact that in some institutions women are not empowered to decide their own destiny means that many a time they are economically dependent on their male sexual partners. This on its own makes them more prone to abuse by their male partners as well as less likely to report the very abusers who they are economically dependent on. In addition to the potentially lost family income,

one can also fear the loss/breakdown of their nuclear family as well as relationships with immediate and extended family members, the in-laws and community members (Chireshe, 2015; Mashiri and Mawire, 2013). This is a particular impediment where one's marital status contributes to their level of importance in their family and community (United States Department of State, 2014). Ultimately, all these concerns impact women's willingness and ability to pursue legal action (Mashiri and Mawire, 2013). Although the numbers have decreased over the years, the reporting statistics are still of great concern. The findings from the 2015 Zimbabwe Demographic and Health Survey showed that 42% of women who had experienced some form of violence did not seek help or tell anyone and of those who were married 38% kept silent about the issue.

Assessment of Findings

This section of the report presents the findings drawn from the data gathered through key informant interviews, in-depth interviews and focus group discussions (FGDs). The findings address the questions posed in the assessment that sought to determine how GBV and SGBV cases are adjudicated within the informal justice system as well as in traditional courts and how these courts are (in)accessible to particular categories of individuals. The findings bring to the fore some of the underlying cultural beliefs, values, norms and practices that shape and inform the handling and resolution of sexual and gender-based violence cases and how these beliefs, values and norms mediate the handling of GBV and SGBV cases. The findings are presented thematically. Some of the interview material was translated from Shona and IsiNdebele into English but in order to present the data in its richness, nuance and to retain meaning some of the quotations are in vernacular with English translation and analysis.

The following section presents participants' understanding of GBV, SGBV and harmful practices.

UNDERSTANDINGS OF GBV, SGBV AND HARMFUL PRACTICES

Participants' understandings of GBV and SGBV were varied but their conceptualisation coalesced around conflicts, disputes and violence between spouses in most instances arising or pertaining to the lack of consensual sex. In general participants perceive physical, emotional, sexual and verbal abuse as forms and manifestations of both GBV and SGBV while practices such as wife inheritance and the dispossession of widows are seen as harmful practices steeped in cultural traditions.

One of the key informants, Ms. Anesu Chirisa provided a comprehensive definition of GBV, SGBV and harmful practices which resonates with field assessment material. She defines sexual violence as well as other harmful practices such as virginity testing and the levirate custom. She stated that:

Sexual gender-based violence is a classified form of violence. If we look at gender-based violence it is quite a broad phenomenon. Sexual gender-based violence is violence that has to do with sexual harm such as rape, forced sexual intercourse but based on gender relations or gender grounds. Sexual violence is a subset of gender-based violence but the thrust is taken from the context that you are a man or you are a woman, that is why its perpetuated against you. Harmful cultural practices- these are practices or acts that are perpetuated in the context of culture. These are practices in which a society or a group of people believe are part of their culture or they are part of their values and they are perpetuated to other people ostensibly in the preservation of a culture, for example virginity testing. Why do they do that? Because they want to preserve the womanhood they want to

preserve the longer term that is driven out of a marriage of a woman who is perceived to be pure, so it is a practice which is done seemingly in preservation of a certain culture though at the end of it there is some harm done to the person who is being subjected to that practice. There is also child pledging and wife inheritance.

In general, research participants' located in the districts identified emotional, physical, and material (financial) abuse as forms and manifestations of GBV and SGBV but of these- sexual and physical forms of harm- were seen as the most common forms of violation. One of the study participants in Hurungwe stated that GBV was often a consequence of accusations of infidelity among couples as well as allegations of failure to properly take care of the family:

The thing with GBV cases is that they often manifest and are caused by one issue yet the real reasons behind the aggression are issues to do with a couple's sexual relationship. A husband can beat his wife and claim that the wife is not taking good care of the children, yet the real issue would be sexual. Prostitution is a problem as many people sleep with other women then come back to their wives showing a lack of satisfaction with them which can eventually lead to aggression in the home. Refusal to go for HIV testing can also cause SGBV. For example, a woman can get sick and requests to go for HIV tests with her husband, but the husband may refuse and instead beat up the wife accusing her of being unfaithful.

One of the participants emphasised how economic fragmentation and decline were fuelling GBV and SGBV and he perceived these forms of harm as manifest through marital abuse especially verbal abuse often precipitating physical abuse:

The main issue causing violence is poverty and hunger. We are living a tough life, so it

takes away all the joy in the family. When you get home and you have nothing to give to your wife, problems start in the family. So, the main cause of SGBV is poverty. When you go home drunk the wife thinks you have money to buy beer, yet your friends are the ones who would have bought beer for you, but this becomes a source of conflict. The wife will ask you what you have bought for her and when you tell her it's your friends who have bought the beer, she will lose trust in you. The wife will then say hurtful words that will drive you to beat her up.

The research findings show that the ways in which participants understand GBV and SGBV is contextual but intricately enmeshed not only in the economic context they are situated but also intertwined with cultural practices, beliefs and norms. For instance, practices such as labia elongation and sexual education in the form of the *chinamwari*¹¹ practice are deeply entrenched and are not perceived as posing any form of harm even though labia elongation, for example, may at law impinge on an individual's bodily integrity. In essence women are denied bodily integrity and control over their sexuality and the accounts given by research participants reveal that there are pervasive beliefs that women ought to participate in such practices as virginity testing, labia elongation and by virtue of being married they are compelled to have sexual intercourse with their spouses even though this might be against their will at given moments.

In Hurungwe a participant pointed out that married women are compelled to have sex with their spouses and they are often forced to participate in cultural practices such as sexual education which in the area is called *chinamwari*:

¹¹ *Chinamwari* is the traditional practice under which young girls who have reached puberty were given sex education and taught about adult life. The practice is common among the Chewa, Lemba, Shangaan and Venda but is now also practice has now transcended ethnic groups.

The main cause of SGBV can be that a man is disadvantaged if he has no money and the wife loses respect for him. If you constantly go home empty handed, the wife will end up wearing a skin-tight or pants so that you cannot have sex. So you end up sacrificing and getting into debt so that you get money to go home with something. Once your wife puts on leggings or longs then that's it. There's no sex anymore. A wife has no right to deny a man sex because he has no money, but the wife should be adaptable to all environments because situations in life change and she should not love a man because of money. If a wife denies a man sex, the man must not force himself on the wife but should look for mediators anate nana sekuru to resolve the issue. A wife has a right to deny the man sex only if she has valid reasons because sex is what she came for (got married for). So, if she refuses sexual advances, give her a chance to air out her reasons. Practices vary in this area because we have people of different cultures. It also depends on the man's desires. In this area some women go to chinamwari where they are taught on how to please a man in bed, which will save the marriage so that a man might not be attracted somewhere. At chinamwari there are elderly women who will be teaching the younger women how to be good in bed and save their marriages.

Likewise, research material from Mutasa also illustrates that GBV and SGBV are intertwined with cultural practices such as labia elongation and in such instances, women are compelled to take part in practices that are believed to enhance the sexual experience for men. The account given below drawn from an interview conducted in Mutasa is illustrative:

There is a friend of mine that had a disagreement with her husband because she did not have elongated labia. The husband had encountered other women

with elongated labia. The husband asked the wife why she did not have elongated labia. The wife said she did not know about the practice. The man asked the wife to go back to her family. He also started engaging in other relationships. My friend was in dire straits. She tried to do it but it's difficult when you are older because it's painful to pull the labia at that age. The husband eventually understood after being counselled and the wife's relatives had to ask for forgiveness. They now stay together but my friend was troubled. The husband had essentially divorced her and married another woman. He actually has kids with another woman. The issue took years to be resolved.

In a focus group conducted in Umzingwane the participants not only identified physical, sexual and emotional abuse but also pointed out that wife inheritance and the dispossession of widows were harmful cultural practices that they were aware of. An excerpt of the conversation is provided here:

Moderator: You have mentioned physical abuse, what's your understanding of harmful practices?

Male participant: Wife inheritance. This happens when a man dies, and the deceased's brother is obliged to marry the widow (ukungena).

Female participant: Or when a woman dies, and they take all of her possessions acquired during the subsistence of her marriage.

Apart from these forms of violation and manifestation of GBV and SGBV participants also identified other forms of harm and these included verbal and emotional abuse. A response given by this participant in Hurungwe is illustrative. In response to a question posed on their understanding of GBV and SGBV the participant stated that:

SGBV is a result of poor communication. Often, this is when people do not talk properly to each other, “kungokandana mashoko asina kufanira.” [speaking inappropriate words]. Sexual violence results from women refusing a man sex. The wife must do what the husband wants, but in cases where the wife refuses to have sex, you cannot force a person you just leave them like that.

The section below examines the accessibility of informal and traditional justice institutions.

ACCESSIBILITY OF INFORMAL AND TRADITIONAL JUSTICE INSTITUTIONS

The assessment findings reveal that informal justice institutions are preferred institutions for resolving marital and family conflicts even those that at times involve physical harm and violation. In the majority of cases these institutions are seen as the first port of call whenever a dispute arises. Participants however showed an awareness of the cases that must be referred to the formal justice institutions through law enforcement agencies. The selection of informal justice institution as the preferred ‘courts’ centre around the institutions’ perceived accessibility and affordability.

The study participants cited the accessibility, acceptability as well as affordability of informal and traditional justice systems as factors that made them appealing to community members in the resolution of conflicts. This conversation between one of the researchers and a female participant in Mutasa is illustrative:

Researcher: What advice would you give to someone that is being abused? Where can they report such a matter?

Participant: We don’t report marital disputes including sexual disagreements to the police, we resolve these issues within the family particularly through the aunties, they are the ones that deal with these issues.

In Nyamhunga [Hurungwe] one of the village heads concurred and stated that informal and traditional courts were accessible at a relatively low cost and in some cases without any costs at all. The village head stated that:

One can approach the village head directly and you do not have to pay anything. One only pays if the village committee gathers to resolve a matter but often it’s a relatively low amount to enable the gathered individuals to have a drink. If the village head presides and mediates a matter on their own, they can do so at no cost at all. If there is compensation involved, it is because one of the litigants is stubborn and there will be a lot of people hearing the case. At the chief’s court one must pay. If a girl is raped, they do not rush to the village head, but they go to the police. They may fear going to the village head because village heads tend to be older people although nowadays there are younger village heads. They would not want to report the issue to community members because they would be embarrassed to do so.

Two salient points from the village head’s response is first, the recognition that offences of a sexual nature such as rape ought to be reported to the law enforcement officials. Such recognition, however, may also stem from the ‘fear’ of approaching and discussing sexual matters with a relatively older village leader. In such cases, taboos around the discussion of sex among adults and younger people inhibit the reportage of cases to traditional authorities.

The community leader added that traditional leaders in his community made an effort to make the traditional courts accessible to particular categories such as persons with disabilities

by going to their homesteads whenever they managed to bring a matter to their attention. Despite the stated barriers, the flexibility of the traditional justice system distinguishes the system from the formal justice institutions, and this is one of the key factors that renders the system accessible:

Persons with disabilities can call and request for assistance. In some instances, a village head is cognisant of the particular needs of persons with disabilities in their locality and the village committee can go to the homestead of the concerned person whenever the need arises or when alarm is raised.

One of the key informants, Miss Everjoice Win concurred and highlighted that informal and traditional justice systems are not only physically accessible, convenient, affordable but their appeal lies in their embeddedness within communities. Compared to formal justice institutions that, in some instances involved potential costs for litigants such as transport costs and navigating complex administrative processes and procedures as well as language barriers proceedings in informal institutions are conducted in culturally appropriate settings using mediums of communication that litigants understand and easily relate to. Miss Win asserted that:

I think traditional institutions certainly have values, they are close to the people physically, in terms of convenience, affordability, for an average person or average woman that is a huge thing they have going for them because where would a woman get \$2 to get onto a kombi [transport] to get (justice) somewhere else? They [litigants] see accessibility, affordability but also if they [informal and traditional justice systems] are a bit more progressive they would be culturally relevant because they will be dealing with you in a language

you understand and they would understand much more than a magistrate's court somewhere in a growth point or in an urban area; There [formal justice institution] the language changes, the concept changes and so a lot of things then begin to change.

Participants' reasons for preference of mediating cases within families are numerous not least the issue of costs. In Hurungwe some of the given reasons for adjudicating cases within families included the relatively low costs as litigants generally had to contribute affordable costs to the sitting 'court' which at times could be chickens consumed by the participating members. While these costs may be perceived as relatively low, they also act as a barrier for community members that do not have something to pay or give to the court. One of the participants in Hurungwe revealed that:

At the village court a litigant may be required to give a chicken to the court. The village head decides whether a matter is taken to the chief or is finalised at his court. A litigant has to take something with him/her to the chief's court, but this may also hinder someone that does not have anything to give/pay from approaching these courts.

In a female only focus group discussion in Tengwe [Hurungwe] the participants highlighted that informal mediation platforms were often preferred by community members because they were perceived to deal with matters expeditiously and there are no costs involved. Participants highlighted that:

We approach aunties, community leaders, village heads and church leaders as well as relatives. It is faster to resolve cases this way because these are people that live within the community so there are no travel costs.

Apart from factors rooted in the accessibility and affordability of the informal justice mechanisms other reasons proffered by participants on why community members

preferred these platforms are more complex and rooted in cultural traditions, beliefs, norms and societal fears and stereotypes. One of the main reasons given by participants was that adjudicating matters within informal justice institutions preserves the marriage institution. In most instances, women were often encouraged to 'resolve' matters within family structures as reporting a case to the formal institutions such as the police would often result in the ostracisation of such a litigant within a community. There are also economic imperatives that inform the decisions taken by individuals in selecting the appropriate course of action. In Mutasa one of the participants highlighted these conundrums as such:

When it comes to GBV and SGBV people avoid going to the police because they still want to preserve the marriage instead of getting their husbands arrested. "Ukaendesa murume kumapurisa unenge watova shirikadzi. Apa hapana munhu anoda kunzi shirikadzi" [If you report your case to the police/formal justice institution you will be like a widow and no one wants to be a widow¹²]. The man does the hard labour like ploughing and fends for the family. Going to the police will lead to the family losing a breadwinner, additionally his relatives would be unhappy with the fact that they were not approached about the conflict before the issue escalated. This could lead to severed relations between the wife and her husband's family which would leave her and her children out in the cold.

Another view expressed by participants was that informal institutions are intimate spaces where one can be given advice by close

¹² The metaphor of a widow as used by the participant speaks to the extreme ostracisation of a potential litigant as a social deterrent against reporting any form of abuse. Although the norm is that widows and orphans are deserving of care and support, widowhood in this case is invoked to highlight the threat of possible financial, moral and social stigmatisation.

relatives rather than in formal platforms which are perceived as adversarial and inimical to preserving societal bonds. A participant in Mutasa revealed his preference for resolving issues within the family setting based on the rationale that families are intimate and offer a more comfortable platform:

Approaching an aunt is better because an aunt is a close relative, one whom you share blood ties with. You can open up to her and they treat you very well like their own child and they proffer advice that is sound. Tete munhu arinyore, munhu weukama, anokubata zvakanaka, anokutaurira zviripasi pemoyo wake, achikubata semwana wake, iropa rako, saka anonyatso kukubata zvakanaka.

There are however complexities that arise in dealing with matters within informal platforms and these are more pronounced when communities deal with SGBV cases especially those involving minors and persons with disabilities. The account provided by one of the participants in Mutasa shows the dilemmas and paradoxes that women grapple with in reporting cases of SGBV. Anna, the participant recounts:

The sexual violence that we encounter in this community is that of children being abused. Fathers and grandfathers sexually abuse young children. Let's say you are a daughter-in-law and you leave your child with the grandparents and the grandfather has sexual intercourse with the child. When you attempt to raise the matter, they will tell you that if you still want to remain married to their son you have to follow what they do in that particular family. If you wish to pursue the matter, then you will be indicating that you are no longer interested in their son anymore and that you want to leave [the marriage]. And this is difficult because they will tell you that if you intend

to leave then you have to leave the abused child behind because she carries their surname. This is the sexual violence that is happening. In some cases, it arises because a man would have been told to look for a virgin to sleep with so that they can become wealthy. Some of the young girls will choose to sleep with the man so that there is food in the household.

There is a gender dimension that also informs the preference for informal institutions. Men are believed to prefer the resolution of cases within family and traditional mechanisms because this accords them privacy but, in the process, it silences rather than amplifies cases of abuse. One of the men interviewed in Mutasa stated that:

I would refer [a litigant/complainant] to an aunt first to deal with the issue since most men don't like having their issues discussed publicly. Men can also refuse to go kwasabhuku [village head] or mambo saying "handingabvumire sabhuku kutonga mumba mangu" [I cannot allow a village head to preside over my family affairs]. It is better to keep the matter within the family. Families can reprimand a family member. Some relatives however stay far away and cannot participate in hearing a matter and in such cases the church [and other community-based groups] can mediate if one is a believer. The only other option is to go kwasabhuku.

Participants stated some of the reasons for their preference for informal justice institutions such as their accessibility, affordability and in some cases their efficiency in dealing with matters. However, the efficacy of these institutions is complex and ambivalent in a patriarchal society. The following section examines the ways in which informal justice institutions may present barriers in the delivery of justice to complainants.

BARRIERS TO JUSTICE IN THE TRADITIONAL AND INFORMAL JUSTICE SYSTEMS

In the first district inception meeting in Hurungwe, a government official took the opportunity to recount a personal experience that for all intents and purposes seemed to deeply trouble him to the extent that he selected a rather inopportune platform to share this experience. Regardless, the account that seemed to have had a cathartic effect on the narrator aptly captured the narratives and realities the assessment team collected over the course of the data collection period and it is illustrative of participants' experiences. The account is detailed below:

The issue you are bringing to us is very important. Actually, I have an issue that is troubling me that I wish to share with all of you. My wife and I have been having a difficult time. It all started when she said we couldn't have sex because she was tired. The first day- well you understand. The following day we couldn't have sex because she had a headache but on the third day, I forced myself on her. In the morning she said that 'makandimbunyikidza' (you forcibly had sex with me). I asked for forgiveness and bought her a red dress as my way of apologizing. But this is what troubles me- every other time we have a dispute she says 'paya paya makandimbunyikidza' (that day you raped me). I don't know what to do, our sexual encounters feel like they are forced, like I always compel her to have sex with me and there is always that reminder that I raped her.

In some ways the account spoke to the issue of SGBV, specifically marital rape but it also highlights how victims of marital

rape may remain silent about the violation. The assessment findings indicate that while informal justice institutions are preferred platforms for addressing certain forms and manifestations of sexual and gender-based violence and they are often the first port of call where reports of such violations occur they are beset by silence and this affects their efficacy in addressing violations. There are also numerous complexities and intricacies that individuals bring to bear in dealing with matters that are brought before them.

Participants revealed that when sexual and gender violence cases are mediated and resolved within family structures and institutions individuals tend to rely on long standing cultural norms which encourage victims, particularly women, to be tolerant and silent on issues in order to maintain their marriages and social standing. In an FGD conducted in Mutasa one of the participants stated that:

The difficulty in taking a matter to an aunt, especially one to do with sex or conjugal rights is that at times they are not able to deal with it. If you report marital rape for example, they will tell you that it's the reason why you got married and it's a man's right to force you to have sex with him. At times the matter may involve conflict over unprotected sex or conducting blood (HIV) tests especially when the husband is promiscuous but they will tell you that you cannot talk about that issue, a woman is not supposed to raise those issues. It's a man's right to do as he pleases. Aunties are unable to resolve these issues of SGBV.

Of salience is an issue raised by one of the key informants which relates to kinship ties of the people that sit within informal set ups which affects the adjudication of cases and ultimately distorts the very concept of justice. Informal justice platforms are often presided by people related through blood ties such as aunts, uncles, grandparents and other neighbours or

community members and there are suspicions of bias as family members may sometimes attempt to protect familial interests rather than offer fair rulings. Ms. Chirisa asserted that:

The challenge is that due to relation dynamics like within the family setup you have the duty of care towards your brother. I do have a duty of care within the family setup, so within those dynamics it's really difficult for any matter to be adjudicated fairly. Let's say I have been violated sexually by a relative; the family has to sit down and discuss and then come up with a solution or the way forward. It's not up to the victim to choose because this is family issue, so once there is a problem it's not a problem perpetrated against a single complaint or a single victim, it's a problem against the family so the family has to determine the compensation; they also have to define the mechanisms to be used but that is not justice. I have always believed that justice is best defined by the aggrieved person so once justice is defined by the third person it ceases to be real justice. So, because of that 'brotherhood' kind of approach or family collective responsibility on the part of communities more often than not, the concept of justice be it SGBV or any other wrongdoing is watered down.

Another key informant concurred and in turn noted that a significant barrier to the functioning of informal mechanisms and traditional courts was the system that shapes and informs these mechanisms and Zimbabwean society in general- patriarchy. Participants were of the view that the resolution and adjudication of cases in these platforms tends to be mediated by patriarchal views and attitudes and ultimately these negatively impact women and girls seeking justice through these platforms. Referencing Alice Armstrong Miss Win stressed that:

The second thing she said is because of the patriarchal nature of our society the transgression or how we communicate [the violation] suggests that we perceive the violation of a right having been committed against patriarchal family not her natural family but the male side of the family so atadzirwa ndiani let me put it Shona, anenge atadzirwa if you look at the language is her family. Let's say the girl is about 12, she is raped by an older man, so if the case goes to the Chief, yes this man has committed a wrong, but the wrong that he has committed is that he has violated the rights of her patriarchal family i.e. they have lowered her value for marriage purposes. The first question this man is asked is 'Do you love this girl?' and if he says, 'Yes', they will say, 'You have to pay damages'. In other words you had sex with her illegitimately, not that you violated her but you had sex with her illegitimately meaning you were not allowed to have sex with her before you had declared your intentions and had been given permission through the payment of the requisite token and that token is Lobola. Damage is to the family name, damage to the family's honour and damage to the potential they would have gotten for her if she had been married a virgin. Of course these words are not going to be said but it's part of the conceptual. Remember the damage is not paid to her, she is not the one who has been damaged it's her family that been damaged. Then secondly if he says he wants to marry her, he is then asked to pay lobola and then off she goes. We did research on sexual violence against girls in schools in Zimbabwe, and Mozambique and a couple of other countries- a lot of cases were committed by teachers, the teachers would pay the initial damage; maybe 2 goats, as soon as the holidays came the guy packs his bags, gets a transfer moves from Karoi to

Harare, or he continues to stay there but the girl is asked to move in with the teacher but gives him the licence to continue to sexually abuse her, or maybe the teacher has a family somewhere which is the case most of the time, then the family rocks up and there is violence and other things.

An account provided by a participant in Umzingwane supports the above assertion but also speaks to the silence and shame that characterises proceedings from some of the informal mechanisms which taken together impedes the delivery of justice particularly to the concerned individual in favour of the 'family' or the perpetrator. The woman recounted that:

When I was growing up my uncle impregnated my cousin. The elders concealed the issue and moved my cousin to a different area. They even ensured that the child was given a different surname. I don't even know where they got the surname from. But we all know it's my uncle's child. There was silence. The issue was not spoken about and up to now no one speaks about it. The elders were very good at concealing these issues especially in rural areas. The village heads are the problem. The issue doesn't even get to the chief. There is silence. It's different in places like these (peri-urban areas) we are crowded, and neighbours tend to speak and say so and so is doing this. But in rural areas they just keep quiet; these issues don't come out. I know this from personal experience.

The assessment findings presented below detail some of the specific issues that confront minors and persons with disabilities.

(In)justice for minors and persons with disabilities

The assessment paid particular attention not only to the ways in which women and men accessed justice within the informal and traditional mechanisms but also how persons with disabilities and minors especially girls approached and accessed justice within these platforms. Field material suggests that persons with disabilities and young girls were confronted with immense difficulties in accessing justice but at one and the same time they are often victims of GBV and SGBV. The assessment findings show that in most instances they are victims of sexual violence and other forms of harm because they cannot report the issues and in cases where the issues come to light their cases may not be presented in a competent manner due to discriminatory societal practices and attitudes.

In Mutasa one of the assessment participants detailed an account involving her relative with mental ill-health. The relative was sexually abused and although the perpetrator is known and while the issue was brought before a village head it was dismissed on account of the woman's mental health. The account is detailed below:

There are men in this community who are in the habit of abusing people with mental illnesses. I have an aunt of mine who is mentally ill. She was abused and has a child right now. When some of the men in this community realise that someone is mentally ill, they take advantage and abuse them whenever people are away fetching firewood. My aunt has a 2-year-old child, the child is turning 2 years in June. She was abused. The issue was brought before a village head but what is painful is that the village head dismissed the matter and told us to 'take care of our mentally retarded relative'. He said, 'take care of her, isn't you know

that she is mentally retarded'. [Sabhuku akadaira muromo wekuti chengetai benzi renyu, handiti muno ziva kuti ibenzi.]¹³

Ms. Barbara Nyangairi a director at the Deaf Zimbabwe Trust revealed that persons with disability were confronted with discriminatory practices and attitudes and this severely impeded their access to justice. Oftentimes this was worsened by communication barriers especially for sign language users. In addition, there are cultural practices that have persisted and, in the process, perpetuated forms of discrimination and harm towards girls and persons with disabilities.

Women and girls with disabilities are not valued by communities which results in cases of abuse being brushed aside and not dealt with. There are communication barriers especially for sign language users and there is lack of disability awareness on SGBV and HP interventions. Organisations do not know how to include women and girls with disabilities. Cultural practices and beliefs are the biggest impediments in tackling SGBV and HP in Zimbabwe. Cultural practices such as kuzvarira and kuripa ngozi that are still practised today by some Zimbabwean societies such as the Mabee-Rukangare villages further south of Chipinge, near Mozambique with some girls, as young as 13, being sent as helpers and later on being taken as wives. The religious sect known by some as Masowe or Mapostori allows the practice of child marriages in Zimbabwe.

The account given by a victim of SGBV is illustrative of the ways in which sexual abuse of a minor is at times concealed under the cover of 'marriage' and the account also shows the intricacies that are involved and when matters

¹³ The Shona word 'benzi' that was allegedly used by the village head is derogatory and is illustrative of the lack of respect for the dignity and rights of persons with disability, specifically mental disability.

are handled within informal systems of justice. The account also highlights the ways in which informal systems interact with law enforcement agencies in problematic ways. Reflecting on the handling of sexual abuse drawing from personal experience the participant, now aged 15 revealed that:

Yes, it happened to me personally (sexual abuse). The incident happened when I was 12 years old. My sister and her husband arranged that I become the fourth wife to my sister's husband without my knowledge. So, my sister's husband promised to take me to school but instead he took me to Harare. When I got there, I was not enrolled at any school instead my sister's husband took my virginity and continued to have sexual intercourse with me each time he wanted to. I informed my sister about it and she told me that I was now the fourth wife. My sister however, told her husband to stop having sex with me until I was mature, but he never stopped. I ran away to the neighbours and I informed them of my situation and they directed me to go to the police station. I reported the matter and the police promised to give me money so that I could go to my mother in Rusape. I then returned to those neighbours, but my sister's husband approached them and told them that he was taking me to Rusape but instead we travelled to Mudzimu village in Hurungwe. Before we arrived at the village, he stopped the car in the bush and tied my hands and had sex with me. Then we proceeded with our journey. I got a chance to meet the Councillor of Mudzimu village and I informed him of my situation, and he promised to mediate but he never did. I then reported to the police and the police consulted the councillor then they approached my brother-in-law, but he fled. The relatives heard about this and they approached me advising me to let go of the

case because I was now mature and some of them said I should just go is if I no longer wanted my husband.

In this case the girl's abuse was perpetuated over many years and there are several issues that can be alluded to. Despite the obvious issue of rape and child marriage the police intended to resolve the issue through an informal channel that involved the councillor of the area. The intricacies that inform the handling of GBV and SGBV cases are also apparent in that the girl's sister would not report her husband despite knowing about the sexual abuse. The relatives in this instance did not want to get involved in the matter. Delis Mazambane, the executive secretary at the ZHRC concurs and she asserted that:

Some of the impediments [to addressing GBV and SGBV] are women's lack of economic independence. Women who are economically dependent hesitate to assert their rights and report abusive persons due to fear of losing a breadwinner if arrested. There are also semi-autonomous social fields and patriarchal gatekeepers especially in rural areas, the extended family influences enjoyment or violation of rights of women. Family members such as mothers-in-law, sisters and brothers -in-law and grandparents put pressure on women to conform to some practices which perpetuate SGBV. They support internal settlement of even criminal conduct such as physical and criminal assaults and women who wish to report such violations are threatened with divorce or banishment.

The following section examines the impact of constitutional, legislative and policy changes on the informal and traditional justice systems.

THE IMPACT OF CONSTITUTIONAL, LEGISLATIVE AND POLICY CHANGES ON THE INFORMAL AND TRADITIONAL JUSTICE SYSTEMS

The assessment sought to examine how the constitutional, legislative and policy changes initiated in Zimbabwe have permeated into and are understood within communities and the ways in which they influence the adjudication of cases in informal and traditional justice structures. Our findings both from the field and from key informants reveal that whilst significant strides have been made at the broader levels of the law, the constitution and policy the implementation of these changes is impeded by cultural understandings, attitudes and practices.

Key informants within the communities where the assessment was conducted revealed that traditional structures were being transformed to become more inclusive as opposed to male dominated. In keeping with constitutional provisions on gender equality in all the three communities' respondents stated that village heads and other community leaders had constituted committees made up of seven individuals and in most instances, there were four men and three women that sat in these committees. These committees handled cases together with the village heads. Apart from broadening the leadership structures at a community level the impact of the village committees is not yet seen but perhaps it has allowed women to have a say in the adjudication of cases at a community level.

Key informants such as Ms. Nyangairi emphasised the importance of traditional institutions while noting their shortcomings. She pointed out that:

Zimbabwe's traditional justice system is made up of an uncodified system consisting of a hierarchy of courts that are largely recognised by most people. Whilst traditional or indigenous mechanisms of justice have their own shortcomings such as bias against women and children, failure to abide by international human rights standards and failure to document judgements among other shortcomings, the mechanisms remain key in ensuring that justice is domestically rooted and owned by local communities for sustainability, peace and justice. Traditional mechanisms of justice facilitate access to justice for citizens in less costly ways and fosters greater ownership through the use of local languages, thus they have a major role in addressing matters of SGBV and HP that are mostly reported from within their jurisdiction.

Miss Win noted the transformation of traditional structures but was of the view that in the traditional system chiefs are primarily custodians of culture and in the final analysis they uphold a culture that in many instances privileges men rather than women. She argued that:

I have seen some progressive elements lately and so I don't want to downplay those. The image of a chief has also shifted, they are no longer the older people but younger guys that I went to school with, so there are some seeds, maybe there is potential. Some of the people went to law school like Chief Charumbira, so there is potential, and it would be a huge bonus if the systems were a little bit more progressive but herein lies the problem. Let's not forget what those people exist for. They exist to defend, to enhance and to affirm so called cultural, so called tradition, right, that's why they are called traditional justice systems. It's important, their role primarily is to advance their agenda, what they see as

that as that agenda is to defend patriarchy, to defend the rule of the fathers and the rule of men, is to make sure particularly issues of, remember our system is about who owns the children.

Let me give you an example of my work when I first went to Women's Action Group, literally my first month in 1989. Women came to our office and they wanted to be given advice on the Maintenance Law, because it was new then. Women were complaining that they are suffering with the children, we had put out a magazine and we were on radio, on television, women began to know that the law is there on paper. I would explain to the women that you do this and that. We were at number 127 Union (Avenue) behind the Holiday Inn and at that time the magistrate had moved to Runhare House, so I would tell the women it's just down the road and I would accompany them and show them where Runhare House is, but I would not go in with them, until I saw them coming back saying "vatirambidza kuti tipinde, vati tidzoke tinotaurirana" [they denied me entry, they said I must go back and talk/discuss with father of the child]. I had to accompany three of these women and only to find out that they were being denied entry by the security guard. So, the law was being interpreted, the case was being heard and finalised at the gate by the security guard. These women didn't know better, they just thought that these are government offices, they thought they were being screened first and later they were going to be given forms to fill. I'm telling this story to illustrate a point and it still happens, the justice system can be the hidden hand when you then come down lower the trunk.

Miss Win's reservations are not unfounded, and they buttress the account provided earlier of a village head that dismissed the case of a mentally ill woman who was abused despite

evidence of such abuse taking place. In all the nine wards that were visited many of the village heads are men aged above 50 which contradicts Prof Win's assertions.

In Umzingwane participants in an FGD argued that despite the enactment of the Constitution and the campaigns against SGBV and GBV culture was not the only hindrance but poverty was also a significant barrier to the handling of reported cases in both the informal and formal justice systems. One of the participants asserted that:

I want to emphasise that in most cases it's the indigent that are disadvantaged. For example, I can send my child to and fetch water at the borehole and when she comes back with the bucket of water, she will also report that she has been violated sexually by someone from a rich family. My immediate realisation will be that the perpetrator's family are very rich, they have children and relatives in the UK, they have a lawyer, a very educated lawyer. In most instances people with money are abusive and they abuse the poor, those with nothing to their name. In the circumstances I will take the child to Social Welfare officers and report the matter and eventually the case will be taken to court. I will follow up the case a couple of times but I wouldn't be able to keep going to court many times and the case will die a natural death. So, when you're poor your children will be abused, and you can't get justice. Your children eventually becomes laughing stock in the whole community.

The brief section below examines some of the cultural beliefs and norms that participants perceived as positive aspects that could be deployed to address SGBV, GBV and HP in the communities.

CULTURAL BELIEFS THAT ADDRESS GBV AND SGBV

Some of the key informants drew our attention to the positive cultural aspects that could be used in addressing SGBV and GBV in communities. In general, these aspects are predicated upon the concept of a common humanity or ubuntu which is often celebrated and upheld within African communities.

Miss Win argued that interventions could be undergirded by the communal nature of the communities whereby individuals could look out for each other:

I think the communal nature of our societies that says it takes a village to raise a child [is important in curbing SGBV] so our communities look out for each other, our extended families look out for each other and that in a sense also gives some protection.

Another key informant, Ms. Musa Sibindi concurred and also asserted that ‘we say that it takes a village to raise a child’ there are aspects that can be borrowed from culture to inform policies.

Summary of Findings

The findings highlight that there are differing understandings and conceptualisations of what constitutes GBV, SGBV and HP. Some harmful cultural practices are perpetuated even though there are at odds with constitutional dictates because they are acceptable within communities.

Informal and traditional justice systems are imperative in rural communities because they are less costly and accessible. The accessibility of these institutions should however not conceal their complexity and intricate nature because they are rooted in the patriarchal system, shaped and informed by kinship ties and they are marked by silence and make certain matters invisible.

Persons with disability and girls struggle to access justice due to strongly held negative societal views.

Undeniably, traditional court systems are undergoing transformation and there is greater inclusion of women but in general they are still dominated by men and by the interests of men and this distorts the very concept of justice.

Discussion of Findings

This section of the report discusses the findings presented in the preceding section. The focus of the discussion is highlighting some of the key issues raised by the participants.

AMBIVALENT UNDERSTANDINGS OF GBV, SGBV AND HP

Participants identified different forms and manifestations of sexual and gender-based violence and these included physical, emotional and sexual forms of harm and participants also highlighted harmful practices prevalent in their communities. The report notes however, that there are different meanings and interpretations as to what constitutes GBV, SGBV and harmful practices. In the first instance, practices such as chinamwari and labia elongation that are prevalent in Hurungwe and Mutasa and in some instances accepted by community members as part of cultural expression are perceived as neither harmful practices nor physical and emotional violence. Nonetheless the findings reveal that these practices are not only sources of tension and conflict but manifestations of GBV, SGBV and HP. In a context fraught with different, contradictory and ambivalent interpretations what may be a criminal offence in the eyes of the law may not be perceived as such by community members who in some cases are amongst the courts of first resort that complainants approach in pursuit of justice. The different interpretations may stifle complainants with some of the cases not reaching formal institutions through the police.

Closely related to the above, in instances of sexual abuse especially involving minors family courts opt for marriage payments rather than reporting offenders to either traditional or formal justice institutions. This perpetuates harmful practices such as child marriages.

Informal justice institutions as Courts of First Resort

The assessment findings show that informal justice systems organised around families and community structures as well as traditional courts presided by village heads, headmen and chiefs are the courts that community members report matters to as the first resort. These courts are regarded as intimate spaces that are accessible, affordable and resolve cases expeditiously without the complexities and intricacies that are common in formal justice institutions.

However, the informal mechanisms are also beset by unique barriers that affect their efficacy in delivering justice in cases of GBV, SGBV and HP. In adjudicating cases families rely on long standing cultural norms which encourage victims, particularly women, to be tolerant and maintain silence on issues affecting them in order to preserve their marriages, social standing and the reputation of their families. Grave crimes committed within families are made invisible and silenced in the process.

The affordability of informal and traditional justice systems also has to be understood from the lens of rural economies and the severe economic difficulties that the country is grappling with. From this perspective there may be barriers that complainants such as young women and persons with disabilities encounter which may dissuade them from reporting issues of GBV, SGBV and HP. The ownership of chickens and goats that are paid in some of the court sittings may be a significant barrier in contexts of hardships and severe lack.

There are also age and gender disparities between some of the traditional leadership and victims of GBV, SGBV and HP and these can also be significant barriers for potential complainants.

The transformation of traditional justice systems

There is acknowledgment that traditional justice systems are undergoing significant transformation in both their structure and personnel of officials presiding over these courts in line with constitutional and societal aspirations for gender parity. From this perspective, village committees are becoming gender inclusive and this may improve gender sensitivity in the handling of cases

Traditional institutions tend to be male dominated at the level of village heads, headman and the institution of chiefs. Although there have been efforts to include women in some of the village committees and in some of the community leadership structures participants felt that the fact that there are few women in leadership positions tends to perpetuate long standing patriarchal views and practices.

Despite their efforts at transformation some of the traditional institutions are distrusted. Some of the village heads are distrusted by community members who opt to resolve their disputes amongst themselves. This is particularly common among couples. The consequence is that cases remain 'unheard' and a perpetual cycle of abuse and violation persists.

Conclusion and Recommendations

Drawing from the research findings the study makes the following recommendations:

1. There is need for concerted awareness and educational programmes aimed at publicising matters that can be adjudicated by traditional and informal justice mechanisms and platforms so that cases of GBV and SGBV are not stifled or silenced. This is crucial since informal and traditional justice systems are deeply embedded within communal life and they are imperative due to their cost effectiveness, accessibility and expeditious handling of cases. The awareness programmes could be organised around a broader programme of educating communities and disseminating key messages and information on key constitutional and legal provisions on GBV, SGBV and HP.

2. In view of the fact that community structures such as village committees are emerging as important vehicles for addressing GBV and SGBV cases, it is recommended that these structures be strengthened through awareness raising, education and closer cooperation with formal institutions such as the police and courts systems in order to ensure that matters are handled by the appropriate system and to foster community ownership.

Practitioners working in the informal/traditional justice system such as village heads should be capacitated on human rights-based approaches and paralegal training so that they are aware of the parameters of their powers, available remedies as well as victim support and protection.

3. One -Stop Centres must be established or expanded or strengthened for purposes of handling and managing issues of GBV and SGBV. The one stop centres can be constituted by traditional leaders and other community members, community-based organisations and the Victim Friendly Units (VFUs). These can become important, multi-sectoral vehicles for addressing GBV, SGBV and HP especially in cases involving persons with disabilities and young girls.

4. There is need for recruitment and training of community-based members that can continually educate communities on GBV, SGBV and HP and the appropriate mechanisms for redress. Such training could be conducted by community-based organisations that have an in-depth understanding of community issues obtaining in their area of operation.

5. There is need for concerted advocacy efforts at a national level to conscientise the general public about constitutional, legal and policy initiatives in place and the appropriate platforms to approach for redress. Such advocacy could be conducted by the Government, Civil Society Organisations, Community Based Organisations and Faith Based Organisations.

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

The SADC Gender and Development Protocol.

Zimbabwe National Gender-Based Violence Strategy 2012-2015.

Zimbabwe National Gender Policy 2013.

Francis Maramwidze v Commission General Zimbabwe Republic Police and Prosecutor General HH 208-14 HC 10203/12.

Loveness Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs and two others CC 2015-12

APPENDICES

Appendix 1



Informal and Traditional Justice System and Sexual and Gender-Based Violence Assessment

Introductions

Confidentiality reassurance and relevant codes of practice

Key Informant Interview Guide (Policy Makers/Legislators/NGOs etc.)

1. What is your understanding of Sexual and Gender-Based Violence (SGBV) and Harmful Practices (HP)?
2. To what extent has Zimbabwe implemented mechanisms (policies/legislation/constitutional provisions etc.) to tackle or address SGBV and HP?
3. What is the impact of these measures in terms of eliminating or reducing forms of discrimination and violence especially SGBV and HP? Are there any gaps in these policies/laws etc.?
4. What are some of the impediments or challenges encountered by the country in addressing SGBV and HP? Probe: Are there any factors specific to rural areas?
5. Are there any cultural practices, attitudes, beliefs etc. that you think impede tackling SGBV and HP?
6. Are there any cultural practices, attitudes, beliefs etc. that you think assist in addressing SGBV and HP?
7. What is the function of informal and traditional justice systems in addressing SGBV and HP? To what extent do these systems either aid or impede the fight against SGBV and HP?

8. Are the interests of different categories of society, protected and/or advanced by the country's legislation/policies/constitution? Probe: (women/girls/men/boys and persons with disabilities?)
9. What is the relationship between your institution (the one you work for or represent) with other institutions such as the police, the courts, community members, NGOs, stakeholders and is this relationship beneficial in tackling issues of SGBV and HP?
10. What is your opinion (or perception) on the manner the judiciary in this country handles issues of SGBV and HP?
11. Are there any other policies, laws, initiatives etc. that ought to be enacted or amended in order to comprehensively address issues of SGBV and HP?
12. Do you have any recommendations concerning how SGBV cases can be handled in informal/traditional/formal justice systems?

Thank you for your time!!!

Appendix 2



Informal and Traditional Justice System and Sexual and Gender-Based Violence Assessment

Introductions

Confidentiality reassurance and relevant codes of practice

Key Informant Interview Guide (Traditional Leaders)

1. What is your understanding of SGBV and HP (*Elaborate on HP*)
2. Which cases are often brought before you or before your court? Probe: How prevalent are cases of SGBV in this area/community?
3. Who often reports these cases? How are they brought before you? Probe: Is there a procedure that complainants have to adhere to?
4. How accessible is your court to persons with disabilities? Probe- mental and physical disabilities?
5. How accessible is your court to different categories of society? (women/girls/men/boys)
6. How does your court handle these cases, especially the ones involving SGBV and other cultural practices?
7. Are there cases, which the court has found difficult to resolve? Probe: What happened in these cases?
8. What challenges (if any) have you encountered in handling or resolving cases of SGBV?
9. Do people in this community accept and adhere to the court rulings in cases of SGBV and HP?
10. What is your relationship with other institutions such as the police, the courts, community members, NGOs, stakeholders? Probe for each.
11. Do you have any recommendations concerning how SGBV cases can be handled in informal/traditional/formal justice systems?

Appendix 3



Informal and Traditional Justice System and Sexual and Gender-Based Violence Assessment

Introductions

Confidentiality reassurance and relevant codes of practice

Ethnographic Interview Guide

1. What is your understanding of SGBV and HP (Elaborate on HP)
2. Have you or someone that you know experienced any form of sexual and or gender-based violence or HP? Do you mind sharing what happened?
3. How did you/they handle the case? Did you/they face any challenges?
4. Did you/they report the matter anywhere else? Probe: who did you/they report the case to and why?
5. Are there any other groups or (community based, non-governmental, etc.) organizations that assisted? The church or neighbours perhaps? How did they assist?
6. Suppose someone that you know was abused or was made to do a practice they are uncomfortable with, what would you advise them to do? Why?
7. How accessible and equitable are informal and primary justice systems in your community to girls, women and men, persons with disabilities, young people (probe- elaborate on indigent and vulnerable categories)
8. How do traditional leaders like village heads, headmen and chiefs in this area deal with SGBV and other cultural practices?
9. Which reporting structure do you prefer and why? (Researcher to elaborate on the informal and formal)
10. What are your recommendations with regards to how the issues of sexual and gender-based violence can be handled?

Thank you for your time!!!

Appendix 4



Informal and Traditional Justice System and Sexual and Gender-Based Violence Assessment

Focus Group Discussion Guide (FGD)

Number of participants:

Ages:

District:

Date:

Facilitator:

Research Assistant:

1. What is your understanding of sexual and gender-based violence (SGBV) and harmful cultural practices? *(Researcher to elaborate on HP so that it does not come across as being judgmental of people's cultures)*
2. How do you handle cases of sexual and gender-based violence (SGBV) and harmful practices (HP)? *Elaborate on HP. Probe: Why?*

Probe: Are there traditional norms, values, customs and beliefs that you draw on in resolving these cases?

1. What are the challenges with the way the community handles these cases?/ Is there any challenge with the manner the community handles these cases?
2. What do you do as families/neighbours/villages/churches/community (Researcher to offer a range of options) when you encounter cases of SGBV and HP?
3. Who normally sits in family mediation and negotiation meetings? How accessible are family mediation/negotiation mechanisms for men? For women? For youth? For children?
4. How accessible are informal mediation and negotiation mechanisms to persons with disabilities?

5. At what stage do families/churches/other social/community groupings involve village heads/headman and chiefs in resolving SGBV cases?
6. What are the benefits of adjudicating your cases before informal courts instead of approaching traditional and/or formal courts?
7. Are there other mechanisms that people in the community employ or use to resolve sexual and gender-based violence cases? Why do people use these mechanisms? How effective are these mechanisms?
8. What are the impediments/challenges encountered by people in this community in reporting their cases through the formal justice system?
9. Is there any other information that relates to the issues we have discussed that you want to share?
10. What are your recommendations regarding improvement of the justice delivery systems in your community/locality?

Thank you for your time!!!

Appendix 5



MRCZ No. _____

INFORMED CONSENT FORM

An assessment of the efficacy of informal justice systems in addressing sexual and gender-based violence in three districts of Zimbabwe (Hurungwe, Mutasa and Umzingwane)

Principal Investigator: Dr. Reason Beremauro, [*Ph.D Anthropology, MSc. Sociology and Social Anthropology and Bsc. Sociology*]

Phone number(s): +263 78 511 6318

What you should know about this research study:

- Σ We give you this consent so that you may read about the purpose, risks, and benefits of this research study.
- Σ The main goal of this research study is to gain knowledge that may help communities.
- Σ We cannot promise that this research will benefit you.
- Σ You have the right to refuse to take part, or agree to take part now and change your mind later.
- Σ Whatever you decide, it will not affect you in any way.
- Σ Please review this consent form carefully. Ask any questions before you make a decision.
- Σ Your participation is voluntary.

PURPOSE

You are being asked to participate in a research study assessing the informal and traditional justice systems in addressing sexual and gender-based violence. The purpose of the study is to examine the efficacy of both the informal and traditional justice systems in addressing sexual and gender-based violence. You were selected as a possible participant in this study because we are talking to people in this particular community as well as about 120 people in selected districts in Hurungwe, Mutasa and Umzingwane. I am particularly interested in talking to you about how the informal and traditional justice systems address issues of sexual and gender-based violence. By informal justice system we are referring to the mediation and negotiations done within families by relatives such as aunts, uncles, parents and friends while by traditional justice systems we are referring to mediation and resolution mechanisms deployed by traditional courts such as community or village courts headed by traditional leadership. Other related issues may come out of these conversations and you may share any other additional information you so wish to share.

PROCEDURES AND DURATION

If you decide to participate, you will be interviewed by me. The interview will be conducted at a place you deem private and where you feel comfortable sharing your thoughts and opinions with me. The interview may take about thirty (30) to forty-five minutes (45).

RISKS AND DISCOMFORTS

Some of the issues we will discuss might have some legal implications or consequences and may also remind you of past events that you might find traumatic. You are free to pause the interview or not to continue with the interview. You are also at liberty not to disclose any information that you are uncomfortable sharing.

BENEFITS AND/OR COMPENSATION

We cannot and do not guarantee or promise that you will receive any benefits from this study but the information you share with me will help the organisations I am working with to inform policies on sexual and gender-based violence and design programmes and campaigns to address these issues. This may have long-term benefits for individuals and communities. (For focus group participants we will offer each participant \$32 as reimbursement/compensation for transport and/or refreshments).

CONFIDENTIALITY

If you indicate your willingness to participate in this study by signing this document, we plan to share your views with the Spotlight Initiative and partners such as the Legal Resources Foundation (LRF) and Women and Law in Southern Africa (WLSA) in the data analysis process as well as in the study reports. Any information that is obtained in connection with this study that can be identified with you will remain confidential and will be disclosed only with your permission. We will not document your name in interview reports (transcripts) and in the study reports if you are not agreeable to this. In the research report we will also use pseudonyms (not your real name) to conceal and protect your identity and that of other participants.

ADDITIONAL COSTS

Apart from the time you will take to talk to me we do not anticipate any additional cost on your part.

VOLUNTARY PARTICIPATION

Participation in this study is voluntary. If you decide not to participate in this study, your decision will not affect your future relations with the the Spotlight Initiative, WLSA and LRF, its personnel and associated partners. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without penalty.

SIGNATURE PAGE

An assessment of the efficacy of informal justice systems in addressing sexual and gender-based violence in three districts of Zimbabwe (Hurungwe, Mutasa and Umzingwane)

Protocol Version Number/date

OFFER TO ANSWER QUESTIONS

Before you sign this form, please ask any questions on any aspect of this study that is unclear to you. You may take as much time as necessary to think it over.

AUTHORIZATION

You are making a decision whether or not to participate in this study. Your signature indicates that you have read and understood the information provided above, have had all your questions answered, and have decided to participate.

_____	_____
Name of Research Participant (please print)	Date
_____	_____
Signature of Participant or legally authorised representative	Time

Relationship to the Participant

Name of Staff Obtaining Consent
Date

Signature

Name of Witness (*if required*)
Date

Signature

YOU WILL BE OFFERED A COPY OF THIS CONSENT FORM TO KEEP.

If you have any questions concerning this study or consent form beyond those answered by the investigator, including questions about the research, your rights as a research participant or research-related injuries; or if you feel that you have been treated unfairly and would like to talk to someone other than a member of the research team, please feel free to contact the Medical Research Council of Zimbabwe (MRCZ) on telephone (04)791792 or (04) 791193 and cell phone lines 0784 956 128. The MRCZ Offices are located at the National Institute of Health Research premises at Corner Josiah Tongogara and Mazowe Avenue in Harare.

Audio Recording

Statement of Consent to be Audiotaped.

I understand that audio recordings will be taken during the study. (*For each statement, please choose YES or NO by inserting your initials in the relevant box*)

• I agree to being **audio recorded** Yes

No

Name of Participant (please print)

Signature

Date