



# Spotlight Initiative

*To eliminate violence against women and girls*

# CULTURAL PREDICAMENTS



**CULTURAL NORMS,  
POWER AND CONTROL  
IN ADDRESSING SEXUAL  
AND GENDER-BASED VIOLENCE  
IN RURAL DOMAINS IN ZIMBABWE**



# Cultural Predicaments: Cultural norms, power and control in addressing sexual and gender-based violence in rural domains in Zimbabwe”.

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## **Abstract**

*In contemporary Zimbabwe forms of discrimination, violence and inequality are as pervasive as they are persistent. In most instances such violence and sexual abuse occurs in intimate spaces and is directed at and affects women and girls more than men and boys. The violence includes physical, emotional, sexual and financial abuse as well as harmful practices. The country has however partially enacted progressive constitutional, legislative and policy instruments drawing from global norms, agendas, action points and standards. Notwithstanding the partial enactment of legislation and a problematic formal justice system this paper casts attention on the resolution of sexual and gender-based violence within families and households looking specifically at the ways in which informal justice systems mediate and adjudicate the matters. Informal justice as used in this paper refers to the mediation conducted within families and diverse community groupings as well as at traditional courts presided by village heads, headmen and chiefs. Conceptually, the paper draws from Sally Engle Merry's concept of translation and we argue that cultural beliefs, practices, values and norms obtaining in specific localities mediate the resolution of sexual and gender-based violence cases and these practices are in some instances and at certain moments at odds with progressive constitutional, legal and policy initiatives and aspirations. The paper is drawn from fieldwork conducted in three predominantly rural districts namely Hurungwe, Mutasa and Umzingwane. Data was gathered through participatory qualitative methodologies that made use of in-depth interviews and focus group discussions with community members, traditional leaders and key informants that included policy makers. We conclude that efforts to address sexual and gender-based violence as well as harmful practices should go beyond legal and policy changes but incorporate community participation in order to stem the influence and impact that cultural practices.*

## **Keywords:**

Gender Based Violence, informal justice, culture, patriarchy, sexual violence

1. This paper is drawn from an assessment done for the UNDP Spotlight Initiative in Zimbabwe looking at the efficacy of the informal justice system in addressing sexual and gender-based violence in Hurungwe, Mutasa and Umzingwane.

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## Introduction

In contemporary Zimbabwe forms of sexual and gender-based violence (SGBV) as well as harmful practices have remained pervasive and persistent. In most instances such violence and sexual abuse occurs in intimate spaces and is directed at and affects women and girls more than men and boys. This is happening against concerted efforts at both global and local contexts to eliminate forms and manifestations of violence, discrimination, and harm within public and private spaces. Globally, such efforts are anchored on the long-standing Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979. The Sustainable Development Goals (SDGs) in particular SDG5 encapsulate and embody 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 GBV and SGBV and simultaneously to empower survivors of such abuse is gaining traction is manifestly seen through cyber campaigns such as the #MeToo<sup>2</sup> campaign whereby survivors of sexual violence allegedly committed by powerful and influential individuals have highlighted such abuse leading to the prosecution of some of the perpetrators.

Within this global context and drawing from some of the global norms, agendas and action points significant efforts have been made 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, section 52 of the country's Constitution, for example, 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.

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 (2009), the Criminal Law Codification and Reform Act and the Children's Act<sup>3</sup>. 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

2. The #MeToo movement was founded by Tarana Burke in 2006 to raise awareness on the pervasiveness of sexual abuse and violence. The movement gained popularity following the Harvey Weinstein sexual abuse allegations and over time the movement has been used to publicize allegations of sex crimes committed by powerful and/or prominent men.

3. Other relevant pieces of legislation include the Labour Relations Amendment Act and Trafficking in Persons Act.

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and Sexual Abuse<sup>4</sup>. Collectively, the legislation and policies aim to eliminate 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.

Notwithstanding these progressive constitutional, legislative and policy instruments forms of discrimination, violence and inequality have remained persistent. For instance, 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.

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 (see Konyana 2018). 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) intersect 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) make 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'. Scholars such as Konyana (2018) writing on the domestic violence legislation within rural communities in Zimbabwe argue for example that:

*“There is little evidence to demonstrate the efficacy of the law as a deterrent to perpetrators of domestic violence in Zimbabwe, particularly in rural communities. This is largely because the use of the Domestic Violence Act (DVA) by ethnic rural people has presented dilemmas for victims, who usually have to make difficult decisions about reporting domestic abuses to criminal law-enforcement agents.”*

Given this framing, this paper casts attention into the realm where sexual and gender-based violence cases are often adjudicated in rural domains- the informal

4. Other policies and initiatives include the Broad-Based Women Economic Empowerment Framework and the Multi-Sectoral Protocol on the Management of Rape and Sexual Violence.

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and traditional justice systems- and interrogates *the ways in which informal justice systems mediate and adjudicate the matters*. Specifically, the paper examines how and in what ways *cultural beliefs, practices, values and norms obtaining in specific localities mediate the resolution of sexual and gender-based violence cases and how these practices are in some instances and at certain moments at odds with progressive constitutional, legal and policy initiatives and aspirations*. Drawing from field data we argue that in some instances informal justice mechanisms distort the very delivery of justice even though they are the preferred and often the first port of call that victims of SGBV approach for redress. Our argument here is that cultural beliefs, practices, values and norms obtaining in specific localities mediate the resolution of sexual and gender-based violence cases and these practices are in some instances and at certain moments at odds with progressive constitutional, legal and policy initiatives and aspirations.

### **The *translation* of legal interventions**

The theoretical question that we seek to address in this paper centres on the ways in which interventions- in this case, in the form of policies, initiatives, legislation etc. are expressed and deployed onto local contexts. How are the laws, policies and initiatives expressed and interpreted and how do they find resonance within socio-cultural and legal contexts? In addition how do these legal interventions permeate the lives and experiences of particular groups of people and how do communities- individually and collectively- 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? In addressing these questions, the paper draws on Sally Engle Merry's (2006) concept of translation. 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 organization 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 'map the middle' between the local and global worlds we use the term *translation* to examine how people at the local level interpret the discourses on SGBV and the various legal interventions and instruments that are deployed by government departments, human and legal rights organisations. Our argument is that interventions in the form of policies and legislation permeates local contexts and articulates 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.

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We define informal justice systems as mechanisms, platforms and arrangements where forms of negotiations and mediation are conducted to resolve disputes and conflicts between and within families, village and community members. On the other hand, the traditional justice systems comprise primary courts recognized at law and encompasses chieftaincies who superintend the system as well as village heads and headmen. Although we attempt a neat dichotomy, the informal justice system is itself complex and defies clear cut definitions and there is close interaction between the system and traditional institutions of chieftaincies.

There is no single standard definition of what constitutes sexual and gender-based violence. GBV and SGBV are defined and understood broadly to encompass rape, sexual assault, physical assault and domestic abuse including emotional, material (financial) abuse (see Pelser et. al, 2005; 1). The Domestic Violence Act (2007) 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.

Research material for this study was gathered through a participatory qualitative methodological approach that entailed the use of ethnographic approaches 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), focus group discussions, observations, participation in the observed practices and events, key informant interviews and archival/documentary analysis. The research was conducted in three rural domains i.e., Hurungwe, Mutasa and Umzingwane over a period spanning eight months.

In the first instance the paper discusses how communities define SGBV and how such definitions are at times at odds with common definitions. Such cultural understandings determine then what constitutes SGBV or harmful practice.

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## Differing Conceptions of SGBV and harmful practices

Participants' understanding of GBV and SGBV were varied but they coalesced around disputes and violence between spouses in most instances arising or pertaining to the lack of consensual sex between partners. In general participants identified physical, emotional, sexual and verbal abuse as forms and manifestations of both GBV and SGBV. Of these disputes- sexual and physical forms of harm- were seen as the most common manifestations of SGBV and GBV. One of the study participants in Hurungwe stated that:

The thing with GBV cases is that they often manifest and are caused by one issue yet the real reason behind the aggression is issues having to do with the couple's sexual relationship. Prostitution is also a problem as many people sleep with foreign 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. Once the wife gets sick and asks the man to go for testing- but the husband refuses and actively retaliates because he knows he's been 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, that's where the 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 for you, so that's where the disagreement starts. The wife will ask you what you have brought for her and when you tell her it's your friends who have bought you the beer, she will lose trust in you. The wife will then say hurtful words that will drive you to beat her up.

Although there appears to be convergence between participants' understanding of what constitutes SGBV and GBV and the legal definitions, cultural practices are at odds with these understandings and conceptualisations. In the three communities' women are especially denied bodily integrity and control over their sexuality. 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.

One of the participants stated that married women are compelled to have sex with their

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spouses, and they are often forced to participate in cultural practices such as sexual education which in the area is called *chinamwari*:

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 you sex a man must not force himself on the wife but you should look for mediators *anate nana sekuru*, 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 on how to be good in bed and save their marriages.

Likewise, in the Mutasa community 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 by a female participant 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 and it's also very painful. 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 other women. The issue took years to be resolved.

Despite the differing definitions of what constitutes GBV and SGBV as well as harmful practices within the informal institutions, these institutions are still the first port of call where aggrieved individuals seek redress. The selection of informal justice institution as the preferred 'courts' centre around the institutions' perceived accessibility and affordability.

### **The informal justice system and the materialities of access**

The assessment findings reveal that informal justice institutions are preferred institutions for resolving marital and family disputes even those that at times involve physical harm. 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 institutions such as the formal court system for determination through the police. The selection of informal justice institution as the

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preferred 'courts' centre around the institutions' accessibility and affordability. Without discounting the rationale behind the accessibility and affordability of informal institutions there are however costs associated with the seemingly ease of access and perceived affordability which accentuate rather than address gender discrimination and harm.

Prof. Everjoice Win, one of the key informants argued that, the informal justice system is physically accessible, convenient, affordable and embedded 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 language barriers. Proceedings in informal institutions are also conducted in culturally appropriate settings using mediums of communication that litigants understand. Prof. 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 were a bit more progressive they would be culturally relevant so they will be dealing with you in a language you would understand and they would understand much more than a magistrate's court somewhere in a growth point or in an urban area, the language then changes, the concept then changes and so a lot of things then begin to change.

The study participants concurred with this view and they cited the affordability afforded by these institutions and resolving cases within families and community groupings such as churches. 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 study participants 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 it's a relatively low amount to enable the gathered individuals to have a drink. If the village head is mediating alone he can do so at no cost. 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 has to pay. If a girl is raped they do not

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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 heads. They would not want to report the issue to community members because they would be shy to do so. The disabled can also call in and village heads can approach such a litigant considering the constraints they may encounter in coming to court.

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 may be taken to the chief or is finalized 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. [Tinoenda kunavatete, sadombo kana sadunhu nevafundisi vekuchurch. Zvinokasikira nokuti vanhu vemunharahunda saka hapana muripo]

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 ostracization 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

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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. If you report your case to the police/formal justice institution you will be like a widow and no one wants to be a widow. The man does the hard labour like ploughing and also goes looking for food 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 problems being faced before the issue was escalated. This could lead to severed relations between the wife and her husband's family which would truly leave her and her children out in the cold. [Throughout the rest of the interview this participant constantly referred to a woman with an imprisoned husband as being a widow as there would no longer be a man playing the role of a husband in her life. She also cautioned that even after the man is released the status of being a widow would remain because no man would want to continue to be with a woman who sent him to jail. Even his family would not support the marriage after that].

Another view expressed by participants was that informal institutions are intimate spaces where one can be given advice by close 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 that one can open up to and they treat you well like their own child and proffer advice that is sound.

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 that women grapple with in reporting cases of SGBV. Anna recounts:

The sexual violence that we encounter in this community is that children are 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 you can leave. And this is difficult because they will tell you that if you intend to leave then you have to leave the abused child 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 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 communal

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settings 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 as most men don't like having their issues paraded publicly by approaching the church for help. Men can also even refuse to go kwasabhuku 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 story within the family, who can reprimand a family member. Some relatives however stay far away and when this is the case the church [and other community based groups] become the next best thing if you are a believer, otherwise the only other option is to go kwasabhuku [village head].

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 and, in some cases,, it silences issues of abuse rather than bringing them to the fore. This buttresses the view proffered by Suzanne Williams, who in 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 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.

The paper asserts that cultural beliefs, practices, values and norms obtaining in specific localities mediate the resolution of sexual and gender- based violence cases and this is manifest in the silences and invisibilities that characterize the informal institutions which we discuss in-depth in the following sections.

### **Blood is thicker than water**

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

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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. In attempting to address GBV, SGBV and harmful practices informal justice institutions are often beset by silence and this affects their efficacy in addressing violations.

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.

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 rulings that are fair or just. Ms. Chirisa, a key informant, asserted that:

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The challenge is that due to relation dynamics like within the family setup you have the duty of care towards your brother and 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. There is also an issue of family integrity when the victim does not define the best possible outcome or the best possible resolution mechanism, like at family level it's not up to me to go and report to police. Let's say SGBV has been perpetrated against me by a relative within a family setup from what we gathered is that the family has to sit down and discuss upon and then the family has to 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 define the compensation commensurate, it also has to define the mechanism to be used but that's not justice. Well, I think, and I've 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 the concept of justice be it SGBV or any other wrong doing 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. Prof. Win highlighted that:

...Because of the patriarchal nature of our society- violence is seen having been done or the transgression, how we communicate suggest how 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. So she goes further to say, 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 marriage purposes, so 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. So first of all is the damage, damage 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 cause these words are not going to be said but it's part of the conceptual. So the damage is saying you have lowered what we would have gotten if you had been married a virgin, so firstly it's the damage, and 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 a research on sexual violence against girls in schools in 2007, in Zimbabwe, Mozambique and a couple of countries. A lot of cases were committed by teachers, the teachers will 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 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 today 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 that 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 culturally determined silences and invisibilities that characterise the informal justice system affect persons with disabilities in ways that are equally damaging and devastating.

### **(In)justice for Minors and Persons with Disabilities**

A salient issue that was interrogated in the study and which we pay particular attention to in this paper is the way in which persons with disabilities and minors especially girls approached and accessed justice within informal institutions. 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. Study material shows 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 by a known perpetrator 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

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someone is mentally ill, they take advantage of them 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 [ibenzi]'.

Ms. Barbara Nyangairi a director at the Deaf Zimbabwe Trust, a non-governmental organisation that assists people with hearing impediments, revealed that persons with disability were confronted with discriminatory practices and attitudes and this 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. She asserted that:

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 lack of disability awareness in SGBV and HP interventions. Organizations do not know how to include women and girls with disabilities. Cultural practices and beliefs are the biggest impediment 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 and they come in various dimensions, 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* has on numerous occasions been identified as allowing 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 tend to inform systems of justice:

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 of 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 never went to school and that is when 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 wait for me to mature then he would start having sexual intercourse with me, 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 return 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 he tied my hands and had sexual intercourse 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 informed the councillor then they approached the man, 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 if I no longer wanted my husband.

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In this case the girl's abuse was perpetuated over many years and there are a number of issues that can be alluded to. Despite the obvious issue of statutory 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 her 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 Zimbabwe Human Rights Commission (ZHRC) concurred 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 and they 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.

What is apparent in these accounts is that persons with disabilities are discriminated against and their cultural rationalities that are brought to the fore in resolving their cases.

Our research material underscores that there are differing understandings, meanings and conceptualizations 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 intricacies 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 especially struggle to access justice due to strongly held negative societal views and this distorts the very concept of justice.

## **Conclusion**

Informal and traditional justice systems are imperative in rural communities because they are less costly and accessible. The accessibility of these institutions should

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however not conceal their complexity and intricacies because they are rooted in a patriarchal system and are shaped and informed by kinship ties. They are also marked by silence and they make certain matters invisible. Persons with disability and girls struggle to access justice due to strongly held societal views and this distorts the very concept of justice. Against this background we make the point that efforts to address sexual and gender-based violence as well as harmful practices should go beyond legal and policy changes but incorporate community participation in order to stem the influence and impact of cultural norms, beliefs and attitudes that inform modes of behaviour and practice.

## References

- Burrill, E.S., Roberts, R.L. and Thornberry, E. eds., 2010. *Domestic Violence and the Law in Colonial and Postcolonial*. Ohio University Press.
- Cedaw, U., 1979. *Convention on the elimination of all forms of discrimination against women*. Retrieved April, 20, p.2006.
- Domestic Violence Act (2007)*
- Konyana, E.G., 22 *Domestic violence legislation in Zimbabwe: Probing into the security of women in rural communities* in Green MC, Gunn TJ & Hill M (eds). 2018. *Religion, Law and Security in Africa*. Stellenbosch: Conf-RAP
- Merry, S.E., 2006. *Transnational human rights and local activism: Mapping the middle*. *American anthropologist*, 108(1), pp.38-51.
- Pelser, E., Gondwe, L., Mayamba, C., Mhango, T., Phiri, W. and Burton, P., 2005. *Intimate partner violence*.
- Zimbabwe, W.L.S.A., 2000. *In the Shadow of the Law: Women and Justice Delivery in Zimbabwe*. Harare: WLSA.

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