



**An Assessment of the Formal Justice System in responding to Sexual
and Gender Based Violence (SGBV), Harmful Practices (HP) and
Sexual Reproductive Health Rights (SRHR) in Zimbabwe.**

for

**Women in Law in Southern Africa (WLSA)
and Legal Resources Foundation (LRF)**

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ACRONYMS

ARC	Adult Rape Clinic	OSCs	One stop centres
CBO	Community-Based Organisation	PEP	Post-exposure prophylaxis
CCORE	Collaborating Centre for Operational Research and Evaluation	SADC	Southern African Development Community
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	SGBV	Sexual and Gender Based Violence
CRPD	Convention on the Rights of Persons with Disabilities	SRHR	Sexual Reproductive Health Rights
CSO	Civil Society Organisation	UN	United Nations
CSW	Commission on the Status of Women	UNFPA	United Nations Population Fund
DV	Domestic Violence	UNICEF	United Nations Children's Fund
DVA	Domestic Violence Act	UNODC	United Nations Office on Drugs and Crime
FACT	Family AIDS Caring Trust	UN	Women: United Nations Women
FGD	Focus Group Discussion	VAWG	Violence Against Women and Girls
GBV	Gender-based Violence	VFS	Victim Friendly System
GoZ	Government of Zimbabwe	VFU	Victim Friendly Unit
HIV	Human Immunodeficiency Virus	WHO	World Health Organisation
HP:	Harmful Practice	WLSA	Women and Law in Southern Africa
IAW	International Association of Women Judges	ZDHS	Zimbabwe Demographic and Health Survey
ICCPR	1966 International Covenant on Civil and Political Rights	ZGC	Zimbabwe Gender Commission
ICESCR	International Covenant on Economic, Social and Cultural Rights	ZIMSTAT	Zimbabwe National Statistics Agency
IFRC	International Federation of Red Cross and Red Crescent Societies	ZRP	Zimbabwean Republican Police
IPPF	International Planned Parenthood Federation	ZWLA	Zimbabwe Women's Law Association
IPV	Intimate partner violence		
JCT	Justice for Children		
JSC	Judicial Services Commission		
LAD	Legal Aid Directorate		
LRF	Legal Resources Foundation		
MoJLPA	Ministry of Justice, Legal and Parliamentary Affairs		
MoWASME	Ministry of Women Affairs Small and Medium Enterprises		
NBSLEA	National Baseline Study on the Life Experiences of Adolescents		
NGO	Non-Governmental Organisation		
NPA	National Prosecuting Authority		

EXECUTIVE SUMMARY

OVERALL RESEARCH OBJECTIVES AND FOCUS

This report provides a grounded analysis of the capacities and responses of various components of the Zimbabwe formal justice system in relation to sexual and gender-based violence (SGBV), harmful practices (HPs) and sexual and reproductive health rights (SRHRs) in Zimbabwe. The overall goal of the research was to assess the efficacy of the formal justice system in addressing gender-based violence. The study was guided by the following objectives:

- To identify the various typologies of formal justice systems;
- To map the various legal and policy frameworks in the formal justice system;
- To examine how formal justice systems, operate and the roles played by various key actors;
- To examine survivors' experiences in the formal justice systems;
- To assess community perceptions on the efficacy of formal justice systems;
- To establish the linkages between formal justice systems and informal ones;
- To assess the gendered experiences of women and children who utilise/ have utilised the formal justice systems;
- To assess the efficacy (accessibility and effectiveness) of formal justice systems in meeting the multiple and even competing and contradictory justice needs of women and children; and

- To determine the costs (social, economic and emotional) and implications of utilising formal justice systems.

Methodological approach

The research focused on three purposively sampled districts namely Mutasa, Umzingwane and Hurungwe. The research relied largely on purposive sampling, targeting community members, key stakeholders and key participants in the formal justice systems across the three (3) districts. The mapping of the key actors involved in the study focused on the following criteria:

- Women and men over 18 years who are survivors of sexual and gender-based violence and have utilised the formal justice system;
- Women and men who have participated in formal justice systems linked to SGBV or HP cases in particular witnesses;
- Actors in the formal justice systems: police, Victim Friendly Unit, Ministry of Justice and Parliamentary Affairs, National Prosecuting Authority (NPA), Judicial Services Commission (JSC), Ministry of Women's Affairs, Community, Small and Medium Scale Enterprises, prosecutors, judges, lawyers, community organisers, nurses and civil society organisations working with survivors of SGBV.

In total 36 survivors (28 female and 8 male), 21 key informants and 4 witnesses were interviewed across the three districts. Another 15 interviews were conducted at national level with various key stakeholders including experts in key SGBV, key populations and counselling survivors. The study has some limitations mainly related to the research approach and number of districts covered. Firstly, qualitative research means that there was no quantifiable data collected in the study. This was mitigated through collection of statistics from official agencies. Another limitation is the limited

number of districts covered in the research. The study covered three districts but they were purposively selected to provide insights into the national experience around formal justice systems in Zimbabwe.

Major findings

(a) Overview of SGBV, HP and SRHR matters in Zimbabwe

According to the Zimbabwe National Statistics Agency Quarterly Digest of Statistics for the fourth quarter of 2016, 8,069 women were reportedly raped in 2016; 7,752 cases of rape were reported in 2015, 7,000 cases in 2014, 5,717 cases in 2013, 5,412 cases in 2012, 5,446 cases in 2011, 4,450 in 2010. This translates to 22 women being raped daily or an equivalent of one woman being abused every 75 minutes and an average of 646 women being sexually abused monthly. There is an increase in the number of reports over the years though more needs to be done to ensure higher rates of reporting of sexual crimes. Childhood sexual abuse is also prevalent in Zimbabwe. The 2011 National Baseline Study on the Life Experiences of Adolescents (NBSLEA) (ZimStat et al., 2013) shows that 43% of girls 13-17 years reported that their first incident of sexual intercourse was unwanted. For the same age group, the ZimStat victimisation rate¹ for sexual violence was 9% for the females and 2% for the males. Findings by ZimStat et al. (2013) also indicate that one in three girls is raped or sexually assaulted before they reach the age of 18 years.

(b) Zimbabwe's International Obligations to Address Gender Based Violence, Harmful Practices and Sexual and Reproductive Health Rights

Internationally Zimbabwe is party to agreements such as Convention on Elimination

¹ A measure of the occurrence of victimizations among a specified population group. For personal crimes, this is based on the number of victimisations per 1,000 residents age 12 or older.

of all Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child, The 1995 Beijing Platform for Action and subsequent Action Agendas, Convention on the Rights of Persons with Disabilities (CRPD), Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa and SADC Protocol on Gender and Development. All these international agreements speak in different ways to the need for the state to institute all necessary measures to combat SGBV, HPs and improve access to SRHR for all (especially women and girls).

(c) Overview of the formal justice system in Zimbabwe

The formal justice system in Zimbabwe is based on both international and national legal and policy frameworks. At the national level the Constitution is the supreme law and provides the broad framework of the formal justice system. At the national level, the Constitution reflects a firm commitment to gender equality and equity. The Declaration of Rights recognises that men and women have the right to equal treatment, including equal protection of the law. The enactment of such laws as the Criminal Law (Codification and Reform) Act, Domestic Violence Act and, to a limited extent, the Children's Act form part of the state's efforts to protect in particular women and children from SGBV and HPs and advance their SRHR.

In response to the need to address these issues in a holistic manner Zimbabwe has developed the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (GoZ, 2019). The purpose of the Protocol is to safeguard the rights of survivors of SGBV, guaranteeing that they receive a holistic package of age and gender sensitive, survivor centred services for their psychological well-being and protection by the welfare and justice system. The main service delivery systems include the Victim Friendly System (VFS),

linking criminal justice partners under the lead of the Ministry of Justice for seamless court service towards successful prosecution. In terms of the institutional framework the study found the following:

- *Government Ministries:* These include the Ministry of Justice, Legal and Parliamentary Affairs (MoJLPA), Ministry of Health and Child Care, Ministry of Labour and Social Welfare and Ministry of Women Affairs Small and Medium Enterprises (MoWASME). They play important roles in the system but face critical challenges such as a dire shortage of qualified staff and lack of adequate funding.
- *Government Institutions:* These include Attorney General and NPA, Zimbabwe Republic Police (ZRP), Legal Aid Directorate (LAD) and the courts. The police crucially has the Victim Friendly Unit (VFU) to deal with SGBV survivors and cases. All these institutions play a role in the functioning of the formal justice system.
- *Reporting Mechanisms:* The Domestic Violence Act outlines the duties of the police officer in Section 5(2) and this implies that survivors of domestic violence must make reports at the nearest police station. Section 7 also outlines the role of the clerk of court, although this is not routinely followed. The act does not, however, provide a clear reporting mechanisms which can easily be broken down and understood by a non-lawyer or survivors of SGBV, HP and SRHR. This is because the Domestic Violence Act has limited application. Section 24 of the Criminal Procedure and Evidence Act (CPEA) provides for a reporting mechanism for survivors of domestic violence to follow. In addition, Section 363 of CPEA provides for compensation for personal injury that it should be paid by a 'convicted a person of an offence

may forthwith award compensation to any person who has suffered personal injury as a direct result of the offence'. This provision provides for civil remedies and compensation for survivors of SGBV, HP and SRHR. The Multi-sectoral Protocol earlier also provides a referral pathway for the reporting of SGBV and HP cases.

- *Civil society initiatives:* Civil society organisations in Zimbabwe play a pivotal role in ensuring access to services for SGBV survivors mainly because of the state's inability to fund programming. These organisations are important for the functioning of the multi-sectoral approach to combating SGBV. The funding by donors and partners is a critical component in government's response to sexual violence. Initiatives include psychosocial support, medical assistance, legal assistance, safe houses and advocacy.

(a) Findings on the referral pathway for SGBV responses

The SGBV referral pathway provides a framework for the management of SGBV and HP cases in Zimbabwe. It provides steps and services to be provided to a survivor including reporting to the police, medical care, psychosocial support, investigations, trial and post-trial support. In analysing the efficacy of the system, the research found the following:

- Lack of provision by the state of resources leading to donor dependence and failure of the system to be responsive especially in times of crisis such as COVID-19.
- Lack of disaster preparedness COVID-19 showed that the referral pathway requires a specific framework that responds to disaster situations.
- There are cases outlined during this research that indicated that at times there is confusion on where to start for survivors. There are stories of survivors being turned away from hospital and having Criminal

Law (Codification and Reform) Act to first get a police report before getting assistance.

- Beyond these challenges we also noticed various gaps² in the formal justice system which include:
- Gender insensitive justice system: The law itself may be against women's interests or the rules of evidence and procedure are such that women are unable to fulfil the demands of these rules. The unguided and sometimes insensitive line of questioning from law enforcement officials, lawyers and judges who are not trained in women's rights issues often leads to secondary victimisation of women who endure the ordeal of SGBV.
- Socio-cultural and attitudinal barriers: authorities generally consider domestic violence to be a private matter and entrenched institutional and societal attitudes that deny marital rape as a form of violence against women also prevent them from seeking justice.
- Lack of legal information: In many instances, survivors of SGBV and HP have limited to no access to free legal information. In addition, the information to which these survivors have access is usually not as detailed as it should be and often comes in a language which they do not understand.
- Other inadequacies include: Lack of coordination and sharing among civil society organisations; lack of funding and capacity gaps; overburdened prosecutors; bureaucratic barriers and lack of quality of services by overwhelmed service providers; limited accessibility to formal courts, the cumbersome and adversarial nature of the

court system leading to secondary trauma and costs related to expenses such as transport and food to attend court.

- Inadequate gender mainstreaming in laws, policies and institutions – which are yet to be fully aligned to the Constitution

(c) Survivors' understanding of laws and what constitutes SGBV, HP and SRHR

- Respondents generally understood the various dimensions of SGBV especially physical and sexual assault.
- There were also aspects noted as SGBV by some respondents that the current legal system does not cater for. An example is an elderly woman who highlighted that she was emotionally abused by her husband, who refused her sex after marrying a second wife. Whilst Section 53(1) (c) of Domestic Violence Act could provide recourse in such a case, there is no way of enforcing resumption of conjugal relations.
- A community organiser in Mutasa District noted that in most cases SGBV involves male perpetrators and female survivors. A counsellor who works with male survivors highlighted the need to increase awareness of the criminal nature of SGBV against men.
- For some respondents (mostly male) there are some issues that should not involve the law especially between married people, for example any issues involving sex. There is a socio-cultural belief system that views the formal justice system as anti-marriage in how it operates and resolves issues.
- Reports can be made either by calling the police or in person. Key informants indicated that most SRHR related cases come through walk-in clients on cases such as SGBV, rape and indecent assaults.
- A Victims Friendly Unit officer carries out in-depth interviews with the victim. Ideally, the interviews with victims should be private, safe and friendly. It was highlighted

² There is a school of thought that argues that these are not gaps but are in essence inadequacies or interpretation and application problems. This is the point where the constitutional arguments come in. The problem is failure to apply the equality provisions, failure to reinterpret, thus there is need for a much more rigorous approach on constitutional litigation pushing the interpretative provisions.

that these interview rooms are not available at police, LAD Offices and NPA due to limited space and officers share offices. VFUs are day shift only and not available over weekends, except perhaps Saturday mornings yet most sexual and violent crimes and domestic violence occur at night. Not all stations have fully trained VFU staff.

(c) Survivors' and witnesses' experiences with formal justice system

- ***Experiences with reporting structures:***

What is clear from the narratives is the share agony by survivors of a reporting structure that is often hostile to survivors. Male survivors for instance, reported negative experience with the police. There were also stories of women who faced bad service at police stations. The experience with reporting structures is also largely negative for key populations: for example, sex workers are not treated with respect and are often stigmatised by the police. Persons with disabilities also face unique challenges in accessing reporting structures. Observation of a few police stations during the course of this research showed that the stations are ill equipped to serve the SRHR needs of people with disabilities. For survivors, the police are often intimidating, especially in areas where there are no trained victim friendly officers. Speaking to the police across the three districts in this research, we found that many police stations are working hard to improve how they work with survivors, but they also face numerous challenges, which include lack of appropriate and adequate offices that provide privacy and comfort for survivors to report in.

- ***Experiences with medical structures:***

Sexual violence requires specialised medical interventions that provides a holistic access to health care (including where required post-exposure prophylaxis (PEP),

psychosocial support, social protection and legal services. These services are not readily available at all poly clinics nationwide. At times survivors face stigma from health providers for example women seeking an abortion after sexual assault or post abortion care are often 'morally reproached' by nurses. A key challenge with medical structures is also the narrow focus on survivors. Witnesses, who are at times young children are often not provided with any care. The referral pathway does not have an explicit protocol for assisting witnesses with mental health care.

- ***Experiences with prosecuting authority:***

The problems have continued however with most people having little faith in the prosecution system given that it '... emphasises the rights of the accused at the expense of protecting the survivors. A key stakeholder lamented that the NPA was the 'biggest disaster because of poor conditions of services it was not assisting survivors of SGBV, HP and SRHR'. The prosecutors were interested in numbers of cases that went through the court without assisting survivors as to their rights, walking with them through the court process and explaining that the outcome may be a conviction or discharge.

- ***Court experiences:*** Court spaces can be intimidating to survivors, especially children. There is an effort to institute victim friendly courts in Zimbabwe. In everyday life survivors encounter an intersectionality of experiences. Re-victimisation, fear of divorce or desertion and cultural factors are survivors' personal hurdles and explanations for not accessing the justice system. In most cases, the argument is that survivors of violence are 'blamed' for not reporting or using the justice system, yet people who work in the justice system do not understand the lived realities of women and girls. From the

research the key issues around witnesses' experiences of the court system include the following: In some areas where transport to courts is a serious challenge, witnesses are either asked to cater for their own costs or transported in the trucks that transport prisoners going to court. In a few cases, witnesses have slept in police stations because of a lack of accommodation. As a result, some witnesses end up being treated as if they were criminals.

- **Post court experiences:** One of the major weaknesses of the formal justice system to emerge out of this research is the impersonal nature of the system after the case is done. The formal justice system has a defined and definite end, beyond which the survivor is on their own no matter the outcome of the case. The narratives in the main report point towards the situation in which the justice system is ill equipped to deal with the post court experiences of survivors. The impersonal nature of the formal justice system poses serious challenges to effective use of the state system in the context where the informal justice system provides an alternative.

(d) SGBV, HP, SRHR and formal justice system in the context of COVID-19

- Violence against women also amplifies in emergency, crisis or conflict situations. The current COVID-19 pandemic has exacerbated SGBV against women and girls, and also led to new forms of violence. Because of pre-existing gender inequalities, deep-rooted discrimination and feminised poverty, the multifaceted consequences of the current COVID-19 pandemic have adversely impacted women more than men.
- The levels of sexual and gender-based violence has spiked in Zimbabwe as households are placed under the increased strains that come from concerns over health, psychosocial well-being and loss or reduction of income, and many women and

girls are under lockdown with their abusers

- A respondent explained the increase in violence by arguing,
 - *'... hunger is an issue which triggers to violence in the homes. Before the lockdown women could source for provisions and income using regular methods and avoid disputes about provisions or could visit friends for temporary relief.'*
- The right to free movement in Zimbabwe was suspended by COVID-19 safety precautions and this had a negative effect on SGBV survivors' access to services.
- Key informants highlighted cases that involved women being denied access to services as police at roadblocks demanded letters that allowed individuals to move freely during the lockdowns. Government also diverted funds from other health care needs towards combating COVID-19. Even at local levels, critical resources have been diverted towards COVID-19.
- Organisations in the three districts and across the country instituted various mechanisms to provide services during the lockdowns:

For example, in Hurungwe District, Family AIDS Caring Trust (FACT) officer noted that they had trained volunteers in the communities who were responsible for referring survivors to health services dependent on the nature of challenges.

(e) Relevance, effectiveness and efficiency of the formal justice system

- The formal justice system tends to have a one-size-fits-all approach, which in reality causes complications at the local level.
- Most stakeholders indicated the continued lack of awareness and knowledge around the law in most communities. Other stakeholders however argued that there is

also wilful ignorance by communities who know the law but chose to act contrary to it arguing this is their culture.

- There is no accountability to those who are complainants or to witnesses who participate in the delivery of justice within the system. Within the court system survivors are usually left in the dark around key issues and decisions around their cases.
- The lack of faith most survivors and witnesses have in the system. This lack of faith is often compounded by the lack of information around how the formal justice system works.
- In the formal justice system, the prosecutors in criminal trials have to prove beyond reasonable doubt that the accused is guilty, and where evidence is missing or compromised alleged perpetrators can go free.
- Survivors and witnesses also indicated the challenges with accessing services at night. Whilst both the police and health care centres provide services at night in many areas, the services are often inadequate and not responsive due to lack of resources.
- Key informants within the referral pathways largely touted the benefits related to how formal justice system is able to stop the abusive acts by imprisoning perpetrators.
- However, imprisonment, community service or a fine that goes to the state means that the nature of justice in the formal system provides little material benefit to survivors and their families.

(f) Costs and implications of utilising the formal justice system

- Access to justice for survivors of violence is costly, as they have to pay transport fares, which vary depending on their location. Whilst it is a common approach to focus on financial/monetary costs, there are other non-economic costs and losses that survivors face.

- The cost of utilising the formal justice system is also social and cultural. Through discussions with many participants in this research, it became clear that the socio-cultural cost of utilising the formal justice system has a more profound impact than economic costs.
- In Umzingwane District, a district council official argued, 'Some individuals are adamant and have their beliefs that when you report, you have committed some form of taboo.' Other respondents talked about socio-economic issues such as loss of time and income from attending court as indirect costs.
- There are also socio-cultural costs at the heart of which is fear. Fear is often linked to a lack of knowledge about the formal justice system and stigma associated with reporting. Respondents from the communities also indicated that they are to report a case they witnessed only if the survivor comes forward first to report. There is a stigma associated in reporting abusive situations in other people's homes.

(g) Linkages between formal justice system and informal justice system

- Because traditional justice systems frequently fill the gap between the needs of the community and the services offered by the formal court system, the shape and design of traditional justice systems change as the formal court system changes and as the needs of the community evolve
- A JSC official was of the view that: 'The formal justice remains best for redressing issues to do with SGBV and the like. The informal justice system has too many loopholes.' Most stakeholders in the formal justice systems were highly critical of the informal justice system.
- A respondent from the police also indicated how the perceived weaknesses of the formal justice system often leads people towards

informal justice systems. He argued,

Most people don't report their cases because they are afraid of losing support, because most of the perpetrators are the bread winners and victims are heavily dependent on them, they don't have transport to go to the police or courts and people are not patient for the long process. They would rather have the informal justice hear and try the cases.

Recommendations

- *Realignment of laws with the Constitution of Zimbabwe:* The constitutional realignment process in Zimbabwe is moving at a frustrating pace leading to complexities in implementing the laws related to SGBV, HP and SRHR. There is need to advocate for fast paced reforms of legal frameworks for the protection of women and children in line with the 2013 Constitution.
- *Strengthening the SGBV response/referral pathway:* Introduction of more one stop centres. Increased funding for the referral pathway. Increase capacity of all actors in the pathway to understand their role and also the law so that they provide a holistic support system.
- *Building capacity of prosecutors and police officers in handling SGBV, HP Cases:* The relationship between the prosecutor, police and survivors should be improved. The prosecutors should be trained on the basics of handling and sitting down with survivors and appropriate language to use in explaining court processes. These discussions with survivors should include the significance of bail applications by suspected offenders, postponements and delays of trial proceedings. The police officers should be trained on human rights and handling of survivors in a gender sensitive manner.
- *Investment in technology and infrastructure to make formal justice system more accessible:* There are however still major challenges using technology in most rural parts of Zimbabwe. In Mutasa District, key informants indicated that some parts of the district do not have cell phone reception and that most people do not have phones. The use of technology is thus limited in such contexts. There is however still need to build cheap technological systems that enhance access to SRHR services. In Mutasa District, an official with the National AIDS Council indicated that there is need to take basic steps such as a toll-free number for reporting cases to cut costs.
- *Recommendations for Legal Aid Directorate:* Increased funding, resources, training and incentives to improve operations and decentralisation of legal aid services to district levels.
- *Recommendations to the Judiciary Services Commission:* Besides creating specialised courts, the JSC can also build infrastructure that ensures that courts are adequately equipped to reduce survivors' contact with the accused and ensure their safety. This may include separate waiting rooms and entrances; screening off sections of courthouse verandas and charge offices where there are no other options can work private rooms to conduct interviews; infrastructure to ensure facilitation of survivors' testimony, and special units within the court administrative staff for coordinating support for survivors throughout the trial.
- *Continued programming and training around changing community attitudes and norms that promote SGBV and HP:* There is need to continue investing in community training and advocacy that focuses on changing attitudes, norms and practices that promote SGBV and HP. Community stigma was highlighted as a barrier to reporting and it is important to combat

this through continued programming and appropriate sensitisation campaigns.

- *Advocate for judicial activism:* There are growing voices advocating for judicial activism to protect the rights of vulnerable groups especially women and children from outdated laws. The judiciary, like other branches of Government in Zimbabwe are governed by the Constitution. For example, Section 81(2) of the Constitution states, '8a child's best interests are paramount in every matter concerning the child.' Advocates of judicial activism can use this section to call for the judiciary in specific cases where the law is not in the best interests of the child to intervene and protect child right.

CHAPTER 1:

SITUATING THE STUDY ON THE FORMAL JUSTICE SYSTEM IN ZIMBABWE

1.1 INTRODUCTION

This report provides a grounded analysis of the formal justice system in the context of sexual and gender-based violence (SGBV), harmful practices (HPs) and sexual and reproductive health rights (SRHRs) in Zimbabwe. The research was undertaken under the Spotlight Initiative in Zimbabwe. The Spotlight Initiative Country Programme seeks to address gaps and the gender blind spots in the implementation of the law by investing in the formal and informal justice systems and the linkage between the two in the continuum of SGBV/HP/SRHR responsive justice delivery. The overall aim of the project is to assess the efficacy of the formal justice system in addressing gender-based violence and to understand the processes, actors, implications and costs associated with the use of formal justice systems. This task involves conceptualising, designing, managing, and leading a research project while placing emphasis on high quality evidence-based research. The research utilises a qualitative research approach to examine the effectiveness of the formal justice system in responding to the challenges confronting women and girls who experience or are exposed to SGBV and HPs in different contexts. The report provides narratives that highlight the lived experiences

of survivors and witnesses who have interacted with the formal justice system. More importantly, the research into the adequacy of the institutional frameworks should be informed by the practical challenges and violence that confronts survivors and victims of SGBV and HP (especially women and girls) to ensure that state and non-state actors adopt and implement evidence-based interventions to achieve the full enjoyment of women's rights and gender equality in Zimbabwe. Despite existing legislation, gender-based violence (GBV) remains high in Zimbabwe. The Zimbabwe Demographic and Health Survey (ZDHS) of 2015 estimates that 27% of women have experienced sexual violence in their lifetime with insignificant variation by wealth and education.

1.2 OBJECTIVES OF THE STUDY

The objectives of the Study are as follows:

- To identify the various typologies of formal justice systems;
- To map the various legal and policy frameworks in the formal justice system;
- To examine how formal justice systems, operate and the roles played by various key actors;
- To examine survivors' experiences in formal justice systems;
- To assess community perceptions on the efficacy of formal justice systems;
- To establish the linkages between formal justice systems and informal ones;
- To assess the gendered experiences of women and children who utilise or have utilised the formal justice systems;
- To assess the efficacy (accessibility and effectiveness) of formal justice systems in meeting the multiple and even competing and contradictory justice needs of women and children; and
- To determine the costs (social, economic

and emotional) and implications of utilising formal justice systems.

1.3 CONCEPTUAL FRAMEWORK

This research is based on an eclectic conceptual approach that combines three models to provide an extensive understanding of how the formal justice system is experienced by survivors of sexual and gender-based violence (SGBV) and harmful practices (HPs) in Zimbabwe. It utilises the intersectionality, life cycle and human rights approaches. Intersectionality in this study is used to analyse how social and cultural categories intertwine. Intersectionality has become the major way of intellectualising the relations between systems of oppression which construct our multiple identities and our social locations in hierarchies of power and privilege. Intersectional feminism is a branch of feminism which identifies how different aspects of social and political discrimination overlap with gender (IWDA, 2018).

Crenshaw (1989) argues that the experience of being a black child/woman cannot be understood in terms of being black and of being a woman considered independently, but must include the interactions, which frequently reinforce each other. Crenshaw states that the intersectional experience of black children and women is more powerful than the sum of their race and sex, and that any observations that do not take intersectionality into consideration cannot accurately address the way black women are subordinated (ibid). In this research it was important to employ intersectionality as a tool of research and of analysis as it is important to understand how women and children's lives are shaped and affected by factors that operate in addition to, and concurrently with, their sex and gender. In the Zimbabwean context, women's experiences of violence are influenced by factors such as age, class, religion, location, sexuality, educational background and disability. Adequate redress

for human rights abuses suffered by women and children therefore requires an understanding of the ways in which socio-economic, cultural, sexual and other factors shape and define their experiences (Buxton- Namisnyk 2015).

The life-cycle approach will complement the above approach in recognition of the intersecting forms of discrimination all women and girls confront throughout their lives. The life-cycle approach informs the SRHR needs and concerns of women and girls at different stages in their lives, especially women above 50 years, whose SRHR knowledge and health concerns are not adequately provided for in services. Analysis on pathways to the perpetration of SGBV shows that perpetrators often have experienced sexual and other forms of abuse in childhood, therefore, while the focus of the Spotlight Initiative in Zimbabwe is on women and girls, prevention and service actions will also target boys as survivors, witnesses and as potential perpetrators. The creation of a survivor-centred (in the context of service provision) and a life-cycle approach to the collection of SGBV, SRHR and HPs data is essential for a more effective analysis, dissemination and use of this data for planning, policy formulation, budgeting and evidence-based advocacy for the eradication and prevention of SGBV and HPs at national, subnational and community levels.

The study also utilised approaches based on human rights. These approaches strengthen the rationale for participatory, people-centred, sustainable human development and provides additional tools for reaching this goal. Rights-based approaches promote human rights principles, such as the universality of human rights, equality and non-discrimination as guaranteed by the Constitution of Zimbabwe, as a reflection of international human rights law, international and regional agreements. Human rights are the rights possessed by all persons, by virtue of their common humanity,

to live a life of freedom and dignity (Hughes 2011). They can be categorised as civil and political rights, such as the right to life, equality before the law, and freedom of expression; economic, social and cultural rights that include the right to work, social security and education, or collective rights like the right to development and self-determination. It is well established under the International Law and the African Human Rights System that states have a tripartite obligation to respect, protect, and fulfil these rights.

The obligation to protect requires states to take positive measures to ensure that non-state actors or private persons do not violate the human rights of others. Such positive measures include adopting legislative and other measures that prohibit private persons from violating the human rights of other individuals. The human rights approach justifies legitimate claims, not because the realisation of rights such as that to health or life is a means to an end, such as quality childcare or development or population policies, but because the realisation of their rights is an important goal in itself.

1.4 RESEARCH METHODOLOGY

1.4.1 Research approach

The research was qualitative in nature, seeking to bring to the fore survivors' lived experiences with the formal justice system. The research utilised a gender sensitive qualitative approach which also included a comparative approach that juxtaposed the survivors' and witnesses' experiences with those of service providers and communities, this needs to be mentioned at this point. Qualitative methods allow researchers a degree of flexibility in the conduct of a particular study, facilitate the examination of sensitive or difficult topics if a relationship of trust develops between the researcher and the researched, and enable researchers to make connections between

different aspects of the formal justice system (Griffin, 2000). Qualitative methodologies study the participants' perspectives – feelings, thoughts, beliefs, ideals and actions in a natural setting (McMillan and Schumacher, 1993). It aims to provide an in-depth understanding of the world as seen through the eyes of the people being studied. This methodological choice was based on the need to ensure that we provided a holistic and nuanced exploration of the lived realities of women and children with formal justice systems. The qualitative research focused on providing thick descriptions and detailed analysis of the various processes, actors, issues, evolution and lived experiences of survivors with formal justice. It also assisted in understanding the perceptions around the strengths and limitations of formal justice systems as experienced by the officials working in the system.

1.4.2 Sampling approach and data collection methods

The research focused on three purposively sampled districts namely Mutasa, Umzingwane and Hurungwe. The research relied largely on purposive sampling targeting community members, key stakeholders and key participants in the formal justice systems across the three districts. Mapping of the key respondents involved in the study focused on the following criteria:

- Women and men over 18 years who are survivors of sexual and gender-based violence and harmful cultural practices that have utilised the formal justice system;
- Women and men who have participated in formal justice systems linked to SGBV or HP cases in particular witnesses; and
- Actors in the formal justice systems: Zimbabwe Republic Police, hereinafter referred to the police, Victims Friendly Unit (VFU), Ministry of Justice and Parliamentary Affairs, National

Prosecution Authority (NPA), Judicial Services Commission (JSC), Ministry of Women Affairs, Community, Small and Medium Enterprise Development, prosecutors, judges, lawyers, civil society organisations working with survivors of SGBV, international partners working with survivors of SGBV.

In total 36 survivors (28 female and 8 male), 21 key informants and 4 witnesses were interviewed across the three districts. Another 15 interviews were conducted at national level with various key stakeholders. Fuller details of the sample are outlined in Annexure One and Two.

Survivor oriented in-depth interviews were augmented by qualitative meta-analyses. It is sometimes known as qualitative meta-synthesis. It adopts an interpretative analytical technique that uses the qualitative findings reported in previous studies as building blocks to gain a deeper understanding of a particular phenomenon. A systematic review was also appropriate in identifying, appraising and synthesising research-based evidence and presenting it in an accessible format. Due to the intuitive and inductive nature of systematic reviews, thematic analysis was utilised to analyse the data. It consisted of three specific activities: first, scrutinising the data for themes, concepts and propositions; second, coding the data and refining one's understanding of the subject matter; and the final activity involves understanding the data in the context it was collected. Documents included the following key areas:

- Constitutional rights framework which includes analysing the implication of all rights relating to SGBV, HP and SRHR;
- Legislative framework covering all relevant acts;
- Institutional framework which covers the entire justice delivery system; and
- literature which outlines cases, lived

experiences and voices of people that have utilised the formal justice system in relation to SGBV, HP, and SRHR.

The survivors of SGBV and HP provided narratives that highlighted their lived experiences and the deep emotional and spiritual impacts of these practices. The narratives are important in understanding the qualitative impacts of violence and how it affects everyday lives of people. Gaining access to justice for acts of SGBV is important to secure relief/remedy at the individual level, but also to promote change at the systemic level in terms of laws and practice. However, there is clear disjuncture between medico-legal narratives on how survivors of SGBV and HPs should be treated and how they are actually treated. Lived experiences of women and girls offer different nuances. It is important to note that rarely are survivors asked what access to justice for SGBV, HPs and SRHR violations means to them. In most instances, justice for survivors of SGBV, HPs and SRHR abuse is conceived in a criminal justice response to the perpetrator. Current international trends are towards taking the victims/survivors needs into account, this is an area that the formal system needs to address otherwise it cannot compete with the informal system.

Rape for example, can lead to permanent physical disabilities, such as the inability to bear children; it can also leave long-term mental health issues for the victim, and may cause serious medical conditions (Campbell et al., 2003). What does access to justice mean in these circumstances? It has been noted that women may identify other aspirations as their idea of justice such as the ability to seek safety through effective protection orders; physical and mental recovery through good quality and accessible health services; and/or the opportunity to seek a divorce and a new life free from the violence of a spouse (International Commission of Jurists, 2016). Women's experiences, usually negative

towards formal justice systems start with how they are even defined. From existing literature, it has been repeatedly stated that women and girls who suffer violence are victims. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power uses the victim terminology and this is also the practice of the Rome Statute of the International Criminal Court.³ However, some feminists and women and girls' rights defenders have argued that the term survivor is more appropriate as it also reflects agency and resilience (Profitt, 1996; UN Women, 2019). Accordingly, in this report we use the terminology 'survivor' instead of 'victim'.

1.4.3 Research sites

The research was conducted in three districts across Zimbabwe namely Mutasa, Umzingwane and Hurungwe. The choice of the three districts was mainly because they fall under the programming areas for the Spotlight Initiative. The districts also have high prevalence of SGBV and HPs. They provide a broad spectrum of communities in different parts of Zimbabwe. The findings from this study therefore provide insights into common areas of concern with the formal justice system across Zimbabwe. Figure 1 overleaf shows the location of the three research areas as well as other Spotlight districts.

Mutasa District: Mutasa RDC is one of the seven local authorities in the Manicaland province of Zimbabwe divided into 31 wards with a population of 169,756, that is, 79,825 males and 89,931 females, as of the last census held in 2012.⁴ It is located 30 km northeast Mutare (fourth largest city in Zimbabwe). Mutasa District's economy is

agriculture-based. Villagers practice semi-commercial agriculture. And the district has several plantations and estates that provide employment. Mutasa remains a largely patriarchal community. As a district, Mutasa has in the recent past recorded cases of SGBV. Mutasa district has a high prevalence of GBV cases owing to a plethora of factors which range from religion, culture and the absence of a well-resourced police force to track and bring offenders to book.⁵ Some of the early marriages in the District are attributed to religious beliefs harboured by different apostolic sects.

Umzingwane District: Umzingwane is a District in the northern part of Matabeleland South province in Zimbabwe. Umzingwane District is in the North Eastern part of Matabeleland South Province. It shares administrative boundaries with four other districts which are Mguza to the North-east, Insiza to the East, Gwanda to the South and Matobo to the West. The district covers an area of 2,797 square kilometres and has twenty administrative wards. These wards are categorised as follows - twelve (12) communal, that is wards 1 – 12; wards 13, 14, 19, 20 and part of 17 are resettlement; 15, part of 17 and 18 are commercial; and ward 16 is peri-urban. The peri-urban ward houses Esigodini Growth Point, which serves as the 'district capital'.⁶ Traditionally, the district is divided into four parts, each ruled by a local chieftain. As of 2012 census, the district had a total population of 62,990 (31,194 male and 31,796 female).⁷

Hurungwe District: Hurungwe District is situated in the north-western part of Zimbabwe and is one of the six districts that make up

3 See UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted under General Assembly resolution 40/34 (1985) and Article 43(6) of the Rome Statute of the International Criminal Court.

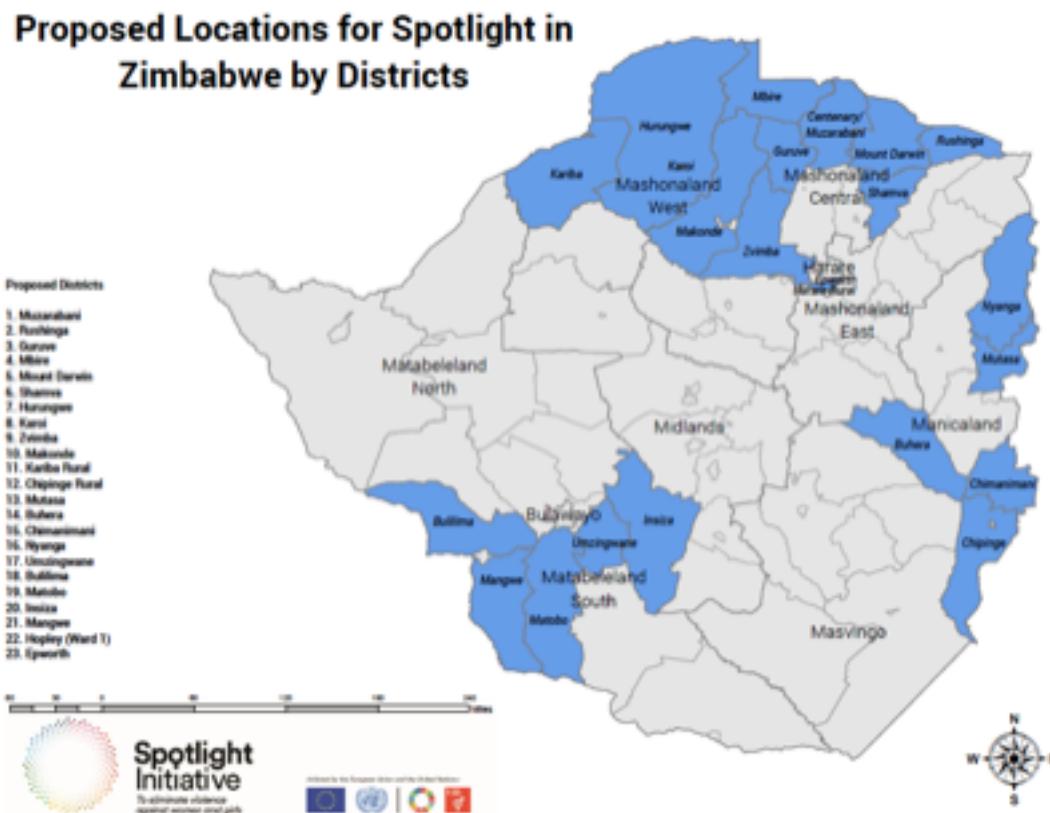
4 <http://mutasardc.org.zw/index.php/about-mutasa-rdc/>

5 <https://healthtimes.co.zw/2019/08/10/gbv-the-evil-unfinished-business-stalking-zim/>

6 <https://web.archive.org/web/20171015224504/http://umzingwanercd.co.zw/about/>

7 https://web.archive.org/web/20170329004505/http://www.zimstat.co.zw/sites/default/files/img/publications/Census/CensusResults2012/Mat_South.pdf

Figure 1: Map of Spotlight districts including three research sites



Mashonaland West, that is, Makonde district to the South and Guruve district. Mashonaland Central to the north. It is the largest district in Mashonaland West, with a total area of 19,678.34 square km. The district is also one of the country’s biggest game reserves. Zambezi Valley conservation area.⁸ Using the 2012 census report, the population of Hurungwe rural district is now estimated 324,675, with 162,289 males and 162,386 females, which is roughly 22% of the total population for Mashonaland-West province.⁹ UNFPA’s Community Based GBV Surveillance System in 2017 highlighted Hurungwe as one of the GBV hotspots in Zimbabwe¹⁰ as a result of gold

mining and agricultural communities.

1.5 OVERVIEW OF THE REPORT

The report has four chapters which build on each other to provide a nuanced analysis of the formal justice system in Zimbabwe. This first chapter has provided an introductory note highlighting the overall aims of the research as well as the methodological approach utilised in this study. Chapter two focuses on outlining the nature, roles, practices and operations of the formal justice system in Zimbabwe. It highlights both the international and regional agreements that shape specific aspects of the national response to SGBV, HP and SRHR. The chapter also provides analysis of the constitution, laws and institutions that make

8 <https://www.pindula.co.zw/Hurungwe>

9 <http://hurungwerdc.co.zw/about/>

10 <https://zimbabwe.unfpa.org/sites/default/files/pub-pdf/Fact%20Sheet%20Community-Based%20Gender%20Based%20Violence%20%20Surveillance%20System%20Report%20June%20>

[1%202017%20-%20March%2031%202018.pdf](#)

up the formal justice system. The third chapter provides a presentation and analysis of the findings from the study. It highlights the lived experiences of research respondents in the three districts with the formal justice system. The findings are thematically discussed, highlighting the numerous gaps within the formal justice system. The last chapter focuses on highlighting the key recommendations to emerge out of the research.

1.6 CHAPTER CONCLUSION

The first chapter grounds the methodological and conceptual basis of the study. It highlighted how the study was conceptualised and conducted across three research sites where Spotlight work is being undertaken in Zimbabwe. The three case studies provide important insights that can provide a national picture on the experiences of survivors of SGBV and HP with the formal justice system.

zCHAPTER 2:

BACKGROUND ANALYSIS OF THE FORMAL JUSTICE SYSTEM, SGBV, HP AND SRHR IN ZIMBABWE

2.1 INTRODUCTION

This chapter provides a broad overview of the situation in Zimbabwe pertaining to SGBV, HPs and SRHR. It highlights issues around prevalence, nature and occurrences of SGBV and HP. The chapter provides a grounded analysis of the formal justice system in Zimbabwe. It largely utilises meta-analyses to situate how the formal justice system is organised and the various related issues pertaining to access and quality of justice. The outline of the formal justice system in this chapter provides the basis for analysing and understanding the lived experiences of survivors and victims of SGBV and HPs in Chapter 3.

2.2 DEFINING SGBV, GBV OR VIOLENCE AGAINST WOMEN (VAW), HP AND SRHR

2.2.1 SGBV, GBV or violence against women (VAW)

Good practices require that states adopt definitions that are derived from international and regional human rights agreements. For example, ‘Where possible, definitions are

derived from the Protocol, the Convention or other existing international instruments.’¹¹ The United Nations adopted the first international definition of violence against women in 1993 which states,

‘Violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life. Violence against women shall be understood to encompass, but not be limited to, the following: Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

The terms ‘sexual violence’, ‘gender-based violence’ and ‘violence against women’ are commonly used interchangeably to ‘refer to physical, sexual and psychological harm that reinforce female subordination and perpetuate male power and control’.¹² In this report, we use tighter definitions as follows:¹³

11 UNODC, *Model Law against Trafficking in Persons*, p 8.

12 UNHCR *Training Package (2016) SGBV Prevention and Response*, p 10.

13 *Ibid.*

- The term **gender-based violence** is used to distinguish common violence from violence that targets individuals or groups of individuals on the basis of their gender. GBV has been defined by the Committee for Convention on the Elimination of Discrimination Against Women (CEDAW) as violence that is directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty.
- The term **violence against women** refers to any act of gender-based violence that results in, or is likely to result in, physical, sexual and psychological harm to women and girls, whether occurring in private or in public. Violence against women is a form of gender-based violence and includes sexual violence.
- **Sexual violence, including exploitation and abuse**, refers to any act, attempt or threat of a sexual nature that results, or is likely to result, in physical, psychological and emotional harm. Sexual violence is a form of gender-based violence.

The forms of GBV that are prevalent are physical violence, sexual violence and rape, intimate partner violence, emotional and psychological abuse, sexual harassment, trafficking and child marriages.¹⁴ Multiple causes of GBV ‘can be traced back to harmful cultural and traditional practices, gender inequalities and discrimination in all aspects of life (social, economic, religious and political) and entrenched institutional arrangements that are patriarchal’.¹⁵

¹⁴ Ibid.

¹⁵ Ibid.

The UNHCR and Implementing Partners¹⁶ have expanded the definition of SGBV¹⁷ as follows:

Gender-based violence is violence that is directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.... While women, men, boys and girls can be victims of gender-based violence, women and girls are the main victims. (...) shall be understood to encompass, but not be limited to the following:

a) Physical, sexual and psychological violence occurring in the family, including battering, sexual exploitation, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

c) Physical, sexual and psychological violence perpetrated or condoned by the state and institutions, wherever it occurs

The UNHCR uses the term ‘SGBV’ instead of ‘GBV’ to emphasise the scope and gravity of sexual violence in situations of conflict and displacement as well as to encourage a more inclusive approach that does not focus exclusively on women and girls who comprise

¹⁶ Ibid, p 10.

¹⁷ Based on Articles 1 and 2 of the UN General Assembly Declaration on the Elimination of Violence against Women (1993) and Recommendation 19, paragraph 6 of the 11th Session of the CEDAW Committee. See, UNHCR Training Package (2016) SGBV Prevention and Response, p 10

the majority of victims,¹⁸ but should also target boys and men.¹⁹

‘Sexual violence’ means rape and sexual assault, including sexual offences against children.²⁰ It is defined as ‘any sexual act that is perpetrated against someone’s will.’²¹ Additionally, ‘It includes, but is not limited to, rape, attempted rape and sexual slavery, as well as unwanted touching, threatened sexual violence and verbal sexual harassment.’²² It can be perpetrated within community, family, workplace and school settings. Children and women and men can be victims of sexual violence. They may be victims of rape who would not have resisted the attacks due to fear of being seriously injured or killed. Unwanted sexual intercourse is a form of sexual violence because the partner concerned would not have consented. The issue of consent is also important in relation to minimum age and free and full consent to marriage²³ and legal age of sexual consent. One is criminalised for having sex with a young person even with her or his consent in terms of Section 70 of the Criminal Reform and Codification Act. However, those aged between 12 and 16 years are covered by this Act. The Act protects children between 12 and 16 years. This means victims above 16 years but below 18 years are not protected this Act. The Act does also not criminalise child

18 Ibid, p 19.

19 Ibid, p 10.

20 UN Women, Good Practices in National Action Plans on Violence Against, p 31. Women Expert Group meeting organized by United Nations Entity for Gender Equality and Empowerment of Women. (UN Women) and United Nations Economic Commission for Latin America and the Caribbean Sub-regional Headquarters for the Caribbean. Port-of-Spain, Trinidad and Tobago 13-15 September 2010

21 UNODC, *Strengthening the Medico-Legal Response to Sexual Violence*.

22 Ibid.

23 See Articles 2(e) 10(a) of CEDAW; Articles 2(2) and 28(1)(b) of CRC; Article 18 of the African Charter on Human and Peoples Rights; Article 6 of Maputo Protocol, Article 8 of the Revised SADC Protocol on Gender and Development and Constitution of Zimbabwe.

marriages that have resulted from mediation by their parents and perpetrators.

2.2.2 Harmful practices

The Joint General Recommendation No.31 of CEDAW/ General Comment No. 18 CRC on harmful practices,²⁴ describe harmful practices as:

[P]ersistent practices and behaviours that are grounded in discrimination on the basis of, among other things, sex, gender, age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that these practices cause to the victims surpass the immediate physical and mental consequences and often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, educational, economic and social status.

This Joint General Recommendation recognises harmful practices are compounded by intersecting forms of discrimination that involve and cause harm or suffering. The characteristics of harmful practices are:

- They constitute a denial of the dignity and/ or integrity of the individual and violate human rights and fundamental freedoms of women and children as recognised under international law.
- They constitute discrimination against women or children and are harmful because they result in violence, negative physical, psychological, economic or social harm or limit the capacity of a woman or a child to participate fully in society.

24 CEDAW/C/GC/31-CRC/C/GC/18.

- They are traditional, emerging or re-emerging practices that are kept in place through social norms that perpetuate male dominance and the inequality of women and children based on their sex, gender, age and other intersecting factors.
- They are imposed on women and children by families, community members or society at large, regardless of whether the victim provides or is able to provide full, free and informed consent (Rajab-Leteipan and Kamunyu, 2017:12).

The CEDAW Committee acknowledges that ‘gender stereotyping, traditional and customary practices can have harmful impacts on all areas of the lives of older women, in particular those with disabilities, including family relationships, community roles, portrayal in the media, employers’ attitudes, health care and other service providers, and can result in physical violence as well as psychological, verbal and financial abuse.’²⁵ The states parties have a core obligation ‘to enact and enforce the legal prohibition of harmful practices and gender-based violence, including female genital mutilation, child and forced marriage and domestic and sexual violence, including marital rape, while ensuring privacy.’²⁶ The Domestic Violence Act includes harmful practices as forms of domestic violence (DV) namely forced marriage, child marriage, forced virginity testing, pledging a girl child for the purposes of appeasing spirits, newly wedded daughter-in-law sleeps with father-in-law and forced wife inheritance.²⁷

2.2.3 Femicide

Research has defined ‘femicide’ and ‘feminicide’, in relation to the concept of gender-related killing of women and girls.²⁸ These are hate

crimes against women that perpetrated by men simply because of the gender roles assigned to women.²⁹ In addition, ‘femicide is inextricably linked to violence against women.’³⁰ Gender-related killings can be perpetrated by intimate partners and domestic violence. There are also honour-related killings of women and girls which ‘are usually committed by family members when they consider that the behaviour of female family members has brought shame on the family and needs to be sanctioned. This kind of killing is a consequence of men’s domineering relationships with women.’³¹

2.2.4 Sexual harassment

- *Harassment*: Any unwelcome conduct of a sexual nature that can be verbal, non-verbal or physical in nature.
- *Sexual behaviour*: Actions, language or visual materials which specifically refer to, portray or involve sexual activity or language. Conduct of a sexual nature may include overt sexual solicitations, inappropriate touching, sexual jokes and inquiries about a person’s sex life.
- *Sex-based behaviour*: Sex-based behaviour occurs because of the sex of the intended victim but is not necessarily sexual in nature. Examples of this kind of behaviour are disparaging comments on the role of women, or discriminatory treatment aimed only at women.
- *Assault*: Infliction of offensive physical contact or bodily harm or the threat or attempt to inflict such conduct or harm.
- *Peer-to-peer harassment*: Harassing behaviour between individuals considered

2019), 23.

29 Ibid.

30 A/HRC/20/16, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (2012), para. 15.

31 UNODC, 30. See Afghanistan Independent Human Rights Commission, National Inquiry Report on Factors and Causes of Rape and Honor Killing in Afghanistan (2013), p. 8.

25 General recommendation No. 27 on Older Women And Protection of Their Human Rights, para 16.

26 ICESCR General Comment 22 (2016), para 49(d).

27 Section 3 Domestic Violence Act Chapter 5;16

28 UNODC, Global Study on Homicide 2019 (Vienna,

to be equals in the context in which the harassment takes place, such as a student harassing a fellow student, athlete harassing a fellow team member, employee harassing another employee at the same level.

- *Quid pro quo harassment*: Also referred to as abuse of authority, occurs when (1) job benefits, including employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment, are made contingent on the provision of sexual favours, usually to an employer, supervisor or agent of the employer who has the authority to make decisions about employment actions, or when (2) the rejection of a sexual advance or request for sexual favours results in a tangible employment detriment.
- *Hostile-environment harassment*: Harassment that does not result in a tangible employment-related action such as displaying pornography, touching and grabbing, and sexual or sex-based remarks or jokes.
- *Cyber-harassment*: The use of new media and web-based technology to carry out harassment, such as unwanted emails, text messages, and posting on social network sites such as Facebook.³²

2.2.5 Human trafficking

According to the UN Handbook, ‘The definition should include: A provision which states that the consent of the trafficking victim is not a defence to the criminal offence of sex trafficking; and A provision which states that a trafficking victim shall not be detained, arrested or charged with a criminal offence for the activities they are involved in as a direct consequence of being trafficked.’³³

³² UN Handbook for Legislation on Violence against Women (2010).

³³ UN Handbook for Legislation on Violence against Women (2010).

2.2.6 Sexual and reproductive health and rights

Starrs et al. (2018: 2646) provides the following integrated definition of sexual and reproductive health and rights:

Sexual and reproductive health is a state of physical, emotional, mental, and social wellbeing in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction, or infirmity. Therefore, a positive approach to sexuality and reproduction should recognise the part played by pleasurable sexual relationships, trust, and communication in the promotion of self-esteem and overall wellbeing. All individuals have a right to make decisions governing their bodies and to access services that support realisation that right. Achievement of sexual and reproductive health relies protection of human rights which provide that all individuals have the following:

- Have their bodily integrity, privacy, and personal autonomy respected;
- Freely define their own sexuality, including sexual orientation and gender identity and expression;
- Decide whether and when to be sexually active;
- Choose their sexual partners;
- Have safe and pleasurable sexual experiences;
- Decide whether, when, and whom to marry;
- Decide whether, when, and by what means to have a child or children, and how many children to have;
- Have access over their lifetimes to the information, resources, services, and support necessary to achieve all the above, free from discrimination, coercion, exploitation, and violence.

Essential sexual and reproductive health services must meet public health and human rights standards, including the 'Availability, Accessibility, Acceptability, and Quality' Framework of the right to health. The services should include:

- Accurate information and counselling on sexual and reproductive health, including evidence-based, comprehensive sexuality education;
- Information, counselling, and care related to sexual function and satisfaction;
- Prevention, detection, and management of sexual and gender-based violence and coercion;
- A choice of safe and effective contraceptive methods;
- Safe and effective antenatal, childbirth, and postnatal care;
- Safe and effective abortion services and care;
- Prevention, management, and treatment of infertility;
- Prevention, detection, and treatment of sexually transmitted infections, including HIV, and of reproductive tract infections; and
- Prevention, detection, and treatment of reproductive cancers

2.3 OVERVIEW OF SGBV, HP AND SRHR IN ZIMBABWE

Violations of women and children's rights persist in Zimbabwe regardless of the adoption of seemingly progressive laws targeted at protecting women against SGBV, HP and SRHR. Violence against women and girls is a violation of the fundamental rights and freedoms that are entrenched in international and regional human rights frameworks, the Constitution as well as national legislation. SGBV results from and perpetuates harmful gender norms and cuts across all aspects of the

development of women and girls (International Planned Parenthood Federation, 2015). According to the Zimbabwe National Statistics Agency (ZimStat) Quarterly Digest of Statistics for the fourth quarter of 2016, 8,069 women were raped in 2016; 7,752 cases of rape were reported in 2015, 7,000 cases in 2014, 5,717 cases in 2013, 5,412 cases in 2012, 5,446 cases in 2011, 4,450 in 2010. This translates to 22 women being raped daily or an equivalent of one woman being abused every 75 minutes and an average of 646 women being sexually abused monthly. Data collected through the ZDHS (2015) and other prevalence studies show that intimate partner violence (IPV) among those aged between 15-49 years is the most prevalent form of violence experienced (Spotlight Initiative Country Document 2018). Again 35% of girls and women aged 15-49 years have experienced physical violence since age 15; 14% have experienced sexual violence at least once in their lifetime; and 32% of ever-married women have experienced spousal emotional violence (ZimStat et al., 2016). In the same ZDHS study, about six percent of women who have been pregnant have also experienced violence during one or more of their pregnancies (ZimStat et al., 2016).

Childhood sexual abuse is also prevalent in Zimbabwe. The 2011 National Baseline Study on the Life Experiences of Adolescents (NBSLEA) shows that 43% of girls 13-17 years reported that their first incident of sexual intercourse was unwanted (ZimStat et al., 2013). For the same age group, the victimisation rate for sexual violence was 9% for the females and 2% for the males. Findings by ZimStat et al. (2013) also indicate that one in three girls is raped or sexually assaulted before they reach the age of 18 years. In the ZimStat et al. (2013) report, it was highlighted that about 48% of the females and 5% of the males aged 13-17 years who reported childhood sexual violence said they experienced either two or more incidents. In

general, girls were significantly more likely to experience repeated sexual abuse compared to males. One in eight girls is reportedly being sexually harassed at school and 22% of children are reportedly being abused by care givers (Ministry of Public Service, Labour and Social Welfare, 2017). In general, women and girls with disabilities are both more likely to face sexual violence and abuse and are less likely to access support before or following an attack (Adams et al., 2018). Vulnerability is increased by their intersectional identities that include lack of self-esteem and economic dependence thereby placing women and girls with disabilities at greater risk of SGBV.

The percentage of young women aged 15-19 years, who are married, as well those who are unmarried and are sexually active, using any form of contraceptive is the lowest (12.3%) across all age groups, increasing their risk of early pregnancies and of contracting HIV and other sexually-transmitted infections (STIs) which compromise their sexual and reproductive health (Adams et al., 2018). This is because of cultural and religious beliefs as well as negative attitudes by healthcare providers towards adolescents and young girls who are sexually active. Women, especially young women (15-24 years), remain among the majority (59% women and 41% men) of those in Zimbabwe living with HIV. Intersecting factors jeopardise the SRHRs of women and girls, for example, lack of knowledge and information, poverty and unequal gender power relations within intimate partner relationships. Inter-generational sexual encounters with older men largely place young women at a greater risk. Women's care burden also limits their access to sexual and reproductive health services and in turn, lack of sexual and reproductive health services can increase women's care work burden by impeding their decisions on when and how many children to have (IPPF, 2012). Due to intersecting socio and economic factors,

and very limited access to contraceptives and family planning, girls in the age group 14-25 remain highly vulnerable to HIV infection with infection rates, which are 4-5 times higher than that of boys of the same age, and to teenage pregnancies (IPPF, 2015).

The 2011 NBSLEA collected information on experiences by adolescents. It focused on victimisation rates during a period of 12 months. These rates were based on responses from respondents that were aged 13 to 17. They reported that they had experienced a form of violence in the 12 months that preceded the survey. They indicated that boyfriends and girlfriends were the main perpetrators of sexual violence among males and females aged 18-24 years. It is important to note that sexual violence is 'any sexual act that is perpetrated against someone's will'.³⁴ Additionally, 'It includes, but is not limited to, rape, attempted rape and sexual slavery, as well as unwanted touching, threatened sexual violence and verbal sexual harassment'.³⁵ It can be perpetrated within community, family, workplace and school settings. Children and women and men can be victims of sexual violence. They may be victims of rape who would not have resisted the attacks due to fear of being seriously injured or killed. Unwanted sexual intercourse is a form of sexual violence because the other partner would not have consented. The issue of consent is also important in relation to minimum age and free and full consent to marriage³⁶ and legal age of sexual consent. One is criminalised for having sex with a young person even with her consent in terms of Section 70 of the Criminal Reform and Codification Act. However, those

34 UNODC, *Strengthening the Medico-Legal Response to Sexual Violence*.

35 Ibid.

36 See Articles 2(e) 10(a) of CEDAW; Articles 2(2) and 28(1)(b) of CRC; Article 18 of the African Charter on Human and Peoples Rights; Article 6 of Maputo Protocol, Article 8 of the Revised SADC Protocol on Gender and Development and Constitution of Zimbabwe.

aged between 12 and 16 years are covered by this Act. This means victims above 16 years but below 18 years are not protected by this Act. The Act does also not criminalise child marriages that have resulted from mediation by their parents and perpetrators.

HP refers to all behaviour, attitudes and or practices which negatively affect the fundamental rights of women and girls (in some cases boys), such as their right to life, health, dignity, education, and physical integrity.³⁷ Padare³⁸ (2014) cites the following harmful practices: *Kuzvarira* is a practice where parents marry off a child at birth or as a baby in exchange for food or cattle; *Chiramu* is a practice whereby it is culturally acceptable for a man to fondle the breasts of his wife's sister because she is considered to be one of his wives; and *Nhaka or wife inheritance* occurs when at the death of a husband, a woman is required to become a wife to a male relative who then takes over her late husband's duties. All these cultural practices are undertaken by families without the consent of girls and women. Safaids (2011), highlights another harmful cultural practice which occurs in Guruve called *kupisa guva*, a tradition where after the death of their father, all the girls in the family would be taken to the river for virginity testing. These practices, which are very invasive, comprise child maltreatment as they infringe on rights of the child. Another practice which is no longer very common but is occasionally still practised is the pledging of girls to appease vengeful spirits (*kuripa ngozi*). This occurs when a person commits a murder and to avoid a 'curse on the offending family' a virgin girl is handed over to the offended family by the family responsible for the harm-

37 Maputo Protocol Art. 1

38 Padare/Enkundleni/Men's Forum on Gender is an anti-sexist and anti-gender and domestic violence men's social movement that was established with the sole purpose of addressing violence against women by way of challenging patriarchy and promoting positive masculinities.

doing (Safaids 2009:15). Muronda (2009) also outlines other practices such as *kuputsa or kutengesa*, whereby a young child is married off to benefit her family; this could also be referred to as child trafficking. All these practices are based on specific traditional and cultural beliefs within different ethnic groups.

Across the three districts in this study, there were various types of HPs that were taking place and were highlighted by participants in this research. Below is an outline of the narratives from each district describing such practices.

- *Mutasa District*

A nurse in Mutasa District noted:

*Vasikana vanonzi vanodhonzwa (girls are experiencing elongation of the labia). It is a sex grooming practice that is said to help a girl when she is sexually active to satisfy a man when they have sex, but not realising that these practices can be damaging. Unfortunately, sex grooming could influence the girls to experience what they would have been taught by their mothers or aunts. When the same girls become sexually active, they are then denied access to SRHR services. As a result of nurses' attitudes towards these young girls, they are told to get parental consent in getting contraceptives. This confuses the girl who was groomed to have sex at an early age but denied contraceptives to avoid unplanned pregnancies. There is need to remove the age restrictions for accessing SRHR services.*³⁹

Another harmful practice which is prevalent in the district is early child marriages among members of the Apostolic groups such as Johanne Marange churches.

- *Umzingwane District*

One survivor discussed HP by means of such examples as '*ukungena*', when the late husband's younger brother assumes the role of

39 Interview, Nurse, Mutasa District

being a spouse to the widow. This is a common practice in their community. This interviewee also cited other harmful practices such as early child marriages; and a belief that a person who is HIV positive can be cleansed of the virus once they have sex with a virgin. A respondent highlighted another common practice of 'ukudonsa', which is elongation of the labia. The practice still exists because of stigma that one would not be considered as a 'complete woman' if they had not undergone the process. Further, it is still in existence because women feel that their partner will not be enticed into marriage as a result of absence of 'ukudonsa'. It was indicated that some mothers encourage their daughters to perform 'ukudonsa' using clothes pegs which is extremely painful and uncomfortable because of the sensitivity of the labia. Another respondent argued,

The only harmful practice, I am aware of is that if girls, usually during school holidays, come back home after 'home curfew' from visiting their boyfriends, they are sent back to go stay where they were. The girl goes back to the home of the boyfriend and eventually gets pregnant and is forced to permanently live with him even when they were still at dating stage. This is the norm in the community and its prevalence is high.⁴⁰

- **Hurungwe District**

In Hurungwe, the research found multiple practices that are defined as harmful. One such practice was virginity testing conducted by an Apostolic Sect. One respondent noted,

I grew up in the Zion Christian Church. At conferences, they would carry out virginity testing for all girls to verify they were still virgins. We were then assigned into groups of virgins and non-virgins. This was a name and shame practice for non-virgins. As a result, I thought this was a permissible practice and did not view it as a harmful

practice but a way of encouraging them to abstain from pre-marital sex. In 2017, I conducted a virginity test on my 16-year-old daughter who had skipped school. I feel very embarrassed about this test to this day.⁴¹

The practice is a violation of the victim's human rights and is associated with both immediate and long-term consequences that are detrimental to her physical, psychological and social well-being. Child marriages are also rife in this region as reported by a number of persons we interviewed.

2.4 INTERNATIONAL AND REGIONAL FRAMEWORKS

Zimbabwe is party to multiple regional and international frameworks that relate to SGBV, HP and SRHR. Annexure Six outlines some of the international conventions that have been ratified by the Zimbabwean government. This section provides a brief descriptive of some of these agreements, noting the implication and impact they have on Zimbabwean legal systems. Article 38 (1) of the Statute of the International Court of Justice lists the sources of international law. These include international conventions, international custom, general principles of law recognised by civilised nations, judicial decisions and juristic teachings of the most highly qualified publicists of the various nations. These sources comprise of 'hard law', which is legally binding, such as international conventions and judicial decisions, and 'soft law', which is not legally binding but has persuasive value, such as Declarations, General Comments, General Recommendations, views and special procedures issued by treaty bodies. The international legal framework for GBV is informed by a combination of hard and soft law which has three tiers – an international human rights framework, regional human

40 Interview, Witness 2, Umzingwane District

41 Interview, Survivor 2, Karoi

rights instruments and the SADC human rights system.

The international human rights framework is not a single document, but a system of conventions, treaties, declarations, implementation and enforcement mechanisms, committees, and reports on the protection of human rights and political institutions. At its foundation is the International Bill of Human Rights, comprising the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), all of which were drafted under the auspices of the United Nations. These three instruments provide the most basic protections against violence to women by recognising the inherent freedom and equality of all human beings; the rights and freedoms to be afforded to human beings, and, that such rights and freedoms are to be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The International Bill of Rights is supplemented by more targeted human rights treaties that provide protections to specific vulnerable groups such as women, children and persons with disabilities or prohibitions against certain acts.

The United Nations has made clear that violence against women is a violation of basic human rights. Amongst the catalogue of rights and freedoms, a number can be interpreted as prohibiting violence against women, such as those provisions that guarantee the right to life, liberty and the security of person, freedom from slavery or servitude, torture, cruel, inhuman or degrading treatment or punishment; and the right to equal protection of the law without any discrimination. Although these basic human rights apply without regard to sex or age. This means their provisions apply equally to women

and men, as well as to girls and boys. However, women are still disproportionately victims of certain specific human rights violations, such as domestic abuse, sexual violence and trafficking and sexual exploitation. The United Nations addresses such violations through thematic human rights documents, such as the CEDAW, and General Comments and Recommendations, such as the ICESCR General Comment 14, which provides the normative content of the right to health; General Recommendation No. 26: Women Migrant Workers; and CEDAW General Recommendation No. 19 and No. 35 on gender-based violence against women, updating General Recommendation No. 19 (2017). The Study will briefly discuss the following under the International Human Rights Framework:

- ***The Convention on Elimination of all Forms of Discrimination against Women (CEDAW), 1979*** brought women's issues into focus as human rights concerns. The Convention provides for equality between the sexes by requiring states parties to take 'all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men' (article 3)⁴². CEDAW Committee first addressed violence in 1989 through its General Recommendation No. 12, Recommendation No. 19 in 1992 with its detailed and comprehensive review of violence against women, and Recommendation No. 35, which stated that GBV against women as a human rights violation. In 2017, the Committee, noted that despite advances made by state parties, GBV against women, whether committed by states, intergovernmental organisations or non-state actors, including

⁴² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

private persons and armed groups, remains pervasive in all countries, with high levels of impunity for those who commit SGBV (CEDAW Committee 2017).

- ***The Convention on the Rights of the Child (CRC) (1989)*** requires that children should be protected from all forms of ‘physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’;⁴³ Unlawful sexual activity, exploitation for prostitution or pornography;⁴⁴ and all forms of torture or other cruel, inhuman or degrading treatment or punishment (neither capital punishment nor life imprisonment without possibility of release can be imposed for offences committed by persons below the age of 18).⁴⁵ In the context of access to justice, including justice for gender-based violence, the state obligations include, ‘To establish mechanisms and procedures for complaints, remedy or redress in order to fully realise the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her’.⁴⁶
- ***The UN Convention on Rights of Persons with Disabilities, 2006*** seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Article 16(1) calls upon states parties to ‘take all appropriate legislative, administrative, social,

educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects’. In addition, Article 27(2) obligates states parties to ‘ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour’. Based on the CEDAW approach, the UN CRPD has incorporated the concepts of ‘capacity to be a person before the law’ and ‘legal capacity to act’ regarding GBV, sexual abuse and rape cases perpetrated against women and girls with disabilities’ (Ortoleva and Lewis 2012:21). These concepts are supposed to be incorporated into the Criminal Code and provide legal protections to survivors of SGBV.

- ***The International Covenant on Economic, Social and Cultural Rights, 1976***: General Comment 1447 provides for the right to maternal, child and reproductive health. This is particularly important in relation to provision of health services during national emergencies such as experienced with Cyclone Idai in March 2019 and the COVID-19 pandemic of 2020. The 2013 Constitution in Zimbabwe recognises socio-economic and cultural rights.
- ***The Declaration on the Elimination of Violence against Women***⁴⁸ was the first international legal instrument to expressly address violence against women and provide a framework for national and international actions. It also defines violence against women as any act of

43 Convention on the Rights of the Child, Article 19.

44 Convention on the Rights of the Child, Article 34.

45 Convention on the Rights of the Child, Article 37.

46 Committee on the Rights of the Child General Comment No 14, ‘The right to the highest attainable standard of health’, UN Doc E/C.12/2000/4 (2000), paragraph 15(c)

47 Officer of High Commissioners for Human Rights, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4)

48 Adopted by UN General Assembly in its resolution 48/104 of 1993

gender-based violence that results in: physical, sexual or psychological harm or suffering to women, including but not limited to threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.⁴⁹

- **The CEDAW Committee General Recommendation No. 33, 2015**

recommends that states parties to the Convention should:

- a. Institutionalise systems of legal aid and public defence that are accessible, sustainable and responsive to the needs of women; and ensure that these services are provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings, including alternative dispute resolution mechanisms and restorative justice processes. Ensure unhindered access to legal aid and public defence providers to all relevant documentation and other information including witness statements;
- b. Ensure that legal aid and public defence providers are competent, gender-sensitive, respect confidentiality and are granted adequate time to defend their clients;
- c. Conduct information and awareness-raising programmes for women about the existence of legal aid and public.

It also called upon states to give special consideration to the needs of girls who, who lack the legal and/or social capacity to make important decisions about their lives, face specific barriers to access to justice and may be subject to gender-specific harmful practices and violence. Additionally, the CEDAW Committee called upon states parties to ‘ensure that independent, safe, effective, accessible

⁴⁹ <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards>

and child-sensitive complaint and reporting mechanisms are available to girls’.

- **The CEDAW Committee General Recommendation on Older Women No. 27, 2010** recognises the negative impact of gender stereotyping, traditional and customary practices on older women especially those with disabilities.
- **The UN General Assembly** provides that :

*Crime prevention and criminal justice responses to violence against women must be focused on the needs of victims and empower individual woman who are victims of violence. They aim to ensure that prevention and intervention efforts are made not only to stop and appropriately sanction violence against women, but also restore a sense of dignity and control to the victims of such violence.*⁵⁰

States should develop mechanisms that ensure a comprehensive and sustained response to the problem of gender-based violence in order to ‘increase the likelihood of successful apprehension, prosecution and conviction of the offender, contribute to the safety and well-being of the victim and prevent secondary victimisation.’⁵¹

- **The Blueprint for Action** recognises that violence against women requires a coordinated and integrated criminal justice response. In addition, ‘States have a due diligence responsibility to establish effective measures to prevent, investigate and prosecute cases of violence against women.’⁵² It recognises that

violence against women manifests itself in different forms, such as

⁵⁰ Updated Model Strategies and Practical Measures, paragraph 7.

⁵¹ Updated Model Strategies and Practical Measures, paragraph 16(b).

⁵² Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women, 29.

*domestic violence, sexual violence, sexual harassment, stalking, human trafficking, forced prostitution, forced and early marriage, female genital mutilation, crimes against women committed in the name of honour and other harmful practices, and femicide, as well as to acknowledge the fact that this violence happens in different settings, including conflict and post-conflict settings.*⁵³

- ***The 1995 Beijing Platform for Action and subsequent Action Agendas***, to which Zimbabwe is a signatory, also flags out a number of relevant issues regarding SGBV. The Platform for Action sought to take integrated measures to prevent and eliminate violence against women, study the causes and consequences of violence against women and the effectiveness of preventive measures, and eliminate trafficking in women and assist victims of violence due to prostitution and trafficking.\
- ***Convention on the Rights of Persons with Disabilities***: The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) was adopted on 13 December 2006 at the United Nations Headquarters in New York and was opened for signature on 30 March 2007. Article 6 focuses on women with disabilities. It puts obligation on the state to recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. States are also mandated to appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

- ***The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (hereafter the ‘Women’s Charter’)***: The Women’s Charter came into force in 2005 with a clear focus to ensure a broad protection of women’s human rights, including their sexual and reproductive rights of women. It focused on violence against women in the family, affirmed that women have the right to control their fertility, decide on the method, a right to self-protection and reproductive autonomy, woman’s right to abortion and the prohibition of harmful practices such as female circumcision/female genital mutilation.
- ***The SADC Protocol on Gender and Development***: In 1997, state parties to the SADC agreed to protect and promote human rights of women and children, recognise, protect and promote reproductive health and sexual rights of women and children, make quality reproductive health and other services accessible to women and girl child and take urgent measures to tackle increasing violence against women and children.⁵⁴ With regard to GBV, the SADC Protocol aimed by 2015 (among other aspects) to

enact and enforce legislation prohibiting all forms of gender-based violence; ensure that the laws on gender based violence provide for the comprehensive testing, treatment and care of survivors of sexual assault and; review and reform their criminal laws and procedures applicable to cases of sexual offences and gender based violence.

⁵³ Ibid.

⁵⁴ See Document on the Declaration on Gender and Development by the Heads of State or Government of SADC, 1997

2.5 NATIONAL LEGAL AND POLICY FRAMEWORKS

This part discusses the legal and policy frameworks that address SGBV, HP and SRHR. The ratification of the treaties highlighted earlier in the study is supposed to be followed by the process of domestication on international and regional treaties at national level. This means there should be a continuous thread of human rights practice in national laws, policies and services as a result domestication of international obligations. The Constitution of Zimbabwe provides for the ratification and domestication of international and regional human rights standards. Zimbabwe is a dualist country. It is guided by a dualist theory that argues that international law and domestic law are two separate legal systems. This means international law has not direct application at domestic law unless it is approved by a parliamentary process and incorporated into national law. Zimbabwe has express provisions on ratification and domestication of international law. Section 34 of the Constitution of Zimbabwe provides, ‘The state must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law.’ This means domestication of international instruments is part of national objectives that can influence SGBV policy and law-making processes.

In addition, domestication also takes place through the interpretation of customary international law⁵⁵ and international conventions, treaties and agreements by all courts and tribunals in Zimbabwe.⁵⁶ This is because customary international law is part of the law of Zimbabwe unless it is inconsistent with domestic law⁵⁷ and when interpreting legislation, courts must adopt reasonable

interpretation of legislation that is consistent with international conventions treaties or agreements that are binding on Zimbabwe.⁵⁸ This means the Judiciary can directly invoke international legal commitments/obligations that promote rights of survivors of SGBV. To note is the fact that the impact and effectiveness of human rights treaties is mostly dependent on commitments of states parties in giving effect to the treaty obligations through domestication into national laws and policies as well as implementation of these obligations.⁵⁹ Zimbabwe has demonstrated domestication of international and regional human rights instruments through constitutional provisions that have incorporated the human rights principles; repeal, amendments; enactment of new laws as well as adoption of relevant laws and that provide for SGBV services.

2.5.1 Laws governing SGBV, HP and SRHR

At the national level, the 2013 Constitution of Zimbabwe reflects a firm commitment to gender equality and equity on the part of the state. These provisions have wide implications for government policy making, programming and law reforms. Chapter 2 on ‘National Objectives’ spells out gender balance as one of the objectives to guide the state, all institutions and agencies of Government.⁶⁰ The Declaration of Rights in Chapter 4 of the Constitution recognises that men and women have the right to equal treatment, including equal protection by the law.⁶¹ Zimbabwe is founded on the values of equality, including gender equality. These values are expanded by the right to equality and non-discrimination. Read together, these constitutional norms impose on society and the state the duty to

55 Constitution of Zimbabwe of Section 326.

56 Constitution of Zimbabwe, Section 327.

57 Ibid, Section 326(1).

58 Ibid, Section 327(6).

59 Sepper (n183).

60 Section 17 of the Constitution.

61 Sections 56 and 80 of the Constitution.

ensure that women and girls benefit from domestic laws that protect them from SGBV. This claim is supported by the constitutional injunction that the state must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people who have been disadvantaged by unfair discrimination.⁶² Accordingly, it is incumbent upon the state to adopt laws that are deliberately targeted at protecting women, as a historically marginalised group, from SGBV. The enactment of such laws as the Domestic Violence Act [5:16] and, to a limited extent, the Children's Act [5:06] form part of the state's efforts to protect women from SGBV and HPs and advance their SRHR. The Criminal Law (Codification and Reform) Act is instrumental in the protection of women from SGBV and HP. The Sexual Offences Act [Chapter 9:21] which commenced on 17 August 2001, provides the legislation in relation to sexual offences including rape and non-consensual sexual acts. The act prohibits sexual violence including marital rape and wilful transmission of sexually transmitted infections, including HIV. The sentences available for such offences are detailed in the Criminal Law (Codification and Reform) Act. *Annexure Five* identifies some of the key constitutional provisions that protect the rights of survivors in the SGBV, HPs and SRHR sphere. These rights play an important role in the advancement of human dignity and equal protection and benefit of the law. If the rights in the Constitution are vigorously claimed and implemented, there will be very low cases of SGBV, and HP perpetrated against girls and women. In addition, the table also discusses key legislative instruments that implement constitutional rights and shield survivors of SGBV and HPs from further harm. As ever, the problem appears to be non-implementation of sometimes well-crafted legislation.

2.5.2 Policy frameworks

The domestication of international and regional human rights instruments is further demonstrated by the adoption of policies, strategies and plans that are aligned with the Constitution of Zimbabwe and international and regional human rights agreements. For example, Section 34 of the Constitution provides for domestication of these agreements as part of national objectives that influence policy and legal reforms. These laws and policies are supposed to protect the rights of survivors of SGBV and provide them with comprehensive services. Although policies are unenforceable in a court of law, they are critical in addressing SGBV, HP and SRHR issues. They are important in implementing the international and regional standards on SGBV, HP and SRHR in that they translate them into practice. Policies and strategies provide time-frames and strategic actions that should be carried out in addressing SGBV, HP and SRHR issues. Programmes are developed around how policies could be more gender responsive, victim-centred and eliminate gender inequalities, stigma and intersecting forms of discrimination that fuel SGBV and HP as well as violations of SRHR. They also provide for multi-sectoral and sector-wide approaches to ensure that survivors get comprehensive medical, psychosocial, counselling and legal services. They also provide for capacity building for prosecutors, legal aid providers and judges on how to handle survivors and also protect their rights so that they are able to access effective justice and remedies. In addition, survivors are able to have increased legal awareness and literacy of rights and relevant laws. Policies also address negative attitudes of service providers such as nurses, doctors and police officers.

62 Section 56(6) of the Constitution.

- ***The National Gender Policy: The Revised National Gender Policy (2016)*** addresses emerging issues at the national, regional and global level including alignment to the SDGs, the SADC Gender Protocol and the African Union Agenda 2063.⁶³ Apart from other priority seven areas, the policy focuses on gender and health, gender-based violence and gender, constitutional and legal rights. It makes reference to the gender dimensions of people living with disability; and for the first time the policy is also accessible in braille.
- ***The National Gender Based Violence Prevention and Response Strategy (2012-2015)*** sought to improve the efforts of the government, civil society and the country's development partners to address GBV through a multi-sectoral, effective and coordinated response (Ministry of Women Affairs, Gender and Community Development, 2012: iii). The goal of the Strategy was to reduce all forms of GBV in the country by 20% by 2015 (Ministry of Women Affairs, Gender and Community Development, 2012:11). The Strategy was adopted after extensive consultations with key stakeholders.⁶⁴
- ***The Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2019)***: The purpose of the Protocol on Multi-sectoral Management of Sexual Abuse Cases in Zimbabwe was to safeguard the rights of survivors of SGBV, guaranteeing that they receive a holistic package of age- and gender-sensitive and survivor-centred services for their psychological well-being and protection

⁶³ <https://www.undp.org/content/zimbabwe/en/home/presscenter/articles/2017/07/06/milestone-as-new-national-gender-policy-is-launched0.html>

⁶⁴ These include the Ministry of Justice and Legal Affairs; JSC; Ministry of Health and Child Welfare; Ministry of Labour and Social Services; Zimbabwe Republic Police Victim Friendly Unit; Anti-Domestic Violence Council; Ministry of Education, Sports, Arts and Culture; Ministry of Higher and Tertiary Education; CSOs; UN agencies; and development partners.

by the welfare and justice system; and to strengthen and clarify roles and responsibilities between service providers and agencies that have statutory and thus obligatory responsibilities in the delivery of age- and gender-sensitive, survivor-centred services, thereby enhancing their accountability and credibility. Thus, it provides a holistic response by various key actors in managing sexual abuse and violence in Zimbabwe. According to the Protocol (2019), every act of sexual violence and abuse, and of domestic violence, must be treated as a priority crime and handled according to the minimum standards stipulated in the Police Client Service Charter. The Zimbabwe Republic Police (ZRP) was required to provide the victims with timely access to medical examinations, treatment and access to PEP and emergency contraceptive within 72 hours of the incident. The Victim Friendly System (VFS) is part of the reporting mechanisms.

The main service delivery systems include the VFS, linking criminal justice partners under the lead of the Ministry of Justice for seamless court service towards successful prosecution; One-Stop Centres, and shelters that operate under the Ministry responsible for Women Affairs, Community Development and SME; and the national case management system led by the Ministry responsible for Labour and Social Welfare that ensures multi-sectoral services provisions to girls and boys who are survivors of SGVB and HP (Spotlight Initiative Country Program Document Zimbabwe 2018). The protocol is not an act of parliament or any form of delegated legislation and as such it has no legal force unless its contents are enacted into law. If the ministries involved (which include the Ministry responsible for Justice, Legal and Parliamentary Affairs) consider any of the contents of the Protocol to be important in the fight against SGBV and HPs, they should

enact them into law. Survivors' exclusion from justice is mediated by institutional factors. A study by UN Women Zimbabwe (2016) reported that women in Makoni and Epworth districts did not fully understand the referral pathways. It was indicated that training on the Protocol on Multi-Sectoral Management of Sexual Violence and Abuse has not been fully rolled out. In both sites, it was observed that health workers as a matter of policy required that survivors of abuse report to the police first before seeking medical assistance, and this often resulted in loss of evidence because it delayed the presentation of cases to health workers.

2.5.3 Institutional frameworks

2.5.3.1 Ministry of Justice, Legal and Parliamentary Affairs (MoJLPA)

The MoJLPA plays an integral role in ensuring and enhancing access to justice by women and girls who have experienced SGBV and HPs. It does this by adopting, revising and amending laws to make them more sensitive to the needs of women and girls who are subjected to SGBV and HPs. This function enables the MoJLPA to pass laws that enable women and girls to enjoy their SRHR in a manner consistent with national, regional and international human rights instruments. The power to make and amend laws is exemplified in the ongoing alignment of laws with the Constitution of Zimbabwe and international and regional human rights agreements. Furthermore, the duty 'to provide legal assistance to the indigent' requires the MoJLPA to design and improve systems for the provision of legal aid to survivors of SGBV and HPs to ensure that such survivors have access to recourse against their perpetrators.

Some of the functions of the MoJLPA are exercised through the Attorney General's office, whose mandate is discussed in some detail later on in this report. It is instructive to note that

the MoJLPA is constrained by several factors that negatively impact the full implementation of its mandate, vision and mission.

- Firstly, there is a dire shortage of qualified staff, especially lawyers, in the MoJLPA, 'with some of the most experienced staff leaving to seek better opportunities outside the government. Poor conditions of service have not only led to high staff turnover, but also to low staff morale and corruption' (Ministry of Justice, Legal and Parliamentary Affairs and United Nations Development Programme 2014:27).
- Secondly, the MoJLPA is reported to have been received only 50% of its annual budget from the Treasury and these funds in addition are disbursed late (Ministry of Justice, Legal and Parliamentary Affairs n.d.:20). This has led to the postponement or non-implementation of programmes and activities. The lack of a comprehensive resource mobilisation strategy negatively affects project implementation in the MoJLPA. If these and other challenges are addressed, the MoJLPA will play an important role in enhancing access to justice for victims of SGBV and HPs across the country.

2.5.3.2 Ministry of Health and Child Care

Another critical actor in the referral pathway system promoted within the formal justice system is the Ministry of Health and Child Care. This Ministry controls the medical centres and oversees procurement of medical supplies and rape kits which are critical in providing various types of SRHR services. A nurse in Mutasa District detailed the services that her clinic provided stating, 'We offer free medical services for those that would have suffered harm as a result of SGBV and HP as well as SRHR services. Most of these people are brought through the police. The most patients we have assisted were rape victims. The services

include medical examinations and wound treatments.⁶⁵

2.5.3.3 State Gender Institutions

The institutions that have the mandate to promote gender equality and equity include the following:

- ***The Ministry of Women Affairs, Small and Medium Enterprises (MoWASME):*** Its mandate is to promote the empowerment of women, gender equality and equity, and community development. It has the overall responsibility for implementing and coordinating policies and programmes on gender through a multi-sectoral approach. It has also been mandated to administer the national legal framework such as the Domestic Violence Act and implementation of international human rights agreements that promote gender equality and women's rights, namely the CEDAW and Optional Protocol. To fulfil its mandate, the Ministry has implemented a number of policies such as the Revised National Gender Policy. The Ministry is decentralised to provincial, district and ward levels, to make it accessible to all especially women and other vulnerable groups at the community level. Due to its accessibility, the Ministry is usually the first port of call for survivors of SGBV, HP and SRHR.
- ***The Zimbabwe Gender Commission*** is one of the national human rights institutions and also an important part of the gender institutional framework. The Constitution provides that all Chapter 12 institutions that are independent and are not subject to the direction or control of anyone must act in accordance with this Constitution; and must exercise their functions without fear, favour or prejudice.⁶⁶ As one of the independent institutions supporting democracy, the Zimbabwe Gender

Commission (ZGC) is constitutionally mandated to promote gender equality and advance the rights of survivors of SGBV, HPs and SRHR. ZGC is vested with array of functions that enables it to assist and empower survivors or potential victims of SGBV and HPs. This is because SGBV, HPs and violations of SRHR have a gendered face as they predominantly and disproportionately affect women and girls. They raise serious gender related concerns and claims, thereby opening the door for the ZGC to investigate possible GBV of rights⁶⁷ which steeped in systemic gender discrimination and cultural practices. These investigations can be instigated by the ZGC on its own initiative or in response to a SGBV complaint from the public.⁶⁸

- ***The Anti-Domestic Violence Council:*** Section 16 of the Domestic Violence Act establishes the Anti-Domestic Violence Council. The mandate of the council is to promote the protection and relief of victims of domestic violence through research, information dissemination, coordination and monitoring of the Domestic Violence Act. Members of the council are drawn from, among many others, the Zimbabwe Republic Police and organisations concerned with the welfare of survivors of SGBV, children's rights and women's rights.⁶⁹

2.5.4 The Attorney General

The office of the Attorney General has three main divisions: Legal Advice, Civil and Legislative Drafting, each of which is headed by a deputy attorney-general. The core mandate and functions of the Civil Division are to represent the government in civil and constitutional proceedings and to provide advice on litigation issues to various

65 Interview Nurse, Mutasa District

66 Section 235(1)(a)-(c) of the Constitution.

67 Section 246(a) of the Constitution.

68 Section 246(a)-(b) of the Constitution.

69 Section 16(1)(a) of the Domestic Violence Act.

government departments. Working together with other specialist agencies and Civil Society Organisations (CSOs), this Division can ensure that women enjoy freedom from violence by not defending laws, practices, programmes and policies that perpetuate violence against women. It can also advise the Executive Branch of the state on the gender (in)sensitivity of proposed laws/policies or those that are already in force. If it chooses to appear in court for purposes of representing the government on impugned laws, policies and practices that perpetuate SGBV or HPs, the Civil Division should concede their constitutional invalidity and indicate that the government agrees with the applicants in that particular case. In fact, the Constitution requires the Legal Advice Division to advise the government on such matters even if there are no court proceedings launched to challenge government's approach to particular issues affecting women and girls.⁷⁰ The core functions of the Legislative Drafting Division are to draft legislation in the form of Bills for presentation in Parliament by government ministers; and to draft legislation in the form of statutory instruments and general notices for publication in the *Government Gazette* (Ministry of Justice, Legal and Parliamentary Affairs n.d.:8). Through the Legal Drafting Division, the Attorney General can make laws that prescribe deterrent measures or punishments for perpetrators of violence against women. He or she can also amend laws to be more responsive to the needs of victims of SGBV or HPs, especially through the alignment of existing laws that are inconsistent with the constitutional vision of equal protection and benefit of the law.⁷¹

70 Section 114(4)(a) of the Constitution.

71 See section 56(1) and 80(3) of the Constitution.

2.5.5 The National Prosecuting Authority

Established under section 258 of the Constitution, the National Prosecuting Authority (NPA) is responsible for instituting and undertaking criminal prosecutions on behalf of the state and discharging any necessary functions with this broad mandate.⁷² Its vision is 'accessible world class criminal justice for all citizens', while its mission is '[t]o secure the proper and efficient functioning of the criminal justice system and upholding of the rule of law'. The functions of the NPA include prosecuting criminal cases; prosecuting appeals in the High Court and Supreme Court; drafting legal opinions on criminal matters; providing legal advice to the state and individuals; and giving instructions to police to investigate cases (Ministry of Justice, Legal and Parliamentary Affairs n/d:10). The strategic objectives of the NPA are to prosecute all cases pending in the criminal courts; to prosecute all appeals/reviews in the High Court and Supreme Court; to prosecute all constitutional matters affecting the state in the Constitutional Court; and to provide guidance and direction to the police on criminal matters. Although the Prosecutor-General is appointed by the President on the recommendation of the JSC, he or she (a) is independent and is not subject to the direction or control of anyone; and (b) must exercise his or her functions impartially and without fear, favour, prejudice or bias.⁷³

From the above, it is obvious that the NPA plays a very important role in regard to the protection of women from SGBV, HPs and violations of SRHR. It can do this by:

- Ensuring that relevant laws, policies, procedures, programmes and practices related to violence against women are

72 The NPA is now seized with all the functions historically performed by the now defunct Criminal Division in the Attorney-General's Office.

73 Section 260(1) of the Constitution.

always effectively implemented by the criminal justice system;

- Developing, together with other key players in the access to justice chain, a comprehensive, multifaceted, coordinated, systematic and sustained response to SGBV and HPs to ensure that offenders are held accountable for their conduct and that victims are protected from further harm; and
- Developing materials and procedures assisting and supporting women and girls subjected to violence in a manner that is sensitive and responsive to their needs (UNODC 2014).

More importantly, the Constitution envisages that the NPA can perform its functions better if works together with other players in the JLOS. For instance, the Prosecutor General has the power to direct the Commissioner of Police to investigate and report to him on anything which relates to an offence or alleged or suspected offence. In such an instance, the Commissioner of Police must comply with that direction.⁷⁴ Further, the Zimbabwe Anti-Corruption Commission is empowered to refer matters to the National Prosecuting Authority for prosecution.⁷⁵ As observed elsewhere,

While [the Constitution] is clear on independence in terms of operations, sight should not be lost that as the Office is supported by public funds and was created to provide service for the benefit of the public to ensure people do not take the law into their own hands, it follows from this that in carrying out its mandate, it must interact with the public and where necessary share information not only with this constituency but also with other key stakeholders such as relevant ministries and departments, the police, the judiciary, CSOs, Independent Commissions, and legal practitioners for

collective and efficient justice delivery in line with the Bill of Rights in the Constitution and related ancillary legislation (Mushayavanhu and Phiri 2018: 4-5).

In the context of violence against women, this is a key step towards information gathering and filling gaps to assist victims and the state to hold alleged offenders responsible for SGBV and HPs. It is important to note that there are some wrong assumptions in that NPA is viewed as the lawyer for survivors of SGBV, HP and SRHR. It is not. A prosecutor's duty is to secure conviction of the perpetrator and this does not converge with the rights and needs for survivors. Thus, there is a gap in that there should be legal aid for survivors of SGBV, HP and SRHR so that they are given legal advice and assistance as far as their rights and legal proceedings are concerned.

Finally, the NPA faces many challenges which include an acute shortage of qualified staff; for example in 2014 it had 244 staff members against a desired total of 600 staff members. In addition, it experiences a high staff turnover due to poor remuneration and working conditions. This has resulted in rampant corruption. There is a need to provide incentives for prosecutors to remain with the NPA in order to arrest this problem. Apart from confronting human resource challenges, there are other issues such as the shortage of vehicles (in 2014, NPA had 20 cars against a desired level of 200) and computers (with a total of 50 computers which were significantly less than the 600 which were required for it to function efficiently). On the whole, the NPA requires both an injection of financial and human resources from the state and a strategy for mobilising resources (to supplement those it receives from the Treasury) if it is to function optimally and meaningfully contribute to curbing SGBV and HPs (Ministry of Justice, Legal and Parliamentary Affairs and United

⁷⁴ Section 259(11) of the Constitution.

⁷⁵ Section 255(1)(f) of the Constitution.

Nations Development Programme 2014:48-50). This is important for a new institution with an ambitious decentralisation drive and operating in a country where SGBV and HPs frequently occur in remote parts of Zimbabwe.

2.5.6 Zimbabwe Republic Police

For most survivors of SGBV, HPs and other crimes, the police are the first point of contact with the criminal justice system. As first responders to cases, the police have an immediate impact on the survivors and their behaviour can determine whether the survivors will be protected or exposed to further harm (UNODC 2014: 54). Their actions, determine whether or not these survivors wish to continue to access justice, and this will materially impact on whether the perpetrators will be held accountable by the criminal justice system. An additional structure of policing has been added with the aim of ensuring that survivors of SGBV, HP and SRHR have access to justice, by trying to overcome some of the immediate barriers to making complaints (International Federation of Red Cross and Red Crescent Societies 2017: 21). The Victim Friendly Unit (VFU) was established in 1995. This police department is mainly concerned with cases of violence against women and children as well as sexual and domestic violence offences. The protection of the victims of SGBV is made through the placing of special duties on the police to assist victims of SGBV, HP and SRHR. This has been done through the establishment of the VFU at every police station in Zimbabwe (Mashiri and Mawire, 2013; International Commission of Jurists, 2015).

It promotes a conducive environment where victims and witnesses are able to report in a private, friendly and confidential manner yet in many instances a lack of resources has led to a failure to comply with these requirements (Ministry of Justice, Legal and Parliamentary

Affairs and UNDP, 2014:14). Its mandate is also to prevent police violence against women and children, in particular in sexual offences and domestic violence cases. Its officers are specially trained to handle vulnerable witnesses such as survivors of SGBV. Unfortunately, they are not trained on the rights of survivors and referral pathway regarding legal aid, which we regard as important once a report has been made. Early access to legal aid for survivors is an important ingredient in the access to justice journey for survivors. The police are required to bring the perpetrator of domestic violence before a magistrate's court within forty-eight hours. It is the responsibility of the VFU officer to escort the victim for medical examination, but the VFU officer has no responsibility to disclose the results of the examination to the victim or the family (Judicial Service Commission 2012:33). In accordance with the Protocol on the Multi-Sectoral Response to Sexual Abuse and Violence in Zimbabwe, the police VFU investigators are responsible for investigation, arrest of offenders, and docket compilation and make all the necessary referrals. This framework has proven to be very important in dealing with cases of abuse and ensuring justice for survivors of SGBV and HPs.

2.5.7 Judicial Service Commission

Section 190(2) of the Constitution provides that the Judicial Service Commission (JSC) must promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice in Zimbabwe, and has all the powers needed for this purpose. JSC is therefore in a position to ensure that the formal justice system and individual judges are responsive to the rights and needs of survivors of SGBV and HPs. Some of the roles of the JSC in promoting access to justice for survivors include establishing specialised courts on SGBV and HPs against women and girls; designating

specialised judges and dedicated court times in the regular courts; and introducing special measures in regular courts to respond to the needs of victims (UN Women, 2019: 137). Such specialisation measures have been evaluated and found to be effective in many instances as they provide a stronger possibility that the judiciary will be specialised and gender-sensitive on issues affecting women and girls. This also ensures that more efficient case management systems are in place and that the courtroom environment is more hospitable to survivors (UN Women, 2012). Building the capacity of all judges to apply national laws in an appropriate and gender-sensitive manner and by using specialised expertise in a parallel manner, has been recognised as a good practice towards ensuring a gender-responsive criminal justice system.⁷⁶

As part of its mandate, the Commission organises training schemes for the judiciary. The training should be deliberately targeted at increasing the understanding of the impact of gender stereotypes as well as the role of judicial operators in deconstructing stereotypes and recognising the different barriers faced by women in their attempts to access justice (International Association of Women Judges 2018; Payne 2009). Workshops organised by the JSC provide concepts and tools for the judiciary to generate a process of sensitisation that allows operators to review their previous knowledge and incorporate notions that help them to consider and rethink their interventions from a practical perspective (UN 2019:144). Trainees work at avoiding acts that constitute so-called ‘institutional victimisation’ or secondary victimisation of survivors of SGBV and HPs. Interviews with JSC officials also indicate that the commission has innovated through victim friendly courts. One

⁷⁶ Updated Model Strategies and Practical Measures Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 (CEDAW/C/GC/35).

key informant highlighted that, ‘The JSC has specifically set up the Victim Friendly Courts where our victims can testify without the fear of being intimidated by the perpetrators. These courts also ensure that people can testify voluntarily and where required mediators will be available. No one is forced to speak or do what they do not want in these courts.’⁷⁷

2.5.8 Reporting mechanisms for SGBV, HP and SRHR

The following are reporting mechanisms for SGBV, HP and SRHR:

2.5.8.1 Domestic Violence Act [Chapter 5:16]

Key provisions of the Act include: Section 5 (2) of Domestic Violence Act provides that

A police officer to whom a complaint of domestic violence is made or who investigates any such complaint shall –

- (a) obtain for the complainant, or advise the complainant how to obtain, shelter or medical treatment, or assist the complainant in any other suitable way;*
- (b) advise the complainant of the right to apply for relief under this Act and the right to lodge a criminal complaint (...).*

Section 6 of the Act stipulates that the police officer can arrest a person suspected of acts of domestic violence without a warrant of arrest. In making the arrest, the police officer should

- (a) [take into account] the risk to the safety, health or well-being of the complainant; and*
- (b) the seriousness of the conduct constituting the alleged act of domestic violence referred to in subsection (1); and*

⁷⁷ Interview, JSC official, Mutasa District

(c) any other factor that makes him or her reasonably believe that the person has committed or is threatening to commit an act of domestic violence referred to in subsection (1).

The suspect should appear before the magistrates' Court within 48 hours of being arrested. The Act provides for the application and issuance of Protection Orders. Section 10(7) criminalises violation of Protection Orders. Section 10 (9) provides that 'An application for a protection order shall not in any way bar criminal proceedings against a respondent'. Enforcement of protection orders are in terms of Section 14 of the Act.

The reporting mechanisms are implied in the duties of the police officer outlined in terms of Sections 5 and 6 of the Act. This means survivors of SGBV, HP and SRHR can pursue criminal and civil proceedings at the same time. The Act does not give clear reporting mechanisms which can easily be broken down and understood by a non-lawyer or survivors of SGBV, HP and SRHR. The reporting mechanisms are implied in the duties of the police officer outlined in terms of Sections 5 and 6 of the Act. This means survivors of SGBV, HP and SRHR can pursue criminal and civil proceedings at the same time. The Act does not give clear reporting mechanisms which can easily be broken down and understood by a non-lawyer or survivors of SGBV, HP and SRHR. Additionally, for one to make an application for a protection order in terms of section 7 of the Act, it is not a simple process. It requires an application in a specific format to be filed with the court, whose language is English, and this application must be supported by an affidavit from the complainant or person who can depose of matters relevant to the application. All these steps without legal assistance act as a deterrence in seeking help.

2.5.8.2 Criminal Procedure and Evidence Act [Chapter 9:07]

Section 24 of the Act provides:

(1) It shall be lawful for any judge, magistrate or justice, who has knowledge of any offence by seeing it committed, himself to arrest the offender or by a verbal order to authorise others so to do.

(2) The persons authorised in terms of subsection (1) are empowered and required to follow the offender if he flees, and to execute the order on him out of the presence of the judge, magistrate or justice.

The Act thus provides for reporting mechanisms for SGBV, HP and SRHR by giving power to arrest for any offence committed. Section 363 provides for compensation for personal injury by a convicted 'person of an offence may forthwith award compensation to any person who has suffered personal injury as a direct result of the offence'.

2.5.8.3 Zimbabwe Human Rights Commission Act [Chapter 10:30]

Some of the functions of the Zimbabwe Human Rights Commission is to conduct investigations on its own initiative or on receipt of complaints;⁷⁸ and to ensure and provide appropriate redress for violations of human rights and for injustice.⁷⁹ Section 9 of the Act provides for jurisdiction of ZHRC to conduct investigations. Section 10 of the Act provides for regulations and form for receiving complaints. Subsections (2) stipulates, 'The Commission may require a complaint to be supported by such evidence and documentation as it may prescribe or in any particular case.' The Commission has no right to refuse to investigate a complaint solely on the grounds that the complaint is not in proper form or not in compliance with the prescribed requirements or that it is not

⁷⁸ Section 4(a) of the ZHRC Act.

⁷⁹ Section 4(d) of the ZHRC Act.

accompanied by the required documentation in terms of section 10(3). Section 12 provides how the investigations should be conducted. The commission is, however, hampered by a lack of financial and human resources to effectively pursue their mandate.

2.5.8.4 Zimbabwe Gender Commission Act (Chapter 10:31)

This was established in section 246 of the Constitution and in Section 4 to conduct investigations investigate of any systemic barrier prejudicial to gender equality, gender equity or gender mainstreaming in a specific named sphere of activity or named sector of the society or economy. Section 6 empowers the ZGC, *inter alia*, to issue summons to any person to attend or produce any record relevant to any investigation by the Commission; and request the assistance of the police during the investigations. Any person who appears before the Commission may be represented by a legal practitioner. The report of the investigations with recommendations are sent to the minister responsible for women affairs.

2.5.8.5 National Peace and Reconciliation Commission Act [Chapter 10:32]

Section 9 empowers the Commission to establish a Gender Unit to provide for, *inter alia*, investigating the use of sexual crimes as a weapon during and after conflicts; and reaching out to and identifying victims of gender-based violations and provide such victims an opportunity, in private or public, to relate their own accounts of the violations or harm they have suffered and to set out their needs.

2.5.8.6 Protocol on the Multi-sectoral Management of Sexual Abuse and Violence in Zimbabwe (2019)

This protocol provides for the Victim Friendly System as well as reporting mechanisms and referral pathway. The VFS is effective in promoting access to justice for survivors. The

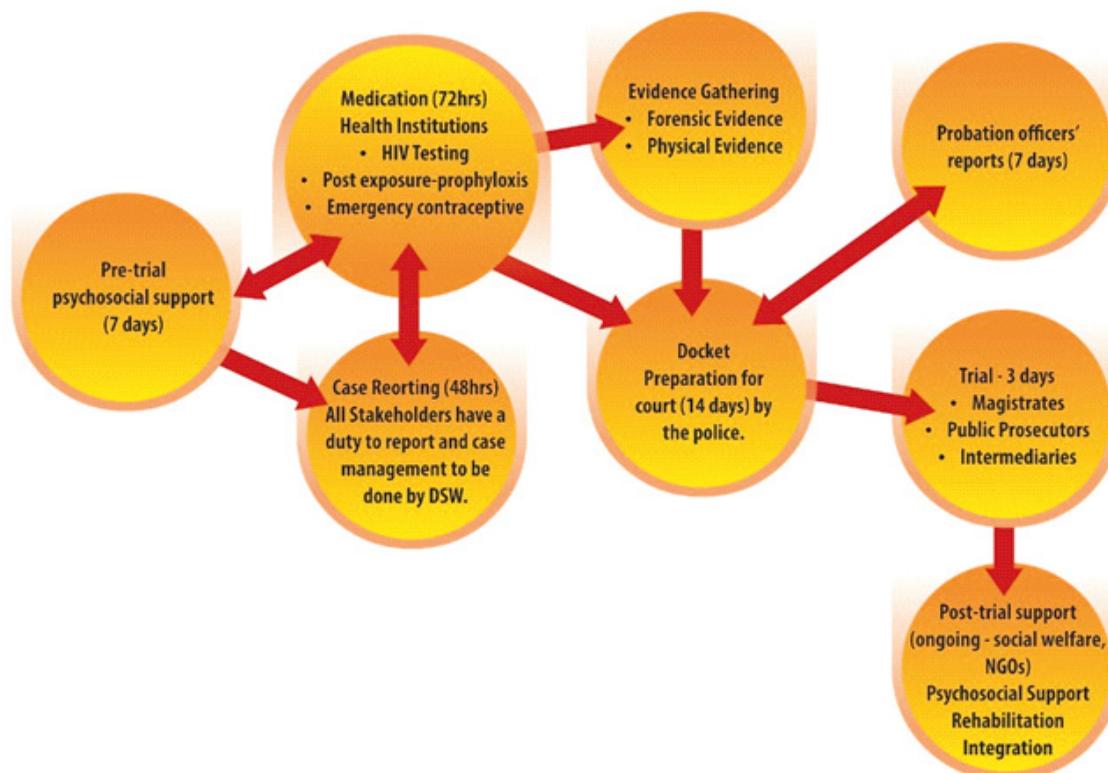
involvement of legal aid providers at police, Clinic and Court and post-trial processes is not very clear. The Protocol has provisions that should be incorporated into legally enforceable provisions so that they bind all actors. The challenges with the Protocol will be outlined later through the lived experiences of survivors of SGBV in chapter four of this report. Overall, the reporting mechanisms are fragmented. They are partly informed by administrative decisions such as the Protocol on the Multi-Sectoral Response to Sexual Abuse and Violence in Zimbabwe, which are not legally binding on the actors. The role of JSC which is part of Judiciary in the Executive realm is not commendable because it violates the principle of separation of powers and rule of law. This, therefore, can be subject to corruption or abuse.

2.5.9 Referral pathway

Stakeholders are of the view that reports of SGBV should be submitted at either the nearest police station or a healthcare facility. The referral can take either pathway depending on where the survivor first reported their case. The healthcare facility or police must then refer the victim to get psychosocial support, thereby involving the Department of Social Welfare especially in cases involving children (See Figure 2). Other stakeholders, such as Musasa Project, provide services such as shelter if required. Legal aid service organisations should also be involved in supporting the victim from the time the matter is first reported, through the court process and to the finalisation of the case. It was notably unfortunate that the LAD is missing as part of the referral system for SGBV, HP and SRHR.

Apart from the need for a general coordination and referral system for survivors of SGBV and HPs, there is need for such a system in each of the sub-sectors that come into contact with the survivors. These sub-sectors broadly include the community (home, school, CBOs, traditional

Figure 2: Referral Pathway



Source: Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2019: 19)

leadership, religious leaders and so on); health care service providers (whether private or public); providers of psychosocial support (including the Department of Social Welfare and CSOs); and legal/justice aid providers (the police, the courts, CSOs and many others). At any level, psychosocial support is important and can determine whether the survivor ultimately accesses justice. The diagram below demonstrates who should be involved in the victim friendly system. The arrows point in both directions to demonstrate that regardless of the point at which the SGBV or HP or violation of SRHR is detected, the case can take either direction depending on its nature, its gravity and the people involved. Further, the bi-directional nature of the arrows also indicates that the direction of the case can change depending on the findings of the institution or

agency in question.

2.5.9.1 Gaps in relation to the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe

Referral for Medical Examination: The VFU officer is required to accompany the survivor to a Family Support Adult Rape Clinic or Healthcare Centre. The officer explains the process of medical examination and what the survivor should expect and that it could be invasive in nature. Medical evidence is maintained and secured by the VFU officer. As has been previously pointed out, the VFU officer does not disclose medical results to either the survivor or his/her family. It is the duty of the medical doctor or delegated clinic staff to disclose the medical results. It is however not clear at what point the results are disclosed to the survivor and his/

her family so that they can have a second expert opinion in the event that they are not satisfied with the results. It is also important to note that LAD law officers are brought into process early so that they can apply to court for a second expert's opinion on the matter if required. These law officers should be able to ask how the doctor arrived at the decision, for example, in a suspected case of rape, if there is no evidence of penetration thereby creating a reasonable doubt in the matter. In such a case, the survivor will face a challenge in court, assuming the defence lawyer requests that the medical expert should come to court for cross-examination or gets access to the medical report. Thus, LAD law officers should also be involved pursuing civil cases because once there is probable case, one can apply for compensation.

Investigations and Referrals to Court: The survivor is deemed to have capacity of making informed decisions. He/she has access to information to make decisions in relation to investigation and prosecution of the matter. All matters with sufficient evidence are referred to court. The Protocol on Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe refers to investigation and evidence gathering and storage by the Investigation officer (IO), but it is not clear at what stage the VFU hands the medical evidence over to the IO. As noted above, the survivor should be properly interviewed right from the beginning by LAD law officer so that he/she clarifies what exactly happened and inform the pleadings. For example, if a survivor does not have access to evidence early in the proceedings, she will be 'surprised during cross-examination' that the medical evidence shows that there was no penetration or injuries. It is important for a survivor to have access to the police Docket prior to the court hearing. This in itself puts her or him at the centre of the legal processes as a survivor.

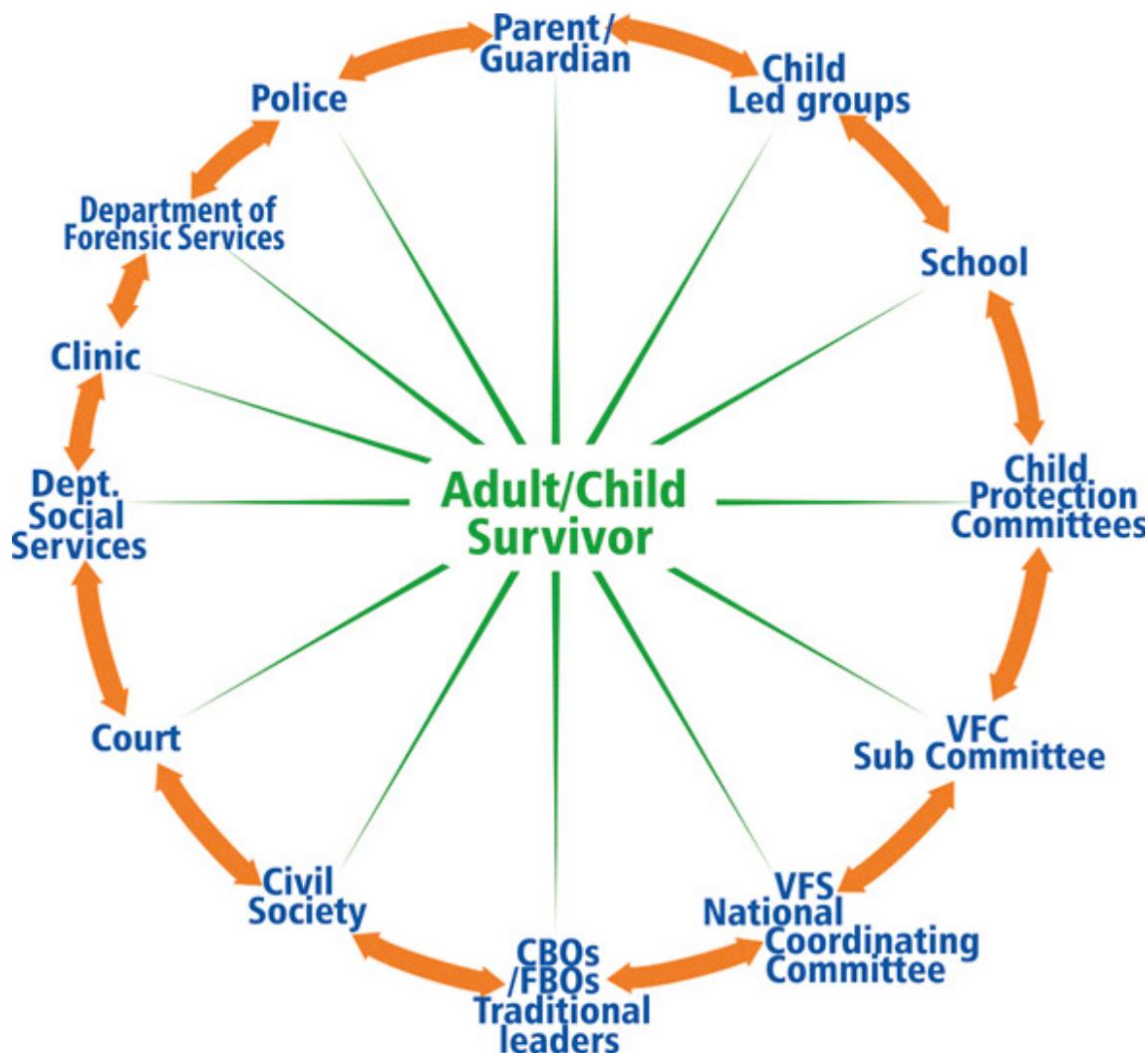
A survivor-centred approach requires that a

survivor should read the docket (or have it read to them, or a third party scrutinises it in the case of a child or someone who is incapacitated at the relevant point) and the LAD should have copy of this docket in their files. This will ensure that the survivor is aware of what is in the 'warned and cautioned' statement, which is known by the police, prosecutor and defence lawyer and not the survivor. This can be dehumanising and traumatic for the survivor when his/her dignity is attacked in court when he/she could have made informed decisions on whether to proceed with the investigations and trial had the docket been availed to her/him early. Thus, the survivor should be entitled to the affidavit with accompanying full explanation so that he/she can decide to pursue the matter or spare him/herself from possible humiliation in court.

Handling child victims: Regarding a survivor who is a child, the Protocol on Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe requires that the NPA should be informed if he or she is being forced to withdraw the matter or has no capacity to make decisions. The police cannot interview children because it is the duty of law officers to do that. The mandate of the police is to carry out investigations, and only lawyers or legal aid officers can give children legal protection; so they should be brought into the process from the outset.

Provision of legal aid: Although the mandate of LAD is to provide free legal aid for those who cannot afford a lawyer, it rarely does so: it fails to provide free legal services which it is required to provide in order to ensure that both survivors and perpetrators have equal access to justice. The challenge with LAD is that it mostly represents accused persons/perpetrators of SGBV, HP and SRHR and does not provide legal aid services to the survivors. There is an apparent conflict of interest because

Figure 3: Stakeholders in response to SGBV cases



Source: Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe (2019: 23).

LAD should provide legal aid to defendants and but is also required to assist survivors/victims of crimes such as SGBV and HP. For example, Justice for Children encountered one such case where there was a conflict of interest when the LAD advised both the survivor and perpetrator. LAD is supposed to provide legal services to those who cannot afford a lawyer. There is need to allocate an officer who explains the process to the survivor once the matter has been reported to the police so that the survivor will fully understand the court procedures,

what to expect when being cross-examined and that the accused may be either convicted or acquitted.

As mentioned previously, the duties of the VFU officer is to interview and accompany survivor for medical examinations. The survivors are referred to a counsellor, social worker or psychologist if the VFU officer observes that the victim is reluctant to talk or refuses to open up. The Protocol on Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe provides that the VFU

supports survivor to get relevant services. It is not clear when legal services are given to the survivor. Thus, in order to have a seamless referral to legal services, LAD and legal aid lawyers should be working with VFU from the time SGBV, HP and SRHR matters are first reported.

Absence of interface between LAD and NPA:

The Protocol indicates that the VFU ensures adequate preparation for survivors or witnesses during first court appearance and to brief the survivor and witness. The victim familiarises with court layout and procedures. It is not clear at which point the LAD law officer or legal aid officers and NPA interface with the survivor before the court process. In reality there is limited pre-trial, during trial and post-trial support to the survivors of SGBV, HP and SRHR. Although this support was envisaged in the Protocol, there are no clear roles and responsibilities laid out at each of these three stages. A result is that survivors shy away from using the law since there is no support structures in place and in some cases their right to privacy and dignity is violated. There is need for mandatory pre- and post-trial support involving fully all justice actors.

2.5.9.2 Gaps in relation to the referral system for SGBV response

The referral system works well in Harare because of the relative ease of access to all stakeholders within the referral system. Another challenge outlined in this research relates to the capacity of many clinics outside Harare, especially in the rural districts, to perform the required medical procedures in a timely, professional and survivor friendly manner. The situation is made worse by the fact that organisations such as Zimbabwe Women's Lawyers Association (ZWLA), Women and Law in South Africa (WLSA), Legal Resources Foundation (LRF) and Musasa Project, which are critical in promoting access to justice

and the rights of survivors, are not available throughout Zimbabwe and therefore their reach is limited. Other challenges and gaps are discussed later on in this report.

The research carried out in the three districts highlighted serious challenges with the referral pathways. These challenges affect the efficacy of the system to deliver quality services to survivors that respects their human rights and protects them from secondary trauma. The challenges include the following:

- ***Lack of resources:*** An officer with the Ministry responsible for Social Welfare in Umzingwane highlighted that there is no funding to ensure the effectiveness of the legal and policy framework for SGBV, HP and SRHR in Zimbabwe. The Ministry faces challenges in relation to resources: for example, even though case management speaks of procedures that must be carried out, there is no funding to do so. Related to this is how the system is mostly reliant on donor funding. Civil Society Organisations (CSOs) and development partners are responsible for the majority of activities and for funding the referral pathway. This leads to donor dependence since in most cases, the government is only able to provide salaries for officers but no funding for programmes. This is worse in disaster situations, 'where CSOs tend to carry the bulk of the load in responding in times of disasters... A lot of the heavy lifting is currently being done by CSOs to provide services such as shelter and providing education on planning safer pregnancies or preventing unwanted pregnancies.'⁸⁰ The lack of resources has affected the operations and activities of the government departments involved in the referral system.

80 Interview, civil society, Umzingwane District

- **Lack of disaster preparedness:** COVID-1981 showed that the referral pathway requires a specific framework that responds to disaster situations. Speaking on the system, one key informant argued, ‘There are no laws that regulate such emergencies. The laws to address COVID-19 were put in place after the pandemic has spread in the country.’⁸²
- **Confusion on where to start in relation to reporting of incidences:** This research found cases where the survivors were confused about where to start. There are stories of survivors being turned away from hospital and told to first get a police report before getting medical assistance. In some police stations there are only one or two officers trained as VFU officers. When those VFU officers are absent or off duty, survivors face serious challenges in getting assistance. This can lead to secondary trauma and at times survivors give up and leave without getting assistance. The Family AIDS Caring Trust (FACT) in Hurungwe District pointed out, ‘Structures are not in place to make sure they get the assistance they need and knowing the procedure would make the survivors feel more confident and in control of the situation.’⁸³

2.5.10 Legal Aid Directorate

The Legal Aid Directorate (LAD) falls under the jurisdiction of the Ministry responsible for Justice, Legal and Parliamentary Affairs (MoJLPA) and was established in 1996 through the Legal Aid Act [Chapter 7:16]: According to the Act, its purposes are to:

- a) Provide legal aid in connection with civil, criminal or other related legal matters, to all eligible persons;

- b) Do all things necessary to promote the provision of legal aid under the Act; and
- c) Do any other thing that LAD may be required or permitted to do under the Act or any other enactment.

Accordingly, LAD seeks to provide high quality free or low-cost legal aid to eligible persons as defined under the Legal Aid Act. In 2017, the government adopted a National Legal Aid Strategic Plan for LAD to enhance access to justice to the poor as a critical component of democracy (LAD 2017: ii). One of the five strategic goals of LAD is ‘to provide competitive legal representation, advice and assistance for the vulnerable and disadvantaged’. This strategic goal is supported by two sub goals which are ‘to increase the number of new and resolved civil and criminal cases’, and ‘to improve the coverage and quality of legal advice and assistance’ (LAD 2017: 9). However, this National Legal Aid Strategic Plan is neither responsive to SGBV, HP and SRHR nor does it prioritise survivors.

In terms of the Legal Aid Act and the Constitution, LAD is the sole government organ empowered to provide legal aid by the long-term constitutional objective to ensure a right to legal representation for all Zimbabweans, especially those who cannot afford private lawyers. This mandate is also justified by the ‘growing demand for legal aid services by indigent persons, the vulnerable, excluded and impoverished populations who cannot access the formal justice system without legal aid’ (LAD 2017: 11). As the state provider, LAD has a targeted aim to provide its services on a nationwide basis. Approximately 60% of Zimbabwe’s population live in rural areas (LAD 2017). In a country with high poverty and limited public transport, vulnerable individuals, particularly women and children living in rural (and suburban) areas, find it extremely difficult to access the formal justice system and obtain the legal aid should they

81 More detailed discussion on COVID-19 is provided later in this report.

82 Interview, Department of Social Welfare, Umzingwane District

83 Interview, FACT, Hurungwe District

require legal assistance. More importantly, LAD can play an important role in the provision of legal assistance or representation to survivors of SGBV, HP and SRHR seeking access to justice for violations of their rights.

In 2014, the Oxford Policy Management carried out an institutional capacity assessment of LAD and many of the findings of the study remain relevant to this day. That study identified LAD's low public profile as one of the challenges facing the organisation. As a consequence, potential clients are unaware of its existence or the legal aid services it provides; and many stakeholders are not fully informed about LAD's mandate and role in enhancing access to justice (LAD 201: iv). The fact that LAD is only found in few provincial capitals means that it has not adequately decentralised its operations to more remote areas where its services are needed the most, especially in light of poverty and the lack of legal knowledge in communities. Ironically, many women and girls who require access to legal aid and experience some of the worst of forms of SGBV, HP and SRHR live in the rural areas. Worse still, the majority of them cannot afford transport costs to travel to centres where they can obtain legal assistance.

Another major issue affecting justice delivery service of LAD is the high staff turnover due to poor conditions of service for law officers. A survey conducted with LAD law officers indicates that on average, officers had been working for LAD for under five years, with nearly all joining LAD immediately after leaving universities. The perception externally (and among some staff) is that LAD is a training ground for young lawyers and a stepping stone to other more lucrative employment opportunities primarily within the non-governmental sector or private legal practice (LAD 2014). Another capacity challenge facing LAD relates to financial resourcing. The Legal Aid Act makes provision for a Legal Aid Fund. Whilst budgetary allocations to LAD have

increased over the years, the amount released by Treasury and effectively available to the fund is inadequate to cover the costs of providing meaningful legal aid services across the country. The absence of appropriate data on its caseload, however, makes it difficult for LAD to argue the case for the release of adequate funds to meet demand effectively (LAD 2014).

Lastly, there is no effective coordination between LAD and other providers of legal aid across the country. In its National Legal Aid Strategic Plan (2017-2021), LAD acknowledges that whilst legal aid service providers in Zimbabwe collaborate, there is neither a formal legal aid coordination framework nor a referral protocol. This remains so despite the fact that the coordination of providers is acknowledged as crucial to enhanced coverage and efficient utilisation of resources (LAD 2017: 21). While LAD sits on committees such as the Steering Committee for the Justice, Law and Order Sector, it urgently needs to become a more active member with representation at a sufficiently senior level to effect real change in the provision of legal services for survivors. It needs to establish strategic partnerships with key institutions, mainly the police and the courts. The police are the first point of contact for potential LAD clients such as survivors of SGBV, HPs and SRHR. LAD should also consider establishing an office within the main court buildings, staffed as needed on a rotation basis by law officers and/or by paralegal staff, to build relationships within the courts as well as offering an immediate point of contact for potential clients.

According to a key informant, 'The Legal Aid Act itself is a barrier in that it does not respond for SGBV, HP and SRHR.'⁸⁴ This has resulted in LAD not being responsive to the legal aid needs of survivors of SGBV, HP and SRHR: the only interface it had with these was in relation to civil matters, when they sought

⁸⁴ Interview, Director, LAD

for protection orders, with the survivors being advised on how to complete the forms for these orders. LAD does not prioritise providing legal assistance to survivors mainly because they view survivors as being represented by the prosecutors, but the interests of prosecutors and rights of survivors may not necessarily converge. It was highlighted that LAD has not been carrying out watching briefs in those cases simply because they would not be representing any party in court. In addition, LAD does not have a dedicated Unit to deal with SGBV, HP and SRHR cases. It also does not have technical capacity or training to deal with specific issues that may arise. For example, the law officers do not have requisite skills to communicate with children and survivors with disabilities, especially those with speech and hearing impairments (there is no standardisation of sign language). As highlighted before, some children who are survivors of rape may refuse to give important information. Thus, law officers must be trained on how to interview vulnerable witnesses who have communication barriers and with children.

2.5.11 CSOs and women's organisations

Annexure 1 outlines the various roles played by civil society organisations in SGBV, HP and SRHR cases. The table is not an exhaustive list of all players in this sector, but provides insights into various projects and programmatic areas being implemented by civil society organisations. These CSOs play a pivotal role in ensuring access to services for SGBV survivors mainly due to the state's inability to fund programming. Donor and partner funding are a critical component in the government's response to sexual violence. This, however, leads to dependence on external funding for financing critical areas such as GBV response yet CSOs' coverage is not countrywide. This results in unmet legal aid needs in marginalised

and hard to reach areas where most of the survivors of SGBV, HP and SRHR live. It was highlighted that donor funding has also led to competition for resources among CSOs and women's organisations. This has resulted in these operations operating independently of each other but having overlapping of mandates, lacking coordination, and as a consequence there is no sharing of information and lessons learnt. This also impacts on building a feminist movement to shape the continued fight for gender equality, because gender inequalities increase the vulnerabilities of women and girls to SGBV, HP and SRHR.

2.5.12 Shelters and psychosocial Support

In 2012 the CEDAW Committee⁸⁵ lamented at the lack of effectiveness of the Domestic Violence Act in allocation of resources for the setting up safe shelters for women. It noted that there was 'only one state-established shelter for women victims of violence (the two other shelters were established by NGOs), and that it is not exclusively for women victims of domestic violence.' Since then, the number of safe shelters has slowly increased. However, this research notes that organisations such as Musasa Project have been in the forefront of establishing safe houses for survivors of SGBV. By 2018, Musasa Project had established 3 urban and 9 community shelters around Zimbabwe for women and girls; these are located in Gweru, Harare Bulawayo, Gokwe, Mwenezi, Chikomba, Bubi, Gutu, Marange, Buhera, Mazowe, Bikita and Insiza. Zimbabwe Demographic Health Survey (ZimStat et al., 2016) revealed that, by 2015, a total of 1,960 women had received support in the Harare, Gutu, Bubi, Chikomba, Gweru, Makoni and Marange shelters. Other

⁸⁵ Concluding observations of the Committee on the Elimination of Discrimination against Women: Zimbabwe. Committee on the Elimination of Discrimination against Women Fifty-first session, 13 February – 2 March 2012.

civil society organisations such as FACT have been instrumental in setting up shelters in Makonde and Mutasa.

2.5.13 Children and access to justice: Legal, policy and institutional frameworks

Children's exposure to SGBV, including through harmful traditional practices, also poses devastating effects to their physical and mental health, development, and ability to continue their education. Importantly, children also face specific forms of SGBV linked to their young age, including early and forced marriage, and sexual exploitation and in situations of child labour. It is therefore of importance that access to justice by child survivors of SGBV and HPs are clearly articulated in national legal, policy and institutional frameworks. The UIN CRC sets out the global children's rights framework that Zimbabwe is signatory to. The Convention provides for the protection of children from harmful influences and abuse. The Zimbabwean government is also party to the CRC Optional Protocol on Sale of Children, Child Prostitution and Child Pornography. In 1995, the government ratified the African Charter on the Rights and Welfare of the Child, which sets out rights and defining universal principles and norms for the status of children on the continent. The African Charter acknowledges the child's unique and privileged place in African society and that African children need protection and special care; it calls for the creation of an African Committee of Experts on the Rights and Welfare of the Child.

The Constitution of Zimbabwe clearly spells out rights of children. It provides for the care and protection of children. Section 19 states 'The state must adopt policies and measures to ensure that in matters relating to children, the best interests of children concerned are paramount'. Section 81 of the Constitution

enshrining children's rights says every child, that is to say every boy and girl under the age of eighteen years, has the right:

- (a) to equal treatment before the law, including the right to be heard;...
- (d) to family or parental care, or to appropriate care when removed from the family(environment;
- (e) to be protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse;
- (f) to education, health care services, nutrition and shelter;..
- (i) ...to be treated in a manner, and kept in conditions, that take account of the child's age.

Besides the Constitution, the Children's Act (Chapter 5:06) also stipulates for: the protection, welfare and supervision of children; the recognition and registration of certain institutions and institutes for the reception and custody of children; the establishment of children's courts (Victim Friendly Units); the requirement of contributions by certain persons towards the maintenance of children and the adoption of minors. In relation to children, the Public Health Act [Chapter 15:09] presented earlier provides for immunisation of all children, even in circumstances where parents object to such immunisation on religious grounds. Education Act [Chapter 25:01] stipulates that education is critical and plays the foundation for the future of a child but is silent on SRHR education for children. The Criminal Law (Codification and Reform) Act [Chapter 9:23] widens the range of sexual offences and increases penalties for such offences, contains provisions dealing with sexual offences committed against young persons and seeks to prevent sexual exploitation of young persons within and outside Zimbabwe and to curb prostitution and the spread of HIV and AIDS.

In terms of the policy framework, the National

Case Management System for the Welfare and Protection of Children in Zimbabwe (NCMS, 2017) is the cornerstone of the child protection system in Zimbabwe. Case management is a way of organising and carrying out work so that children's cases are handled in an appropriate, systematic and timely manner. The system is a hybrid of statutory, customary and community approaches and international and regional best practices. The model's strengths are that it builds on existing community efforts and leverages on cultures of care and support inherent in Zimbabwe to identify hard-to-reach, vulnerable children where they live and provide them with continuous, community-based care and support until their needs are met.⁸⁶ It evolved from the National Action Plan for Orphans and Vulnerable Children established in three phases (2004-2010, 2011-2015, 2016-2020) to facilitate interventions for orphans and vulnerable children. The initial activities were implemented through the coordinating Programme of Support, formed in 2006. A Child Protection Fund was established during the second phase of the national action plan. The NCMS provides guiding principles on child protection. The NCMS works in conjunction with the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe developed in 2012.

What makes the Protocol very important for children's justice is that it championed an approach sensitive to age, disability and gender, and the special measures applied to all stakeholders engaged in preventing and responding to survivors of sexual violence and abuse.⁸⁷ In the guidelines on 'Working with Child Survivors of Sexual Violence and Abuse in Zimbabwe' with respect to reporting cases of SGBV and informed consent to seek health services the Protocol highlights:

- A child has a right to have a parent or trusted adult with them throughout the process.
- Due consideration should be given to the child's readiness and ability to talk, the child's physical and emotional needs.
- To the greatest extent possible, a child be interviewed privately, in a safe, confidential and familiar space.
- Prior to any service provisions, service providers must explain to the child (and their parent or guardian) the processes and services that will be provided.
- While children are unable to give legal consent to services, they should not be compelled or forced to undergo an examination or treatment, unless it is necessary to save the life of the child.
- A skilled and experienced person is required to determine the child's capacity to make or contribute to decisions that affect them.
- As a very general guide: Children 16 years and older are generally sufficiently mature to make decisions; Children between 14 and 16 are presumed to be mature enough to make a major contribution; Children between 9 and 14 can meaningfully participate in the decision-making procedure, but maturity must be assessed on an individual basis; and Children younger than 9 have the right to give their informed opinion and be heard.

It is also important to note the institutional mechanisms that facilitate children's access to justice in the context of SGBV, HPs and SRHRs. The Ministry of Health and Child Care is responsible for ensuring that all survivors of sexual violence and abuse receive the free medical care and support necessary to mitigate the negative health effects that result from their experience of sexual violence and abuse (including the provision of emergency medical examinations and enabling survivors to

⁸⁶ The National Case Management System for the Welfare and Protection of Children in Zimbabwe, 2017

⁸⁷ The Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe

secure a medical affidavit to support criminal prosecution of the perpetrator).⁸⁸

The Ministry of Labour and Social Services' Department of Child Welfare and Probation Services (then Department of Social Services) is the lead department responsible for implementation of the Children's Act that ensures protection of children from all forms of abuse. The Department of Child Welfare and Probation therefore plays an important role in the protection of children who have experienced abuse or live in a situation where they are at risk. The National Action Plan for Orphans and Vulnerable Children also created Child Protection Committees and now established Community Case Workers. They incorporate government departments represented in the area, NGO's, faith-based organisations, care-based organisations, traditional leadership (custodians of OVC in rural communities), traditional healers and child representatives. Victim Friendly Courts were also established to give a friendly environment to child offenders and allow all vulnerable witnesses to give evidence in a closed-circuit system without the fear of facing the perpetrator, thereby protecting the integrity of the victims. The Child Welfare Council, appointed by the Minister of Labour and Social Services, is also important regarding coordinating activities for the welfare of children. Child focused civil society groups are also critical in ensuring children's access to the justice system. An example is Bantwana, an organisation that works with local organisations to prevent and respond to GBV against adolescent girls. It also mainstreams GBV and sexual abuse prevention material into relevant curriculum and programme activities for girls' and boys' clubs at secondary schools and community-based centres for out-of-school youth. Justice for Children Trust (JCT)

provides legal aid to orphans and vulnerable children below the age of 18 years. In addition, UNICEF Zimbabwe has for many years engaged in child-sensitive social protection initiatives in the country (including interventions on behalf of children against SGBV, HPs and SRHRs) (Kang, 2017).

2.6 GAPS IN THE FORMAL JUSTICE SYSTEM

This section outlines the multiple gaps within the formal justice system. *Annexure Six* provides a further analysis of these challenges from the 2012 CEDAW report on Zimbabwe.

2.6.1 A gender insensitive justice system

Women and children are more likely to suffer social ostracism if they approach formal institutions to complain about experiencing forms of SGBV and HP. The law is perceived to be against women's interests and rights. For example, the rules of evidence and procedure are very demanding to the extent that women are unable to fulfil them. This is exemplified by the case of *Mapingure v Minister of Home Affairs and Others* where the Supreme Court of Zimbabwe ordered the government to compensate a rape survivor (the case is also discussed later in the report). Mildred Mapingure sued the Minister of Home Affairs and others claiming that the state had failed to prevent a pregnancy that resulted from her being raped. The Court found that there was negligence on the part of the doctor and police in ensuring that the pregnancy was prevented. The Court found that Mapingure did in fact suffer actionable harm which could entitle her to damages. The Court conceded that the law on termination lacks clarity. It also recognised the relevance of international norms and conceded that the state may be failing to

88 The Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe

meet its international obligations. While the Zimbabwean Supreme Court may certainly have missed an opportunity to show greater commitment to women's rights, this judgment makes very important pronouncements that can be used as a steppingstone to further advance the women's sexual and reproductive rights in Zimbabwe. Although many sectors of the coalition backing the Masingure case in Zimbabwe would have wanted to see a more momentous judgment, it must be remembered that strategic litigation is often an incremental process in which smaller victories work together and build up to significant triumphs. The case also highlights the many challenges that the survivors of rape cases face in navigating the criminal justice system.

The unguided and sometimes insensitive line of questioning from law enforcement officials, lawyers and judges who are not trained in women's rights issues often leads to secondary victimisation of women who endure the ordeal of SGBV. The prosecutors neither have skills to deal with cases involving children and sexual violence especially on vetting of dockets nor give adequate orientation of court processes to the survivors. This has negative effect on adducing evidence from the survivors. There is no offence framed as sexual harassment under the Criminal Law and Codification Act of Zimbabwe. Thus, there is no consensus of whether sexual harassment is a criminal or labour matter. The main challenges faced by majority of survivors include no evidence of rape because they would have washed themselves together with their clothes; some survivors would have been sexually active so injuries could not be identified resulting in absence of definitive evidence. The loss of forensic medical evidence has a negative impact on the successful prosecution of SGBV crimes.

2.6.2 Socio-cultural and attitudinal barriers

Generally, authorities such as the police consider domestic violence to be a private matter. This is attributed to entrenched institutional, societal attitudes and gender norms that deny marital rape as a form of violence against women. They have also prevented them from seeking justice in order to preserve the good standing of the husbands and preservation of family secrets that would be shameful to display in public. Regarding child marriages, it was highlighted that the police are not arresting alleged perpetrators. This is as a result of the misconceptions around the landmark judicial decision on *Loveness Mudzuru and Ruvimbo Tsopodzi v Minister of Justice and Parliamentary Affairs N.O and others* (Constitution application NO 79/14) the Constitutional court ruled that section 22 of the Marriages Act was unconstitutional and stated that no person should marry before attaining the age of 18. This has however not been codified in criminal laws of the country; thus child marriages continue to be perpetrated.

2.6.3 Accessibility of formal courts

The geographical coverage for access to legal services is limited. There are two Supreme Courts in Harare and Bulawayo, respectively. There are also four (4) permanent High Courts located in Harare, Bulawayo, Masvingo and Mutare. Of interest is that most of the courts are located in urban or peri-urban areas and yet 67.79% of Zimbabweans and 48% children live in rural areas. It was also noted that Chivi, Murehwa, Murambinda and Chegutu courts did not have access to office vehicles. They resorted to the 'use of public transport even for docket movement, with the risk of compromising sensitive information, losing it or possibilities of fuelling corruption due to lack of accountability, check and balances on

docket movements' (Mushayavanhu and Phiri 2018:12). Mushayavanhu and Phiri (2018: 13-14) noted:

- Complicated cases with documentary evidence such as medical reports or forensic reports, the documents can go missing for various reasons including misfiling or getting lost while dockets or records are shuttled between stations or between the prosecution and the police for further investigations.
- Due to high staff turnover, some matters fail to be completed as the prosecutor would have moved without adequate paper trail of proceedings in court records for new staff or other colleagues to take over or without adequate handover of dockets and files properly recorded in Registry.
- Important documentary evidence disappears due to corruption thus ending the matter and resulting in a gross miscarriage of justice.
- In cases of sexual offences, violence or abuse of vulnerable groups such as women and girls, that require documentation such as medical and related reports, these can and have been lost while dockets moved from court to police officers to court registries or in offices as prosecutors share office space leading to cases being withdrawn.

Distance and associated costs with accessing legal services are among the biggest barriers to women and girls in rural communities. The demand for legal aid outstrips the current institutional, human and financial capacity of the LAD (LAD 2014).

2.6.4 Court procedures

Hearings in formal courts are conducted through acceptable and laid down procedures provided by law. These procedures however are cumbersome and difficult to understand especially to survivors who are rural based and

have low educational levels. This negatively affects women and children who lack the knowledge of the rules and procedures which are generally viewed as an exclusive preserve for lawyers. There are 'perceptions that court processes are a waste of time and resources and further that the NPA is far removed or insensitive to the plight of the vulnerable/complainants. This is pervasive in cases of sexual assault/violence involving young children and or women who have no knowledge of their rights or familiarity with court processes.' (Mushayavanhu and Phiri 2018: 23) The adversarial nature of the formal justice system, which is viewed as warfare or a fight between disgruntled opponents is also inhibitive.⁸⁹ Due to the adversarial nature of the entire litigation process can lead to acrimony, further disputes and permanent destruction of relationships. In rural areas, where the majority of women reside, the resolution of disputes in an adversarial manner may lead to the victim being discriminated upon and shunned by the community because they are accused of embarrassing the family and destroying its good social standing in society. This results in most survivors opting for less formal means such as mediation in order to preserve peace within the communal family setup (WLSA 2000).

2.6.5 Court levies

Zimbabwe's formal justice system draws the general complaint that the cost of litigation is prohibitive. To initiate a matter, for example, in the Civil Division of the formal courts, the applicant has to pay for the summons, for every court process to be further issued, as well as fees for the Messenger of Court or Sheriff, so that he or she can send or transmit the court processes to the other party. Another issue is the disparity between costs awarded by the court and that of a legal practitioner and client

⁸⁹ <https://zimlii.org/content/criminal-justice-system-zimbabwe>

scale. So even if the applicant is successful and is awarded costs, the costs she can recover are on a much lower scale than what she has to pay her lawyer if represented. This presents a challenge as most of the litigants are women and children who are often indigent and may not afford the money levied by the courts to initiate and process a course of action and prevents them from accessing relief from the formal justice institutions. The high costs of legal representation often exceed the value of civil claims instituted by a disputant, as the costs of the litigation process (as well as related costs) accrue from commencement until the final resolution of the matter, having an adverse effect on individual survivors seeking justice. The unpredictability of the legal costs involved and of the final outcome of the matter may add to the frustration and anxiety of the litigants/disputants. Hiring a private lawyer is an expensive exercise which very few people can afford. This is particularly so in Zimbabwe where the majority of the people earn below USD\$100 a month and many of the survivors of SGBV, HP and SRHR are unemployed. As discussed earlier, LAD was established for purposes of promoting the right to legal representation. However, access to services provided by LAD is severely constrained by the cumbersome application processes that are involved, competing interests of other persons who need legal aid, and the fiscal challenges faced by the LAD. As noted earlier in the Study, the LAD does not prioritise handling survivors of SGBV, HP and SRHR.

2.6.6 Language

Court proceedings in Zimbabwe are conducted in the English language. The English language that is normally used in the courts of law is not ordinary language but often includes Latin legal terms. There is no effort made by prosecutors to demystify the court process for survivors and to get acquainted with the survivors in

order to put them at ease. This ends up being an intimidating factor which precludes women and children, especially from rural areas, from accessing the formal justice system as some may not even be able to speak English. As noted earlier, there are no intermediaries able to communicate in sign language or read braille witness statements. Furthermore, because sex is a taboo topic in societies such as Zimbabwe, comprehensive sexuality education has only recently been introduced in local schools. As highlighted earlier, sex is only discussed when the girl child is groomed during '*kudhonza*' or elongation of the labia. This results in many children who would have been sexually abused or raped unable to know the correct terminology for genitalia or point at the parts on the diagrams depicting genitals to explain the precise nature of an attack in greater detail.

2.6.7 Overburdened Court Rolls

Most court records are handwritten by the Presiding Judicial officer in each case. This practice is more prevalent in the magistrates' Courts as compared to other courts. These courts, however, are more accessible to survivors of SGBV, HP and SRHR because they are located in almost all the districts in Zimbabwe. This means that there are delays in criminal cases as the parties have to wait for the judicial officer to ensure every statement to support, prove, substantiate or refute allegations made by the parties is handwritten. Continued postponements of cases often result in most complainants, survivors and witnesses' victims abandoning the cases they had initiated because of the lack of adequate financial means to meet the continued delays. This is because witnesses and survivors are not reimbursed by the Chief Magistrate's Office in cases where the trial does not proceed, resulting in financial burdens on the survivors and witnesses. Additionally, witnesses and survivors might have been young at the time the SGBV or HPs occurred

and forget events due to passage of time, while adults choose to withdraw as witnesses or affidavits have been lost due to misfiling or dockets movements and complainants appear not to be credible witnesses (Mushayavanhu and Phiri 2018). In addition,

Some cases die a natural death especially where witnesses have come to court several times with the matter not proceeding for reasons not properly explained or recorded, or where the docket is misplaced, misfiled or mysteriously disappears and the state has to proceed by way of summons and witnesses or complainants during delays in prosecuting the matter as records or dockets are misfiled and cannot be located.’ (Mushayavanhu and Phiri 2018: 23)

Many stakeholders are concerned about very low conviction rates using the Domestic Violence Act.

2.6.8 Lack of legal information

In many instances, survivors of SGBV, HP and SRHR have limited or no access to information on legal aid services and where to access these services. Additionally, any information which these survivors receive is usually not as detailed as it should be in terms of raising awareness of relevant laws that address SGBV, HP and SRHR; rights of survivors and how to assert them; directory of services providers and where they are located; and nature of legal aid services offered by these providers and how one can apply for protection orders as well as compensation. The available information often comes in English language that is neither simplified nor translated into vernacular languages, nor provided in Braille and sign language, making it difficult for different categories of survivors to understand. At times, the information may not be uniform or standard resulting in confusing the survivors. The lack of confidence in the Domestic Violence Act can be attributed to lack of knowledge about the legislation,

provisions that regulate GBV, or how to activate the protection mechanisms such as protection orders. In addition, there are instances where people were unaware of the fact that physical, psychological, and emotional abuse constitutes justification for a protection order that can remain in force when a protected person is living with the perpetrator. The general lack of awareness of rights means that people with no legal training will most likely need the services of a legal practitioner to identify and assert their rights.

2.6.9 Bureaucratic and institutional barriers and quality of service

There are bureaucratic and institutional barriers that women and girls face in asserting their right to freedom from violence even if the relevant Constitution of Zimbabwe and national laws explicitly guarantee this right. In order to prosecute for marital rape, the Attorney General is required to consent, which may discourage women from reporting these cases. As outlined earlier in this chapter, there is a high turnover of LAD law officers, prosecutors and magistrates. There are also huge case backlogs in magistrates’ courts and High Courts, some of them dating as far back as 2005. For example, ‘some judges like Samuel Kudya have 36 reserved judgements still to be delivered citing administrative issues as reasons behind the delay in passing judgements’⁹⁰. This results in significant backlogs at court where civil matters are only resolved approximately two to three years after the application for an available trial or hearing date at court has been made. This negatively impacts on access to justice as survivors of SGBV, HP and SRHR, who are deterred from the system due to its slow, tedious and confusing nature compared to the less formal channels like family mediation meetings, counselling and guidance sessions

⁹⁰ <https://www.newzimbabwe.com/retired-zim-judges-to-bounce-back-to-help-clear-trial-backlog/>.

by faith-based leaders and customary courts presided by traditional leaders which are faster, cheaper and easily accessible to the majority of survivors in rural and hard to reach areas.

Furthermore, the final judgment from a formal court may not even address the full extent of the dispute and may take so long to be delivered, that it no longer has any practical effect at the conclusion of the litigation proceedings. This is especially true in GBV as a result of matrimonial problems where parties might have resolved their differences. This will be discussed in greater detail under the section on informal justice system. Lack of understanding among SGBV, HP and SRHR service providers of the referral pathway, related policies, protocols and guidelines. As noted earlier, there are gaps in relation to Protocol on Multi-sectoral Management of Sexual Abuse Cases in Zimbabwe and LAD is not actively providing legal services in one-stop-centres. Inability of service providers to communicate with women and girls with various disabilities are among the barriers to access to SGBV and SRHR services by this specific category facing multiple and intersection forms of discrimination and violence. Service delivery gaps in specialised fields, including forensic investigation and analysis, age estimation in cases involving minors, vulnerable witness preparation, psychological counselling and community-based emergency places of safety for women and girls.

2.6.10 Overburdened prosecutors

As discussed earlier, interests of prosecutors do not necessarily converge with rights and needs of survivors. High caseloads may result in the prosecutor's inability to understand the gendered nature of crimes faced by women and girls. This is because they may not act like survivors of other crimes in that they may be unable to recall or speak about what happened to them, and then they are viewed

as hostile or uncooperative or labelled as not credible witnesses or liars due to inconsistent and contradicting statements (UNODC 2014:41-42). The survivors are also affected by psychological impact of SGBV and the lengthy and cumbersome legal processes. For example, the Adult Rape Clinic (ARC) raised awareness of legal processes to the survivors because it is aware that prosecutors do not have time to explain these processes and how to navigate the criminal justice system. It is important for NPA to be strengthened so that it has an awareness raising component for the survivors as well as being capacitated on how to handle these survivors in asserting their right to fair trial and access to justice.

2.6.11 Lack of funding and capacity gaps

There are gaps in relation to how forensic evidence is collected, and it is only processed at the Police Head Quarters in Harare. For example, there is absence of processing of rape kits due to lack of funding. Thus, the police should be capacitated technically and financially so that they are able to investigate and collect medical evidence that is critical for the assertion of rights of survivors. This is because access to justice starts once the matter has been reported, and failure to collect or preserve forensic evidence has negative impact on the outcome of the case resulting in dismissal or acquittal of the alleged perpetrators.

2.6.12 Lack of coordination and sharing among CSOs

Competition over financial resources affect SGBV, HP and SRHR services and programming. This results in *ad hoc* services that are not integrated and holistic due to lack of sharing of information and lessons on what works as well as lack of collaboration and coordination of legal aid services CSOs. This has a domino effect on the rights of survivors

and their bid to access justice and claim appropriate remedies.

2.7 CHAPTER CONCLUSION

This chapter has discussed various aspects of the formal justice system. The Constitution of Zimbabwe is highlighted as the most important guide to the formal justice system since it provides the basis for laws, policies and institutional frameworks. For example, the constitution provides for the right of access to basic health services, which include the right to control one's health and body, including sexual and reproductive freedom. Many forms of sexual violence, including rape, violate the survivor's right to sexual freedom. For adult survivors of SGBV, the right to health includes the right to be free from interference and to be free from non-consensual medical treatment after the fateful incident. If the unlawful act results in pregnancy, it violates the survivor's reproductive freedom and the right to reproductive health entitles the victim to have the pregnancy terminated. The chapter also foregrounds international law and conventions which inform national laws and policies.

CHAPTER 3:

FINDINGS FROM THE FIELD

3.1 INTRODUCTION

This chapter outlines the findings from the fieldwork conducted in Hurungwe, Mutasa and Umzingwane. The findings are presented and discussed thematically and highlight the key issues to emerge from the communities in the research areas. The everyday lived experiences outlined in this chapter provide localised understandings of how the formal justice system is operated for ordinary people across the country. The various actors, institutions, policies and practices that make up the formal justice system are lived realities that need to be contextualised through the voices of survivors, witnesses and community members that have utilised these services. The chapter provides qualitative data which allows a nuanced understanding of the voices of respondents from the three districts.

3.2 SURVIVORS' UNDERSTANDING OF THE FORMAL JUSTICE SYSTEM

This part discusses survivors' narratives regarding their interaction (or lack thereof) with the formal justice system in Zimbabwe.

3.2.1 Survivors' understanding of laws and what constitutes SGBV, HP and SRHR

The research findings point towards a general understanding of what constitutes SGBV, HPs and SRHR amongst respondents, although there are many practices which are justified in religious and cultural terms. The respondents generally understood the various dimensions of SGBV especially physical and sexual assault. The use of force was generally indicated as a major factor in SGBV, although some respondents indicated how sexual violence can happen without force and gave examples of religious leaders who use 'falsehoods' and their influence to trick women into sexual relationships. There were also aspects regarded as SGBV by some respondents, which the current legal system neither criminalises nor offers legal protection to the survivors. For example, an elderly woman highlighted that she was emotionally abused by her husband who refused to have sex with her after marrying a second wife. This later degenerated into physical violence after she complained. In terms of harmful practices, inheritance practices were identified as a problematic issue which women still largely faced due to the complexities of socio-cultural beliefs. The research identified numerous nuances. In one case in Karoi, the survivor was being forced into levirate marriage (*kugarwa nhaka*) by her late husband's family. The family were refusing to deal with the late husband's estate because the woman (survivor) was refusing the marriage. There were also cases of virginity testing (Karoi), clitoral elongation (Umzingwane and Mutasa) and forced marriages (Mutasa).

A Community Organiser in Mutasa District noted that in most cases, SGBV involves male perpetrators and female survivors. And that violence, whether physical or emotional, is always part of SGBV. The situation is however

different amongst male survivors of SGBV. This is mainly because of a lack of knowledge on what constitutes GBV against a man. It was highlighted that some CSOs working on SGBV, HP and SRHR were overwhelmingly interested in training and advocating for women's rights. This might be attributed to the fact that women are disproportionately affected by SGBV and constitute the majority of survivors. It was highlighted that there are male survivors who are ignorant of the fact that what they have experienced could be regarded as a criminal offence. A counsellor who works with male survivors highlighted the need to increase awareness of the criminal nature of SGBV perpetrated by women against men.

The research also sought to understand how perpetrators or other actors involved in instances of SGBV and HP perceived or understood the law. Throughout the research areas, it became clear that for some respondents (mostly male), there are some issues that they felt should not involve the law especially regarding issues between married people. A male respondent in Mutasa District who had a conflict with his wife due to lack of sex or enjoyment of conjugal rights, said the following, 'I believe that issues about sex between married couples should not get to the police or courts. If the cases are taken there it leads to the destruction of marriages. Protection orders lead to marital separation. Protection orders are regarded as divorce orders.'⁹¹ Of concern was a trained female paralegal who held the same opinion and who said, 'I once helped counselling a couple that was involved in physical abuse. I know that the police and courts are there but, in most cases, issues that relate to marital problems must not be taken to law enforcement agencies because they are sensitive and private issues.'⁹² This shows that even persons familiar with the law can have preconceived opinions, and should be

91 Interview, male respondent, Mutasa District.

92 Interview, Community Paralegal, Mutasa District.

trained to understand that GBV is perpetrated by intimate partners and that this may result in femicide. Family mediation should never be encouraged, and this is in line with international human rights standards.

Another respondent in Hurungwe District added, 'No marriage survives when litigation occurs between the two parties.'⁹³ This underscores the fact that there are many cases of SGBV taking place within the marriages that are unreported. It was highlighted that there is a socio-cultural belief system that views the formal justice system as 'anti-marriage' in how it operates and resolves issues. There is therefore need to rethink on how community advocacy for the formal justice is done in order to effectively address such belief systems that perpetuate SGBV and violations of rights of survivors.

3.2.2 Knowledge of reporting mechanisms and accessibility

The assumption is that a survivor may report to any police station at any time and then must immediately be referred the case to the VFU. However, survivors of SGBV, HP and SRHR are unaware of their rights and that is why some of them consult a traditional leader or faith-based leaders before going to the police or clinic. In practice, ordinary police officers stationed at the help desk/reception of a local police station/charge office, solicit unnecessary personal information from survivors resulting in secondary trauma. Reports can be made either by phoning the police or in person. Key informants indicated that most SRHR related cases come through walk-in survivors of SGBV, rape or indecent assault. When reports are made in person, the survivor should be taken into a private room in order to be interviewed. A VFU officer should carry out in-depth interviews with the victim and should explain the investigating procedures and what is

93 Interview, female respondent, Hurungwe District.

expected of the survivor and what the survivor should do during the process and detail the nature of the assistance that the police offer. During the interviews, the police should take into account the needs of survivor. For example, if the survivor is a child, the child should be accompanied by either a parent or a guardian provided the parent/guardian are not deemed to be material witnesses. Or the victim could have some disabilities such as visual, hearing or intellectual impairments. This means the VFU officer should choose appropriate language and ways to communicate with these survivors. Ideally, the interviews with survivors should be private, safe and friendly. These interview rooms are not available at police, LAD and NPA offices due to limited space with officers sharing offices. As a consequence, interviews are carried out in circumstances where there is no privacy for the survivors thereby violating their right to privacy and confidentiality and infringes their right to human dignity.

3.3 SURVIVORS' AND WITNESSES' EXPERIENCES WITH THE FORMAL JUSTICE SYSTEM

This part discusses the experiences of survivors and witnesses with the formal justice system. The experience of survivors and witnesses are discussed in relation to reporting structures. Medical facilities, NPA, court and post-court processes.

3.3.1 Experiences with reporting structures

UN Women Zimbabwe (2016) highlighted that corruption by the police and traditional leaders was one of the barriers that young women in Makoni District faced when they wanted to get assistance after experiencing violence. Those who reported the crime to the police said that the police took action, by enforcing the Domestic Violence Act and by providing

a 'safe and confidential' place for survivors (UN Women Zimbabwe 2016). This could be attributed to the fact there is a one-stop-centre in Makoni District. The reports for other districts however present negative experiences. For example, a survivor in Hurungwe District narrated the following:

*The police at Magunje Growth Point took me to Karoi Town and there, the VFU helped me to calm down. They then referred me to the Karoi Hospital to get my wounds treated. I was treated and referred to Chaka Hospital because its X-Ray machine was not working. The hospital gave me my medical papers to give the Karoi Police Station. When I arrived at Karoi Police Station, I was told that the police officer who had opened my docket was away and I was assured he would call me when he returned. To this day, he hasn't.*⁹⁴

ZWLA (2018) reported the following narratives of experiences by survivors of violence in relation to dealing with the police and court systems:

- *My first problem with police is they came to take a statement while I was on oxygen. Then the court said I was absconding at least three or more times. They also were not considering my condition – my operation had not even healed; my wounds were fresh. The magistrate was also saying that this woman is not serious as she is absconding (Survivor Harare).*
- *At court on the first day they helped me a lot. But when I went back, they were not so helpful, they were not forthcoming. I spent three months seeking for that protection order (Survivor, Chinhoyi).*
- *The prosecutor would not give me information. My husband would text me immediately after I met the prosecutor narrating exactly what I discussed with him. The moment I was referred to ZWLA*

⁹⁴ Interview, Survivor 2, Hurungwe District.

and got ZWLA involved, the conduct of the prosecutor changed (Survivor, Harare).

- *This place should not be a place to frequent. If given a choice, I would choose not to come back here again. The court environment is very tense; everyone including the magistrate was wearing serious faces. My heart was actually beating when I was giving evidence. I think I left out a lot of things. The court room was full of people in the gallery and I was not able to say out some of the words as the magistrate required me to clearly explain some of the words which are vulgar (Survivor, Harare).*

Fieldwork research for this report provided almost similar narrative experiences with reporting structures in the three (3) Districts and beyond. What is clear from the narratives are the adverse experiences by survivors of a reporting structure which is often hostile to them. For instance, the male survivors, reported negative attitudes experienced at the police station. One male respondent in Mutasa District, noted, 'I think that men are shy to report abuse because they are further abused at the police because the officers often laugh at such issues.'⁹⁵ This is further supported by another key informant, a counsellor for male survivors of domestic violence who added that:

The men that I counsel all have had negative experiences at the police stations when they try to report cases of domestic violence. We live in a culture where a man who is a victim of abuse is a source of laughter and ridiculed by both men and women. Some men also encounter the challenge of not knowing where to report their cases. Other men indicated that they feel humiliated and undignified when they have to report to female officers.'⁹⁶

Thus, there is scope to continuously work

⁹⁵ Interview, male respondent, Mutasa District.

⁹⁶ Interview, Counsellor for male survivors of domestic violence, Harare

towards making reporting structures more accessible and friendly for all survivors. The negative experiences by survivors may possibly result in the belief that the police are corrupt, ineffective and uncaring. Most women fear going to the police as a result of negative stories they have heard from others and negative attitudes towards survivors of SGBV, HP and SRHR due to the social and gender norms that perpetuate the belief that domestic violence is a private matter that requires family mediation, and that 'real men' should not be abused by women.

The experience with reporting structures is also largely negative for key populations. For example, sex workers have a long history of an antagonistic relationship with the police. Scorgie et al. (2013) notes that Sections 81–87 of the Criminal Law (Codification and Reform) Act criminalises soliciting, procuring and living off the earnings of sex work. The post independent government has been attempting to thwart sex work arguing that it degrades moral values of society (Magaisa 1999). In response to the increased number of women in sex work the, government carried out a number of operations aimed at removing or minimising the number of people in sex work. One such action was code named 'Operation Magi Chiroorwa' (Operation Maggie Get Married) conducted in the early 1990s, when women suspected to be sex workers were raided, arrested and relocated to rural areas. As a result, the police have negative views of sex workers and state policies and laws have emboldened the police to mistreat and violate rights of sex workers. In such a context, it is unlikely that sex workers can be treated fairly by the reporting structures. As a sex worker in this research complained:

It is difficult for me as a sex worker to walk into a police station and report a sexual assault or rape. I have colleagues who have been sexually assaulted and tried reporting

*the cases. One of them was told by the police that since she was selling sex how can she complain of rape. For the police, a sex worker cannot be raped since they 'like' sex. The most pressing problem for sex workers is the lack of protection from abusive men who sometimes beat you up and refuse to pay after sex. Sometimes the police are not helpful as they say they do not concern themselves with prostitutes, yet they should help because we are not doing this out of choice but out of necessity.*⁹⁷

Some key informants highlighted policy inconsistencies and incoherence, for example, sex work is criminalised but the National AIDS Council has a big programme that supports key populations which includes sex workers in the fight against the HIV pandemic. The National AIDS Policy promotes rights of sex workers. They also lamented at the fact that

*'when reports of rape are made to the police, the law enforcement officers' attitude is that a girlfriend cannot be raped by her boyfriend and also that they will not arrest a client who forces sex workers to have unprotected sex. Thus, the police are not differentiating what is a legal act from violations of ones' rights, thereby denying provision of appropriate services to these survivors.'*⁹⁸

As noted earlier, persons with disabilities also face unique challenges in accessing reporting structures. Observations taken at a number of police stations during the course of this research showed that the stations are ill equipped to serve the SGBV needs of persons with disabilities. For example, the police stations are difficult to access by persons using wheelchairs. They are also not designed to allow easy movement with wheelchairs. A Council Official in Umzingwane District pointed out that:

*The physically challenged have a challenge in that some of them cannot walk on their own, which makes it a bit challenging to reach some venues because of the distances involved. With some households, disability is considered as some form of bad omen and when door to door services are being carried out, they are hidden and stand to lose out, yet they are persons with disabilities and are HIV positive, a very vulnerable group.*⁹⁹

There is also a lack of support and information for survivors with visual, physical or hearing impairments. The police were also reported to be unhelpful when dealing with disabled people as noted by a key informant in Epworth:

*Here in Epworth, I have helped women with disabilities who have faced challenges in accessing justice after sexual assaults. One major problem is that the police do not take people with disabilities seriously. They often find the officers who are unfriendly and unhelpful. Where the offenders are arrested, we often see them back on the streets without any explanation to us, which makes us suspect that the police are corrupt. The police are also not equipped to deal with all forms of disabilities for example there are no officers trained in sign language.*¹⁰⁰

Like sex workers, lesbians, gays, bisexual, transgender and queer (LGBTQ+) populations have a negative history with the police which includes violence and arrests. For them to report cases to the police is thus a complex and often complicated process that requires better understanding and open mindedness on the part of the police. A key informant argued that:

The whole institutional framework of justice in Zimbabwe is not built to be responsive to the needs of LGBTQ+s. The Constitution itself only recognises unions between men

97 Interview, Sex worker, Harare

98 Interview, Director, Katswe Sisterhood, Harare.

99 Interview, District Council, Umzingwane District.

100 Interview, Community advocate for people with disabilities, Epworth Rural Board.

and women so if a same sex couple get into a domestic issue what happens? The laws are written to respond to the heterosexual unions.¹⁰¹

This narrative highlights the intersecting challenges faced by survivors when dealing with the reporting structures. For survivors, the police are often an intimidating experience especially in areas where there are no trained victim friendly officers. Speaking to the police across the three (3) districts during this research, we found that many police stations are actively working hard to improve how they interact with survivors, but they also face numerous challenges which include lack of appropriate and adequate offices that provide the needed privacy and comfort for survivors.

3.3.2 Experiences with medical facilities

Sexual violence requires specialised medical interventions that provides a holistic access to health care (including if required PEP), psychosocial support, social protection and legal services. These services are not readily available at all poly clinics nationwide. In an interview in 2018, the United Nations Population Fund (UNFPA) Country Representative Dr. Esther Muia noted, ‘Many survivors of GBV in Zimbabwe fail to access much needed services to help them deal with the trauma (...). We must spend sleepless nights to ensure we reach each and every survivor with essential services.’¹⁰² The UNFPA surveyed 1,820 people across Zimbabwe on GBV knowledge, attitudes and practices. The report stated that in relation GBV incidents, 83% of community members surveyed believed there had to be a police report to access health services and 24% knew

of shelters and Post-Exposure Prophylaxis (PEP). This lack of knowledge around access to PEP is concerning and is an area that requires more attention. It also important to note that although section 33 of the revised Public Health Act provides for emergency treatment, it does not specify healthcare services that includes access to PEP, emergency contraceptives and safe abortions for survivors of SGBV. In any case all the survivors in this study did not have knowledge of PEP. Ignorance of such services may mean that survivors fail to ask or seek such services in case of sexual abuse.

Another key issue is access to abortion services for survivors of rape. The Termination of Pregnancy Act (1977) allows abortion when the continuation of the pregnancy endangers the life of the woman or poses a serious threat of permanent impairment to her physical health, and in cases where the foetus was conceived as a result of unlawful intercourse, including rape, incest, or intercourse with a ‘mentally handicapped’ woman. A nurse in Mutasa District acknowledged this right stating that, ‘those who fall pregnant following rape in most cases have the opportunity to abort the children though it is not so common here.’¹⁰³ However, obtaining a legal abortion is a long and fraught process in Zimbabwe (Chiweshe 2016). See the boxed case below outlining the seminal case of Mildred Masingure who sought legal abortion after suffering rape, but the state failed her through systemic bureaucratic processes entrenched in anti-abortion sentiments. Experiences with health workers is often fraught with negativity and trauma for women seeking post abortion care. Maternowska et al. (2014) reported women were being morally reproached by nurses. Ndarukwa (2012), who is a nurse himself, stated that abortion and post-abortion care are seen as adding a further burden on nurses who are already overburdened with other duties

¹⁰¹ Interview, Key Populations Expert, Harare.

¹⁰² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752589/Zimbabwe_-_Women_and_GBV_-_CPIN_-_v3.0e_October_2018_.pdf

¹⁰³ Interview, Nurse, Mutasa District.

and responsibilities. Thus, women who present themselves for post-abortion care are treated badly and are usually humiliated for having harmed themselves.

A key challenge with medical facilities is also the narrow focus on survivors. Witnesses, who are at times young children are often not provided with any care. The referral pathway does not have an explicit protocol for assisting witnesses with health needs and therefore the mental health needs of witnesses are often ignored. Below is a story narrated by witness in Umzingwane District which highlights experiences with the referral structures:

I was once a witness in a murder case of a woman, many years ago. The woman was murdered by a man in front of me. It was on the road that I was using to go home back when I stayed in Plumtree. I went to court but was not allowed to testify because I was only 14. I do not know or remember if I got any support of any kind. I did receive some sort of counselling from a nurse at the surgery close to where the incident occurred. I do not remember much other than that I was interviewed a couple of times by police officers. I would go to the court, but I never entered or got to testify.¹⁰⁴

From the above narrative, we can discern that witnesses are overlooked by the medical facilities in SGBV cases.

3.3.3 Experiences with National Prosecution Authority (NPA)

The problems with NPA continued with most people having little faith in the prosecution system given that it 'emphasises on the rights of the accused at the expense of protecting the victims of child sexual abuse' (Mutandwa 2012:21). Mutandwa (2012) highlighted the many instances where survivors are sidelined

¹⁰⁴ Interview, witness, Umzingwane District.

in the sentencing process and how this alienates people from the criminal justice system. A key informant lamented that the National Prosecution Authority (NPA) was the 'biggest disaster because of poor conditions of services it was not assisting survivors of SGBV, HP and SRHR'. Prosecutors are focused on the numbers of cases that go through the court without assisting these survivors and informing them of their rights or walking with them through the court process and that the outcome may be a conviction or discharge. One problem is that vital medical evidence is not obtained from the survivors which is important for a successful prosecution. Another key informant highlighted that:

A case falls from the outset if forensic evidence is not collected or has been contaminated/tempered with...At times, the prosecutors are also seen talking with defence lawyers creating a perception that they might have been bribed. Defence lawyers are always 'rearing to go and fired up', known to represent rapists and they use all the frustrating tactics while the prosecutors take a laissez faire attitude. It was felt that there are insufficient mechanisms that support survivors of SGBV, HP and SRHR. It was also felt that the legal and policy framework 'aids the perpetrators.'¹⁰⁵

For this reason, survivors fail to report because they do not want to be further traumatised. In cases where the prosecutor fails to protect the survivor and the perpetrator is legally represented, the environment created is too intimidating for survivors of violence to remain confident. For example, the defence lawyers are known to exploit survivors' limited knowledge of court proceedings to the advantage of the perpetrator, which erodes her self-esteem and confidence and negatively affects her ability to assert her rights and access justice. Wilcox (2010) refers to this as a secondary form of

¹⁰⁵ Interview, JSC, Umzingwane District

victimisation in which the system that ought to protect survivors of violence actually exacerbates the original victimisation they would have experienced.

3.3.4 Court experiences

In the case of children, research has shown that Zimbabwe has a long way to go to ensure positive experiences for child survivors in courts. Through ZWLA's court research and court observations (2018), it was noted that whilst some magistrates make an effort to create a conducive court environment by clearing the court before proceedings begin, especially for sexual offences involving minors, some do not carry out such practices. This is highly intimidating for child survivors as illustrated from ZWLA (2018:34) study below:

It was difficult for me to say out the vulgar words, considering that when we were growing up, our parents were so strict, and they never wanted to hear any such language coming from any of us regarding genitalia. I failed to explain myself out and this was made difficult by the fact that my parents and relatives were also in the gallery. I could not explicitly explain what happened, and the magistrate kept on insisting that I should explain all the details of the sexual encounter (16-year-old Survivor).

There are in Zimbabwe no specialised courts solely for children. The magistrate can declare that the court would be sitting as a children's court, but that does not make the court child friendly. For example, Justice for Children, has instituted litigation to make court's child friendly. According to an interpreter from JSC, the courts have implemented, 'the use of one-way mirrors, separation rooms with TVs and speakers, use of softer language and illustration dolls when interpreting, are all methods being implemented and are currently sufficiently appropriate to deal with SGBV cases.'¹⁰⁶ During

¹⁰⁶ Interview, JSC interpreter, Umzingwane District.

the interviews, it was noted that Zimbabwe has a Victim Friendly Court system which can afford children safe space. A key informant noted:

Victim Child Friendly System is where children do not appear in courts as witness. The courts need to be disability friendly:

a) The advantage of this system is that it gives a child freedom to explain his or her ordeal in court and psycho support to that child because of its environment. It also enhances the self-esteem of the child.

b) The weakness of this system is that children become afraid in court that distorts the information about what happened to the child. It also traumatises the child especially during the cross examination by lawyers.¹⁰⁷

The United States State Department Report 2017 stated, 'Although conviction of domestic violence is punishable by a fine and a maximum sentence of 10 years' imprisonment, authorities generally considered it a private matter, and prosecution was rare.'¹⁰⁸ Survivors face numerous challenges with the courts. In everyday life, survivors encounter an intersectionality of experiences. These are re-victimisation, stigma, fear of divorce or desertion and cultural factors are survivors' personal hurdles for not accessing justice. In most cases, the argument is that survivors of SGBV are 'blamed' for not reporting or using justice, but the legal services providers do not understand the lived realities of women and girls that have a gendered face. There are social and cultural factors that form a significant barrier to women realising justice for violence against them (ZWLA 2018). Survivors and key informants in this research also highlighted

¹⁰⁷ Interview, Department of Social Welfare, Umzingwane District.

¹⁰⁸ <https://www.state.gov/documents/organization/277307.pdf>

Box 1: Case of Mildred Mapingure

On 4 April 2006, Mildred Mapingure, the Appellant in the case, was attacked and raped by robbers at her home. She immediately reported the matter to police and requested that she be taken to a medical practitioner to be given medication to prevent pregnancy (emergency contraception) and any sexually transmitted infection. Later that day, she was taken to hospital and was attended to by a medical practitioner. The medical practitioner said that he could only attend to her request for emergency contraception in the presence of a police officer. The medical practitioner further indicated that the medication had to be administered within 72 hours of the sexual intercourse having occurred. Mapingure duly went to the police station the following day but was advised that the officer who had dealt with her case was not available. She then returned to the hospital, but the medical practitioner insisted that he could only treat her if a police report was made available. On 7 April 2006, she went to the hospital with another police officer. At that stage, the medical practitioner informed her that he could not treat her because the prescribed 72 hours had already elapsed. Eventually, on 5 May 2006, Mapingure was confirmed to be pregnant. Thereafter, Mapingure went to see the investigating police officer who referred her to a public prosecutor. She indicated that she wanted her pregnancy terminated but was told that she had to wait until the rape trial had been completed. In July 2006, acting on the direction of the police, she returned to the prosecution office and was advised that she required a pregnancy termination order. The prosecutor in question then consulted a magistrate who stated that he could not assist because the rape trial had not been completed. She finally obtained the necessary magisterial certificate on 30 September 2006. When she then sought the termination, the hospital matron who was assigned to carry out the termination felt that it was no longer safe to carry out the procedure and declined to do so. Eventually, after the full term of her pregnancy, Mapingure gave birth to her child on 24 December 2006. Mapingure brought an action against the Minister of Health, Justice and Home Affairs for pain and suffering endured as well as maintenance of the child. The basis of her claim was that the employees of the respondents had been negligent in their failure to prevent the pregnancy, and subsequently to facilitate its termination.

Extracted from Kangau (2017:82)

numerous challenges associated with the formal justice system. The challenges are outlined below:

- *I think the court procedures are too long. Consider a rape victim who has to go to the police, then comes for examination here, and if we realise there is need for them to get further medical attention, we refer them to maybe, Bonda Hospital in Mutasa District. After that, the Department of Social Welfare will also have to be involved in giving them safe shelter if need be. The perpetrator will, maybe get arrested, get released on bail pending trial and the trial might come too long after the rape incident.*

Survivors and witnesses get impatient. The court process is too lengthy. And we have to consider the proximity of the courts, they are too far for most survivors. Some of the survivors who are children will not even have the money to get to the police to report their matters.¹⁰⁹

- *The challenge maybe lies in that people have a certain misconception attached to the formal justice system. They think it is corrupt when cases take long, not knowing that there is a lot of administration to be done and other pending cases before theirs. I have also heard of situations where people do not*

¹⁰⁹ Interview, Nurse, Mutasa District.

*understand the concept on one being released on bail pending trial.*¹¹⁰

In research conducted by IFRC (2017), the participants explained that women often know about the various SGBV laws, but when SGBV occurs, it is often normalised, or explained as acts of love by the elderly and ‘aunts’ (older women relatives) (IFRC 2017). Because of cultural definitions of womanhood and notions of respectability in Zimbabwe, defined by marriage status, most survivors of domestic [violence] would rather not report, risking ‘biological death’ from further abuse rather than experience ‘social death’ of being deserted by a husband and then become a divorcée and single mother who has no breadwinner to support her.

It is important here to outline the experiences of witnesses within the court system. The strength of legal cases often hinges around having credible witnesses testifying in court. Due to economic challenges the treatment of witnesses has often been deplorable in Zimbabwe. The research showed the key issues around witnesses’ experiences of the court system include the following:

- In some areas where transport to courts is a serious challenge, witnesses are either asked to cater for their own costs or transported in the trucks that transport prisoners going to court. As a result, they may be transported in the same vehicle as the perpetrator resulting in further victimisation. In a few cases, witnesses have slept in police stations because of a lack of accommodation. This can result in witnesses being treated in the same manner as criminals. Some witnesses have reported that they slept on verandas of local shops and had no food to eat.
- The unpredictability of the court system means that witnesses are often required to attend multiple court dates and at times

after travelling the cases are postponed. This leads to frustration with the system and some witnesses may decide to longer participate in the matter.

- There is also stigma attached for being a witness within the community. Many respondents highlighted that witnesses are often accused of trying to destroy marriages.

Section 319B of the Criminal Procedure and Evidence Act [Chapter 9:03] provides for measures to protect vulnerable witnesses at trial. There is no provision for legal aid for victims or witnesses prior to the trial.

3.3.5 Post-court experiences

One of the major weaknesses of the formal justice systems that has emerged out of this research is the impersonal nature of the system after the case is done. Formal justice system has a defined and definite end beyond which the survivor is on their own no matter the outcome of the case. A key informant in Umzingwane District argued, ‘The survivor after the court has finalised the case is left to figure out life alone in the community and even during the trial of the case the victim is not protected.’¹¹¹ Another key informant added:

*The current legal framework is more centred on how to punish the accused, period. There is little to no support or follow up on the complainant. There should be a Branch of government like Social Welfare, perhaps from the Ministry responsible for Women’s Affairs, which focuses on conducting follow up to improve the efficacy of the justice system in relation to SGBV, HP and SRHR. CSOs could help with this as government departments may be limited by financial constraints.*¹¹²

These narratives highlight that the justice

¹¹⁰ Interview, VFU, Mutasa District.

¹¹¹ Interview, Department of Social Welfare, Umzingwane District.

¹¹² Interview, JSC, Umzingwane, District.

system is ill equipped to deal with the post court experiences of survivors. There are no post-court counselling services. The impersonal nature of the formal justice system poses serious challenges in the context where the informal justice system provides the only alternative. The key issue therefore is on creating victim friendly framework that goes beyond the courts. SGBV is treated as a criminal and psychosocial issue and not as a civil issue. This highlights an institutional perception of SGBV as a crime against the state and victims as collateral to the state's effort to punish deviant behaviour and not necessarily redress injury to the victims. It does not place victims at the centre of judicial system's response to SGBV. Section 10 of Legal Aid Act, together with section 319B and 319C of the Criminal Procedure and Evidence Act are very important to victims in that section 363 of the Criminal Procedure and Evidence Act [Chapter 9:07] recognises the need to compensate a person who has suffered personal injury as a direct result of the offence and assistance to secure this compensation would provide redress for victims. While the interests of justice would justify the provision of legal aid to secure compensation, the section is limited in that there are two cumulative requirements for provision of legal aid at the instance of the court, namely the interests of justice and the victim's insufficient means to obtain the services of a legal practitioner on his/her own account. The cumulative means test requirement means that a court would not have competency to order the provision of legal aid based on the interests of justice alone.

3.4 SGBV, HP, SRHR AND FORMAL JUSTICE SYSTEM IN THE CONTEXT OF COVID-19

The study was conducted during the global pandemic that not only necessitated an innovative methodological approach in data collection but whose impacts included an increase in domestic violence. Violence against women also amplifies in emergency, crisis or conflict situations (see UNFPA 2014; WHO 2005). Likewise, the current COVID-19 pandemic has also exacerbated SGBV and HP against women and girls, and also led to new forms of violence. Because of pre-existing gender inequalities, deep-rooted discrimination and feminised poverty, the multifaceted consequences of the current COVID-19 crisis has impacted women more unequally than men, whilst at the same time placing increased responsibilities on women's shoulders.¹¹³ UNICEF also reported in March 2020 that children were facing heightened risk of abuse because of COVID-19.¹¹⁴ In the Guidance Note, the United Nations CEDAW Committee also reported in April 2020 that while many states consider restrictions on freedom of movement and physical distancing necessary to prevent contagion, such measures may disproportionately limit women's access to health care, safe shelters, education, employment and economic life. Reporting on Zimbabwe, UNFPA also announced that an increase in GBV is expected as an indirect consequence of COVID-19 infection prevention measures, including the restriction of movements, increased demand and limited access to public services and basic commodities.

Self-isolation and limited mobility due to a lockdown are likely to impact women's and

113 CEDAW Committee Call for joint action in the times of the COVID-19 pandemic (Statement adopted on 21 April 2020)

114 <https://www.unicef.org/zimbabwe/stories/covid-19-children-heightened-risk-abuse>

girls' ability to access basic family resources, such as water and food, which may increase tension within the household and lead to an increased risk of intimate partner violence (ibid). The levels of SGBV spiked in Zimbabwe as households are placed under the increased constraints that come from concerns of health, psychosocial, and loss of income, with many women and girls are under lockdown with their abusers.¹¹⁵ A respondent explained the increase in violence by arguing that 'hunger is an issue which triggers violence in the homes. Before the lockdown, some women could source for provisions and income through vending and avoided disputes about provisions or could visit friends or relatives for temporary relief if there was abuse in the home.'¹¹⁶ The COVID-19 induced lockdowns from April 2020 to present in Zimbabwe have coincided with a sharp increase in SGBV especially within the home. Musasa Project, an agency that runs toll free GBV help lines, reported that there has been a 100% increase in calls related to domestic abuse since start of the lockdown. According to the Zimbabwe Cluster Status: Protection (Gender-based Violence),

The national GBV Hotline (Musasa) has recorded a total of 2,768 GBV calls from the beginning of the lockdown on 30 March until 13 June (1,312 in April, 915 in May 2020 and 541 from 1 June to 27 June), with an overall average increase of over 70% compared to the pre-lockdown trends. About 94% of the cases are women. The most dominant forms are physical violence (38% of total cases) and psychological violence (38%), followed by economic violence (19%) and sexual violence (5%). About 90% of cases are IPV cases.¹¹⁷

115 Spotlight Communications officer at: <http://zw.one.un.org/newsroom/news/urgent-action-looming-violence-against-women-during-covid-19-pandemic>

116 Interview, Survivor 2, Umzingwane District.

117 Last updated 10 July 20202. See <https://reports.unocha.org/en/country/zimbabwe/card/2XxB9GOV93/>

I further stated,

The Mobile OSCs [One stop centres] teams have strengthened their interaction with Zimbabwe Republic Police (ZRP) and the Victim Friendly Units (VFU) to ensure timely referrals of GBV survivors at points of entry and in areas nearby quarantine facilities. Alternative transport fees support to survivors, including those with disabilities and their caregivers, also continues to facilitate access to services (136 survivors were assisted with transport to and from GBV services).¹¹⁸

In Mutasa District, a young married woman reported that spousal abuse increased under lockdown because she was frequently asking the husband to provide money for food.¹¹⁹ Matabeleland Institute for Human Rights (MIHR) stated that on the 5th of May 2020 returnees to the country who are placed in quarantine centres found themselves desperate for a plethora of human needs and this exposed them to sexual exploitation and abuse. The Institute also noted that due to the harsh economic environment facing the country and the inadequate services and commodities, the returnees found themselves exposed to sexual exploitation and abuse in order to receive better services and supplies from aid workers.¹²⁰ On 11th May 2020, the Zimbabwe Broadcasting Corporation Television News highlighted that in Zimunya District of Manicaland Province, women and girls were not able to access contraceptives due to travel restrictions and menstrual and maternal health services were being side-lined. Those who were interviewed recommended setting up desks and mobile services for contraceptives and HIV medicines.

In emergency situations such as is taking place during the pandemic, certain human

118 Ibid.

119 Interview, Survivor 5, Mutasa District.

120 <https://esaro.unfpa.org/en/news/survivors-gender-based-violence-need-access-services-times-crisis-especially-during-covid-19>

rights are suspended when the state takes central control to avert an adverse health situation, at the same time it is easy for government actors to ignore that their actions reproduce certain vulnerabilities and violate human rights. For example, the right to free movement in Zimbabwe was suspended but this had the negative effect on SGBV survivors' access to services. A key informant from the JSC argued the following:

JSC's operations have continued even during the lockdown and the crisis we find ourselves in. There is no day that anyone came and did not receive assistance. Access to justice is a human right, thus it should always be available. The challenge was actually people failing to come. They cannot access the courts because they do not have transport. For instance, here we do not have ZUPCO buses (government owned buses which were the only buses allowed to operate during the lockdown). People have to use private informal taxis (mushika-shika) which are expensive and can actually ask for up to US\$5 to get here from some rural areas. People are not working, and lockdown has made it worse so many people cannot afford that. We do not know how to help people in such situations. Another challenge that comes with people not being able to access the courts is that the court dates that were set prior to the movement restrictions lapsed. Some people are now worried whether justice can still be served and if it will, when will it be served? People are very impatient with the formal justice system. How then do we restore the faith that people in this area were starting to build when it comes to justice delivery? It is a disaster on its own.¹²¹

Some key informants highlighted cases which involved women being denied access to services because police at roadblocks demanded letters that stated that they were in

121 Interview JSC, Mutasa District.

essential services; since they were unable to do so women who needed to access essential services such as courts or medical health services were denied freedom of movement and as a result access to justice. In Harare, there were reports that persons living with HIV, being turned away from health centres such as Wilkins Infectious Diseases Hospital when they went there to get medicines. The supply of medicines was also negatively affected by the disruptions in cross border and city-to-city movements.

The government also diverted funding and attention to COVID-19 at the expense of health issues already existent such as HIV. Even at the local level, critical resources have been diverted towards COVID-19 as a nurse in Mutasa District indicated:

There is a lot of pressure on the Ministry because this is a health pandemic, and we have to spread out to cater for the new virus. As you can see today, I am the only one in the clinic because the other nurse has been placed at the hospital in Hauna Clinic to cater for the people coming in at the newly set up COVID-19 Centre. I am not only short staffed, but the nurse that is not around is the only one trained to examine survivors of SGBV.¹²²

Voices from the field express the various concerns around access to SRH services and justice systems. A key informant in Manicaland Province argued,

I am of the view that during disasters, vulnerable groups such as women, young girls and women with disabilities are somehow neglected. The focus is usually on things like shelter and food, whilst little attention is paid to SRHR. The result may be unaccounted incidences of SGBV, HP and SRHR violations. I think, the government should make efforts to craft laws that allow

122 Interview, Nurse, Mutasa District.

*vulnerable groups to exercise their SRHR during disasters. I understand the state lifted duty payment on importation of sanitary wear for women, which is a noble move. But more could be done including subsidising access to sanitary wear, perhaps making it free. The state and other stakeholders should distribute such essentials for free during disasters such as pandemics and cyclones.*¹²³

As usual women, girls and SGBV, HPs and justice issues are neglected when the attention is on the crisis or a national emergency. In terms of national disasters in Zimbabwe, the Civil Protection Act [Chapter 10:06] does not include any objectives relating to gender, but it simply establishes an institutional structure for disaster management (International Federation of Red Cross and Red Crescent Societies, 2017). There is no clear framework on SGBV in disasters and emergencies, and in the absence of rapid research on SGBV and HPs and access to justice in emergencies in Zimbabwe it is difficult to understand survivors' experiences. What is clear is that the framework for SGBV prevention and support is not disaster resilient. A Draft Disaster Risk Management Policy¹²⁴ that was supported by United Nations Development Programme (UNDP) recognises different gender groups such as women, girls, boys, men, elderly, internally displaced, refugees and persons with disabilities. Regarding children, it recognises that they should be protected in emergencies from, inter alia, physical harm; exploitation and GBV; and psychosocial distress. It also covers access to essential services such as food, water, shelter and latrines; HIV/AIDS and other health issues, sexual reproductive health services and epidemics during the all the phases of disasters. With 60% of the Zimbabwean population deemed to be food insecure However, there is

123 Interview, lawyer, Mutare District.

124 Dorothy Mushayavanhu (June 2011), Draft Disaster Risk Management Policy.

no clear implementation on the ground.

It was noted that during the COVID-19 lockdown most essential services were not readily available. As noted by one key informant in Mutasa '...our courts are closed. Mine was one of the first to close... the headmen are not operating as well. As it's a primary court and people gather.'¹²⁵ Other survivors said:

*Distance to reach certain areas means some people are left without services, movement restrictions due to COVID-19 lockdown means normal services such as mobile clinics cannot be carried out.*¹²⁶

*Mobile Clinics for family planning usually come around to provide services. Due to COVID-19, they were unable to make their usual rounds and we had to travel long distances to reach clinics. Attempting to access the clinics during the lockdown was risky, we therefore turned to other measures for protection against unwanted pregnancies such as using bicarbonate of soda. It would be advisable to have more clinics in each ward to cater for emergencies such as COVID-19.*¹²⁷

*Yes, it was during the first 21 days lockdown. I went and reported this matter to the headman who is also a police officer, but he told me to see how lockdown proceeds before my order could be enforced.*¹²⁸

However, in Mutasa District, women's shelters run by civil society organisations remained open for survivors, but access was problematic given the restrictions on movement. The stakeholders called for specific guidelines that govern provision of SRHR services in the context of disasters and health emergencies. Interviews with the police also showed that, operations continued during

125 Interview, traditional leader, Mutasa District

126 Interview, CSO, Mutasa District

127 Interview Witness 2, Umzingwane District

128 Interview with survivor, Hurungwe District

lockdown albeit limited by the constrained movement of the people. A police officer with VFU noted that, 'Our operations did not stop when the lockdown was introduced. The only thing we stopped doing were community engagements as we had to adhere to restrictions against gathering and encourage people to stay home.'¹²⁹ Other SRHR services were however affected during the lockdowns. A female respondent in Umzingwane District noted,

*Mobile clinics for family planning usually come around to provide services. Due to COVID-19, they were unable to make their usual rounds and we had to travel long distances to reach clinics. Attempting to access the clinics during the lockdown was risky. We therefore turned to other measures for protection against unwanted pregnancies such as using bicarbonate of soda. It would be advisable to have more clinics in each ward to cater for emergencies such as COVID-19.*¹³⁰

CSOs in the three districts and across the country instituted various mechanisms to provide services during the lockdowns. In Hurungwe District, a FACT officer stated that they had trained volunteers in the communities who were responsible for referring survivors to health services and this was dependent the availability of the services. During the COVID-19 Lockdown, ARC fully embraced ICTs by attending to cases that requires PEP, emergency contraceptives and termination of pregnancies that would have resulted from rape and sexual violence cases. In order to capture the audience of the youth, ARC has a vibrant and interactive Facebook page, Twitter, You Tube and Instagram to raise awareness of how to access its services.

¹²⁹ Interview, VFU, Mutasa District.

¹³⁰ Interview, witness Umzingwane District.

3.5 RELEVANCE, EFFECTIVENESS AND EFFICIENCY OF THE FORMAL JUSTICE SYSTEM

The formal justice systems are comprised of courts of law and other in-corporate mechanisms such as arbitration.¹³¹ However, the efficacy of the formal justice system leaves a lot to be desired. The VFUs that are operational in some sites provide an opportunity to improve access to services for survivors of SGBV. However, their effectiveness is hampered by limited resources, and the resource gap also compromises efforts aimed at raising awareness and reducing the incidence of HIV and its resultant impact (UN Women 2016). There are no service providers with technical competencies and skills to deliver survivor-centred care and specialised services for key populations such as women and girls with disabilities, sex workers, women and girls who have been rescued from trafficking, and those who are survivors of on-line SGBV in Zimbabwe (Spotlight Initiative Country Program Document Zimbabwe 2018).

The UNDP reports that around four billion people across the world have been excluded from accessing fair dispute resolution mechanisms because of poverty (Clark 2008). The report shows that the group most affected by this crisis are women who are usually the most economically disadvantaged members of society, with the result that formal justice is both inaccessible and *de facto* discriminatory (Clarke 2008). The problem of access to justice is not merely of a social or economic kind, but also apparently comes in the form of gender discrimination (Govender 2000). The problems confronting the formal justice system includes accessibility, costs, procedure and language, among other issue (United Nations Development Programme 2008).

¹³¹ In this study 'formal courts' represent state courts, which are administered by judicial officers

From interviews and discussions in the three districts selected for this research, there were several issues mentioned by all stakeholders in relation to relevance, effectiveness and efficiency of the formal justice system. These issues include the following:

- The formal justice system tends to have a one-size-fits-all approach which in reality causes complications at the local level. For example, a key informant, noted that, ‘The unfortunate part is that our laws seem to be generalised. I could be wrong, but I think that people living with HIV face different challenges than those who have a negative status.’¹³²
- Some stakeholders indicated the continued lack of awareness and knowledge around the laws and rights in most communities. In Mutasa Districts, it was argued, ‘Another problem we have is that in as much as these laws are good, people are not aware of the rights they have. As a result, children mainly remain victims of HPs because they do not know that they are protected from such practices. At times parents continue with these practices because they also don’t know the illegalities that lie in these practices.’ Other stakeholders argued that some communities feign ignorance of the law justifying this on the basis that these practices have been practised since time immemorial and there is nothing harmful about them. The laws should also be translated into vernacular languages, which are easy to understand for communities, and should be disseminated amongst the community.
- There is no accountability to survivors within the system. Survivors do not have a way to ensure that the various actors in the system respond to their concerns. Within the court system, survivors usually are not informed about key issues and decisions concerning their cases. The system works

132 Interview with JSC official, Mutasa District.

outside the everyday existence of survivors and their families, which leads to a rather cold and impersonal bureaucratic structure. As discussed earlier in the report, survivors get limited time or explanations from prosecutors who often have multiple caseloads and thus are unable to provide the compassion and understanding of survivors’ experiences and needs.

- Related to the above, is the lack of faith by most survivors and witnesses in the criminal justice system. This distrust is often compounded by the lack of information as to how the criminal justice system works. The implication is: ‘SGBV cases usually do not go beyond the police station, if they are reported at all. Perpetrators of violence have been known to boast about knowing police officers, reporting therefore often seems pointless.’¹³³ This view was supported by another respondent who stated, ‘Cases are never reported to the authorities. There were previously rumours that one officer at the police station was blocking cases and it became redundant to report; that officer has since been changed.’¹³⁴
- In the formal justice system, the prosecutors have to prove guilty beyond reasonable doubt and where the evidence is missing or compromised alleged perpetrators will go free. Most survivors understood that in court, two results are possible, including that perpetrator is found not guilty and is released. That chance of the perpetrator going free is often intimidating for survivors, and where it happens, it discourages other survivors from reporting offences. A key informant in Mutasa District noted that there are instances where perpetrators out on bail go back to communities boasting that they know the police and that the case will go away. Such instances lead to continued

133 Interview, Witness 2, Umzingwane District.

134 Interview, Survivor 2, Umzingwane District.

mistrust of the criminal justice system. In Hurungwe District, it was noted, ‘The Domestic Violence Act is appropriate, but its efficacy is questionable. When there is a breach of an order, the complainants never come back to report. They maintain the belief that the system has failed.’¹³⁵

- Survivors and witnesses also pointed to the challenges to accessing services at night. Whilst both the police and health care centres provide services at night in many areas, but these are often inadequate and not responsive due to lack of resources. One key informant noted that there is no means for calling the police at night if a person is being attacked or abused by a partner. Where the police get calls, their usual response is that they do not have transport to respond to cases. At health centres, a witness who took an abused friend noted that, ‘After hours, nurses are often moody and are not helpful. They always ask us to return another time so there are sometimes unnecessary delays in the provision of medical services and yet time is of essence in dealing with rape cases for administration of PEP and emergency contraceptive.’¹³⁶

Below are additional negative perceptions of the justice system by respondents:

- There is also a lack of alternative reporting methods that allow for anonymity for those who wish to do so anonymously. Police stations are far, and a survivor is likely to get caught by the perpetrator whilst trying to make their way to the police station on any given day. Sometimes the police officer is not available at the station and usually it is only one officer manning the station.¹³⁷
- I believe that our justice system works. Distance and costs to our limited police

stations however becomes a deterrent to accessing justice. There is only one police station in our area – the distance between our area and the station is too long, this means the transport costs to the police station is also very high. There should perhaps be sub-stations closer to communities.¹³⁸

- The legal and policy framework does not deal with the matter adequately. For instance, the law only deals with perpetrators of crimes but does not deal with the cause of the crimes. Even when there is justice, it usually only entails punishment for the perpetrator, but the victim is left without a solution of how to carry on with their lives. There is need for a recovery programme for victims that teaches them to be economically empowered.¹³⁹
- SGBV cases usually do not go beyond the police station, if they are reported at all. Perpetrators of violence have been known to boast about knowing police officers, reporting therefore often seems pointless.¹⁴⁰
- It [the law] needs to be revised as it protects the perpetrator more than the survivor. The perpetrator is arrested and put to prison, which is safe for him because being in the community would leave him at risk of the community taking the law into their hands. The survivor after the court has finalised the case is left to figure out life alone in the community and even during the trial of the case the victim is not protected.¹⁴¹

However, there are positive narratives from the field especially on the referral pathways. In areas where communities have been trained on the referral pathway, there is an improvement in reporting of sexual violence cases. In Umzingwane, a community worker indicated,

135 Interview, civil society organisation, Umzingwane District.

136 Interview witness 2 Umzingwane District.

137 Interview, Survivor 3, Mutasa District

138 Interview, Witness 2, Umzingwane District

139 Interview, Civil Society, Umzingwane District

140 Interview, Witness 1, Umzingwane District

141 Interview Government key informant, Mutasa District

*Training on the referral pathways from CSOs helped us a lot. Before the training, we had many cases of underage girls getting pregnant and instead of seeking justice, the parents would demand damages from the perpetrator. This usually includes a cow or two and for a poor family the compensation is appealing. However, we were taught about the referral pathways and the importance of reporting all cases in time. The information has been empowering for the community as more and more cases are being reported.*¹⁴²

SGBV laws are only effective if they are well known and understood, and if the policies and procedures they establish are available to all in practice (International Federation of Red Cross and Red Crescent Societies 2017). In their project on child survivors JCT, WLSA and ZWLA also noted that there was a gap in knowledge by communities in seeking help from service providers for GBV violations, such as, sexual abuse, domestic violence and maintenance defaults (Justice for Children et al., 2016). For example, the termination of pregnancy cases they have handled revealed late reporting, efforts to settle cases at family or community level and harmful beliefs as major causes of late termination of pregnancy on young girls (ibid). Focus group discussions with women indicated that even some rape cases go unreported, since families agree on a settlement such as payment through goats and cattle, or even arrange for a child survivor to be married by the perpetrator (International Federation of Red Cross and Red Crescent Societies 2017).

In Sierra Leone, the report also highlighted that survivors do not know their entitlements to protection by the criminal justice system and what is needed to pursue a case through the criminal justice system (Maguire 2012). ZWLA (2018) also showed that even the formal court

systems may not be well versed with child justice issues, and this increases the vulnerability of minors to secondary victimisation. Children's lived experiences with access to justice were negative because of the following as reported by Justice for Children et al (2016):

- General lethargy by communities in accessing the formal justice system preferring instead the traditional courts;
- A culture of silence on abuse by caretakers of survivors;
- Deep seated attitudes and social norms are drawbacks to meaningful gains on ending VAWG and GBV;
- Lack of safe shelters for survivors was a big challenge to survivors of GBV who were being abused by family members. The survivors became even more vulnerable where perpetrators were either not arrested, on warrant of arrests or released from prison on bail. Most survivors of GBV are forced to go back and stay with the same perpetrators in their families, or in the same community;
- Limited or no knowledge of constitutional provisions protecting women, girls and children;
- Lack of clarity on the criminal law on child marriage and gaps in implementation of strategies to reduce child marriage;
- In Beitbridge District, many maintenance and domestic violence cases are still pending because the perpetrators have left the country to escape from justice;
- In Makoni and Bindura Districts, most men are unemployed hence they default on maintenance payment. Children continue to be denied their rights such as access to education, resulting in continued violation of children's and women's basic rights; and
- There is still a significant number of children without birth certificates because of, *inter alia*, the difficulties encountered by parents in raising money for transport

¹⁴² Informal talk with Child protection community facilitator, Nkayi District.

and other requirements, failure to meet the requirements and withholding of birth confirmation records. This has negative implications on child protection particularly in cases where someone is accused of having sexual intercourse with a young person believed to be a minor, but the age cannot be proved due to the lack of a birth certificate.

However, there are also success stories that have been told by women and girls themselves. For instance, JCT, WLSA and ZWLA as reported in 'Breaking the silence on Gender-Based Violence in Zimbabwe: A Case Documentation on the UN Women supported Violence Against Women and Girls (VAWG) and Gender-Based Violence (GBV) Project 2016' have reported success stories in the Bindura, Makoni and Beitbridge Districts. A respondent from JSC also emphasised that, 'We actually have a housing facility specifically for such persons behind our courts and we provide the people with lunch allowances. Yes, there is a need to update the amount that people get to adjust to the economy, but the provision is there.'¹⁴³

Another important issue to consider when discussing the relevance of the formal justice system is whether the survivors benefit in any way from the system. Some key informants and survivors held varied views on the benefits of the formal justice system. Other key informants within the referral pathways largely touted the benefits related on how the formal justice system is able to stop the abusive acts by imprisoning perpetrators. A nurse in Mutasa District however noted the complexity of this issue especially in cases where the bread winner is the perpetrator. She stated that:

There is a satisfaction that comes with someone knowing that the offender has received the appropriate terms. But it is controversial because sometimes the person

who gets arrested and a sentence is the bread winner in the family. It means putting them away, and the family loses support. For example, women who report their husbands end up being chased away from the family homes by the husband's relatives. In such cases, people end up regretting even seeking for legal assistance in the first place.¹⁴⁴

Thus, it is clear that the nature of justice in formal systems provides little material benefit to survivors and their families. Another key informant indicated, 'There are no benefits for the survivor. An equal platform is created for both the complainant and the accused. The result falls on the evidence presented at trial.'¹⁴⁵ This is one of the reasons why many people prefer the informal justice system because it provides a mechanism for material compensation. The major problem however is that survivors require healing that comes through access to therapy, mental and medical health care, that is beyond material compensation.

3.6 COSTS AND IMPLICATIONS OF UTILISING THE FORMAL JUSTICE SYSTEM

Certainly, there are costs incurred in accessing formal justice systems. The ZWLA (2018) revealed that access to justice for survivors of violence is costly, as they have to pay transport fares, which vary depending on their location. According to a JSC official interviewed in this study,

The formal justice system is costly especially for people in the rural communities. Some cannot even afford a simple Peace Order. The costs of travelling to access the services are way too high for them, worse off with this Lockdown. It is also time dragging. The processes are too long for people who would want immediate relief. Some end up giving

¹⁴³ Interview JSC, Mutasa District.

¹⁴⁴ Interview, Nurse, Mutasa District.

¹⁴⁵ Interview, JSC, Umzingwane District.

*up on pursuing the case, because they think eventually the courts will not hear their cases.*¹⁴⁶

ZWLA (2018:18) also reported in their study, *Women in rural areas travel long distances to report cases and even longer to go to courts, as these services are centralised. For example, in Chinhoyi court officials indicated that some survivors of rape travel for up to three days to get to Chinhoyi court from their rural homes in Siakobvu, an area which is approximately 500km away but under the jurisdiction of the Chinhoyi Regional Court. The road network and other infrastructure in the area are in poor condition, and a river on route has no proper crossing, and so survivors have to travel in makeshift canoes to cross it to get to court, making the situation even more dire.*

Even the provincial magistrate in Chinhoyi was aware of experiences of survivors in accessing justice stating, 'Some remote areas are more than 100km from here. No mobile courts. If they want legal assistance, they have to travel the long distance and sleep here but there is no place for them to do that that is free. So, some resolve their cases at home.' (ZWLA 2018:18) The ZWLA Court Watch Report 2015–2016 on the *Effectiveness of Protection Orders* highlighted the following:

- For women travelling from rural areas, the situation is dire as they need to cover transport costs. On average, a woman would need US\$6 to pay to go to and from court if seeking help at Murewa, Rusape and Chitungwiza courts;
- The further the women are from the urban centres, the costlier it becomes for them to access the court;
- There are very few or no safe houses for survivors in remote rural areas, forcing them to go back and stay in the same house

with the perpetrator. This exposes them to repeated abuse or undue influence to drop the case; and

- An evaluation of the Victim Friendly System noted how survivors of violence end up sleeping in the open, because they cannot afford safe overnight accommodation as their cases are heard in court. These overwhelming challenges also influence attitudes of women to reporting abuse.

These conditions have several implications, for instance, if one has to use services of the police or the court for GBV cases, he or she is met by an immediate bureaucratic requirement of payment, followed by a series of subsequent payments, if, for example, the police or court requires transportation (Divon et al., 2016).

The prohibitive financial and physical costs to access justice have also been reported in other studies. In the UN Women 2016 study, long distances to the service providers including police stations and health facilities together with the lack of funds to pay user fees featured as the main barriers to access mostly in informal settlement in Epworth District. Added to this, the health centres charged US\$12 per patient to attend. Survivors of SGBV are mostly poor and cannot afford to seek medical treatment hence they are faced with having their injuries and trauma sustained through domestic abuse, untreated. Similarly, in their study, Jordan and Phillips (2013) noted that most women reported experiencing financial abuse and also struggled with severe financial difficulties after their relationship broke down, hence for them legal assistance is inadequate. Private lawyers will often not act in these cases because it is not cost effective. Due to funding constraints, there are restrictions on access to free legal assistance (ibid). ZWLA (2018) reported that the costs of lawyers are another factor that hinders access to justice by women and children. While CSOs that offer legal aid

¹⁴⁶ Interview JSC, Mutasa District.

service provision have lessened the burden; the need is huge as many women still face justice systems without the necessary knowledge and assistance while perpetrators are more likely to have resources to fight for their acquittal (ibid). In addition, despite the criminalisation of most forms of SGBV, the stakeholders interviewed for the study by IFRC (2017) noted that women in Zimbabwe still face challenges in applying for protection orders under the DVA, highlighting that the process is cumbersome, and the processing costs may be prohibitive to women without access to financial resources (International Federation of Red Cross and Red Crescent Societies, 2017).

In 2020 the Law Society of Zimbabwe introduced a new structure for legal fees which makes some services out of the reach of most people especially poor women. For example, an uncontested divorce with or without consent paper, with minimal negotiations and including appearance in Court, where necessary, will now cost plaintiff ZWL\$18 000 and the defendant ZWL\$12 000.¹⁴⁷ Such costs are out of reach for many people. With such fees, access to legal services become the preserve of the wealthy. It also places more pressure on the under capacitated Legal Aid Directorate which cannot cater for everyone. The high costs will also negatively affect women fighting cases related to inheritance, maintenance and other marital issues. Legal fees are thus a barrier to accessing formal justice systems and

Whilst it is a common approach to focus on financial/monetary costs, there are other non-economic costs and losses that survivors face. There are some indirect costs that are difficult to compute. For example, backlash from family members for reporting a relative or husband for SGBV. The trauma and frustrations with the

¹⁴⁷ <https://www.chronicle.co.zw/lawyers-in-shocking-fees-hike-18-000-to-file-for-divorce/#:~:text=%2418%20000%20to%20file%20for%20divorce,-04%20Nov%2C%202019&text=THE%20Law%20Society%20of%20Zimbabwe,to%20file%20for%20a%20divorce>.

negative attitudes of duty bearers are also costs associated with using the formal justice system. The following statement clearly shows this:

*It takes a mental and emotional toll on the survivor and the children involved. If you are a witness, you are likely to suffer from stigma from community members, and backlash from your own partner if you have to spend lots of time away from home to be a witness. Friendships sometimes suffer due to lack of support, and sometimes due to unwanted support.*¹⁴⁸

There are social and cultural costs associated with utilising the formal justice system. Through discussions with many participants in this research, it became clear that the socio-cultural costs of utilising the formal justice system have more profound impacts than economic ones. Given the nature and gravity of most SGBV and HPs, where a close family member or community member is involved, reporting has serious social consequences. In Umzingwane District, a Council Official pointed out, 'Some individuals are adamant and have their beliefs that when you report, you have committed some form of taboo. This erodes self-esteem in women and girls which then suppresses their voices. If the laws could do something about that, it would help people speak out and report.'

There are socio-cultural systems that have emerged as entrenched barriers to accessing legal assistance from formal justice systems. The person who reports is often subjected to 'stigma as the entire community gets to know about your personal life and also the fear of having people laughing at you.'¹⁴⁹ Other respondents talked about socio-cultural costs such as loss of time from attending court as indirect costs. One such respondent argued, 'Indirect costs include loss of time that could be spent seeking income or time away from family

¹⁴⁸ Interview with Survivor, Mutasa District

¹⁴⁹ Interview, Survivor 1, Umzingwane District.

to attend trials that could go on for extended periods. This could affect family dynamics and relationships.’ There are also socio-cultural calculations that affect potential witnesses to testify in domestic violence cases as indicated by a respondent are:

I would be wary of being a witness if there is a high chance that my friend, who is a survivor, may turn against me if the husband begs her to forgive him. I will end up being considered the bad person for trying to help.¹⁵⁰

Another witness also noted,

If you are a witness, you are likely to suffer from stigma from community members as well as backlash from your own partner if you have to spend lots of time away from home to be a witness.¹⁵¹

The socio-cultural costs leave survivors with the complex decision either to report or to seek alternative ways to deal with SGBV. At the heart of the socio-cultural costs, is ingrained fear. Fear is often linked to a lack of knowledge about the formal justice system and stigma associated with reporting. A survivor in Umzingwane District concluded,

Fear! We fear the repercussions from the relatives of the husband. We fear the backlash if the perpetrator is released knowing you were the one who reported him. We fear losing the breadwinners and fathers of our children. We fear stigmatisation by community members for reporting our own partner.¹⁵²

The lack of support from family or people close to the survivor also decreases chances of them ever reporting abuse. This is supported by a respondent who indicated,

I find friends watch from afar and do nothing. Maybe because the survivors

themselves do not seek assistance. The husband’s relatives never assist. They are often the instigators. The survivor’s relatives usually understand but cannot do much beyond being understanding. Often times, they are not in a position to take in the survivor and her children.¹⁵³

In Hurungwe District, it was noted that one cost of reporting to the courts is that the family of the husband will alienate the woman and send her back to her parents. Another survivor in Mutasa District indicated that every time she goes back to her family after being beaten by her husband, her parents tell her to go back. Her mother always tells her to be strong and endure because marriages are always hard. She has nowhere else to go and no choice but to go back to her abusive husband. Some respondents from the communities also indicated that they report a case they witnessed only if the survivor comes forward first to report. This is because there is a stigma associated with reporting abusive situations in other people’s homes. This leads to neighbours and wider community not engaging in assisting survivors in abusive situations.

In relation to women in Apostolic churches, reporting to formal justice systems can lead to excommunication from the church as well as from social support systems, as the formal justice system is frowned upon by persons within those churches. According to a survivor in one such case in Mutasa District, the church prohibits reporting to formal or informal justice systems. She said, ‘*Hazviiti kuti zvizobuda kunze uko!*’ meaning it is not done to report cases because the public will know everything.¹⁵⁴ She says people do not report SGBV because the husband might be arrested, which may negatively affect the economic position of the family. In addition, no woman in such situations wants the stigma of being

150 Interview, Witness 1, Umzingwane District.

151 Interview, Witness, Mutasa District

152 Interview, Survivor 2, Umzingwane District.

153 Interview, Survivor 3, Umzingwane District.

154 Interview, Survivor 8, Mutasa District.

labelled as the ‘woman who sent her husband to jail’. She believes that the church deals with the matters fairly because the aim of the church is to build the marriage not to destroy it. However, there was a case in Hurungwe District, where neighbours did come to the assistance of the woman after her children called them when she was being beaten by their father.¹⁵⁵

There are also instances where systems have been introduced that reduce the financial, time and physical burden of accessing justice systems. The One stop centres (OSCs) are designed to give SGBV survivors access to holistic health, psychosocial support, legal and police services under one roof, using a coordinated multi-sectoral approach with relevant partners who provide specific services in a coordinated manner. It was recently reported that OSCs have helped to reduce the need for SGBV survivors to be moving from one location to another, looking for service providers and in the process, incurring costs that they can hardly afford (Empowerment or Career Development 2019). As a result of being under one roof, there is increased interaction and consultation among service providers, which benefits the survivor (UNFPA 2012). Related to this, is the use of mobile OSCs whereby multi-sectoral teams do outreach for a week, thereby taking services to the people who do not have such facilities. However, there are four OSCs in Zimbabwe located in Gweru, Gwanda, Chinhoyi and Rusape, which means the majority of SGBV, HPs and SRHRs survivors do not have access to OSCs.

3.7 KEY POPULATIONS AND ACCESS TO FORMAL JUSTICE SYSTEMS

This section discusses key populations in relation to access to formal justice systems.

3.7.1 People with HIV

One issue to emerge out of the research around the formal justice system was related to people with HIV and AIDS. The debates dealt with two key issues: first, criminalisation of wilful transmission of HIV; and second, access to SRHR especially during disaster situations. In terms of the first issue, Section 79 of the Criminal Law (Codification and Reform Act) [Chapter 9:23], deliberate transmission occurs when (1) a person who, (a) knowing that he or she is infected with HIV or (b) realising that there is real risk or possibility that he or she is infected with HIV, intentionally does anything or permits the doing of anything which he or she knows will infect, or does anything which he or she realises involves a real risk or possibility of infecting another person with HIV, shall be guilty of deliberate transmission of HIV, whether or not he or she is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years. A JSC official in Mutasa argued,

As you know, the issue of decriminalising wilful transmission of HIV is being debated mainly because people say there is no technology in Zimbabwe to prove such intentions. But I still don't think it should be decriminalised because for example, we had a case in which a husband married a second wife. When the second wife goes away for a visit, they find ARVs in her room, yet she had not disclosed her status. She is already exposing too many people to the disease. Why is she not telling at least the husband? That seems to have some intentionality in itself and I think it's unfair.¹⁵⁶

¹⁵⁵ Interview, Survivor 4, Hurungwe District.

¹⁵⁶ Interview, JSC, Mutasa

Amongst most key informants the general belief was that decriminalising wilful transmission should not be promoted as it may lead to more people hiding their status from partners. According to the Oslo Declaration on HIV Criminalisation, the practice was doing more harm than good to public health and human rights. Whilst the law was enacted as means to protect mainly women from sexual violence, the impact has been the opposite. NAC legal counsellor in January 2020 argued,

The law has had a disproportionate effect on women, I don't know whether it's natural or some other cause, but women are passionately concerned about their health status. Now women because they are the ones who fall pregnant, when they go for their natal services they have to be tested, that's when they realise they are positive, and they are the ones who go first so usually the man points to woman to say she is the one who would have infected him, and he rushes to the courts so that how women are affected by this law.¹⁵⁷

Findings on the second issue show that access to SRHR for people with HIV were seriously compromised under the COVID-19 induced lockdowns.

3.7.2 Sex workers

Some key informants across the three districts highlighted specific gaps in the formal justice system as it relates to sex workers. Given the stigma surrounding sex work and as noted earlier the antagonistic history sex workers have with law enforcement, these gaps are not surprising. Even in this research, a key informant from law enforcement agencies who was trained to work with VFU indicated, 'With issues to decriminalising sex work, we have a culture to defend and a moral campus that

guides us. I do not think that it appropriate.¹⁵⁸ Thus, the gaps include the following:

- The legal framework has no specific structures dealing with the unique nature of sex work. The laws tend to be general and the police are less likely to be responsive to women who are defined by society as undesirable. In many ways, sex workers are often viewed as deserving of violence. In Mutasa District, key informants pointed out:

But as mentioned earlier on, our laws are too generalised. So, you will find the services that a sex worker might try to access may not be appropriate because they are deemed criminals. I, however, strongly believe that sex work should be decriminalised because sex workers remain susceptible to abuse and have no proper channels for legal protection and redress.¹⁵⁹

Further in terms of sexual workers, their biggest challenge is the cultural aspect, whereby they need to go to the clinic for contraceptives: there is a form of stigma which makes them not feel comfortable to do as they fear being judged, yet they have rights to the services. Clinics are also closed at night which makes it challenging for them to access services at night.¹⁶⁰

Accessing SRHR is often fraught with challenges as service providers can be discriminatory and judgemental. In any case, sex workers are mainly active at night, a time when services are also not available leaving them more vulnerable.

3.7.3 LGBTQ+

The formal justice system in Zimbabwe is not easily accessible to LGBTQ+s because of the long complex history between the two. Under

¹⁵⁷ <https://healthtimes.co.zw/2020/01/31/zim-has-highest-hiv-criminalisation-prosecutions-in-africa/>

¹⁵⁸ Interview, VFU, Mutasa District.

¹⁵⁹ Interview, JSC Mutasa District.

¹⁶⁰ Interview, Government Key informant, Hurungwe

Robert Mugabe's presidency, Zimbabwean police were openly hostile to sexual minorities. There were multiple instances of arrests and raids of functions. An expert on key populations who was interviewed for this research talked about a raid on GALZ offices in Milton Park in 2013, which led to the arrest of 42 people whose addresses were taken down. Some of the people who were arrested were abused and humiliated at the police station by being asked to 'model/ do catwalks' for the police imitating the drag contest. They were also ordered to beat one another leading to injuries and trauma. The addresses were later used by the police to follow up and inform the families of the detained people leading to instances of people having their secret being exposed to their families. No charges were ever laid against those arrested. The GALZ offices have also over the years been raided by police, who confiscated computers and harassed people at their offices. Post Mugabe there have been no recorded incidences of harassment of GALZ and on sexual minorities in general. The Criminal Codification Act criminalises sexual acts between men but not women. There are cases in which this law is used to extort from sexual minorities. In such a context it is difficult to expect sexual minorities to engage the police or justice structures that are openly hostile towards them. In terms of accessing SRHR, the major barrier is stigma especially from health care workers. Public health facilities have therefore not been friendly for key populations, but the government has developed a key population health manual through the National Aids Council and funding has been accessed from the Global Fund. There is now a key population desk within the health ministry, which is improving the outlook in terms of access to SRHR. GALZ has also in the past partnered and trained staff at Wilkins Infectious Diseases Hospital in Harare. Civil society organisations such as Population Services International offer

services to sexual minorities. The Sexual Rights Centre in Bulawayo is also providing services through drop-in centres, which provide health screening, information and support.

3.8 YOUNG PEOPLE AND THE FORMAL JUSTICE SYSTEM

It is also important to consider how young people, especially women, experience the formal justice system. Health services provided are mostly 'youth unfriendly'. In Zimbabwe most adults take a moralistic stance towards young people's sexuality, making it difficult for young people to access SRHR. Laws around the age of consent affects youths' ability to access health care independently of their parents. Narratives from respondents in this research outlined below provide evidence of how key actors view young people's access to SRHR and also experience the formal justice system.

In terms of the age, there is a challenge where culture and awareness intersect, as they hinder people from getting the right services or use of statues effectively. For example, when a minor is infected, he or she needs to go with an adult but now it complicates things when the minor has the fear of opening up to the adult who is meant to accompany him or her. They end up not claiming their right effectively.¹⁶¹

The youth are largely excluded from legal frameworks of the existing policies have age restrictions that hinder them from receiving services like SRHR. There is also need for alignment of the laws to all mean one thing because youth are left vulnerable with the age for sexual consent being low but them being denied basic SRHR services.¹⁶²

From what I have observed, the survivors and witness are given relief when it comes

¹⁶¹ Interview, District Council, Umzingwane

¹⁶² Interview, Ministry of Youth, Sports, Arts and Culture, Mutasa

*to testifying because they can do so in the Victim Friendly Courts. Here and there, accommodation is offered if available, but the youth are again not prioritised because there are no facilities that are specific for their age group.*¹⁶³

*Our culture puts restrictions on who can and cannot access HIV services. We say young people should not get access to condoms. This mentality unfortunately might have us losing our children because they are indulging in sex when they as young as 14. At times parents may actually know but not allow their children to get access because they fear tarnishing their reputation in society. Teenage pregnancies too are something to be considered in accessing services. These have potential to child marriage promotion. One thing is linked to the other and it becomes a cycle.*¹⁶⁴

These narratives show the various challenges that young women especially face in interacting with formal systems in either accessing justice or SRHR. Despite the fact that Section 76(3) of the Constitution provides that ‘No person may be refused emergency medical treatment in any health-care institution’, adolescent girls may be denied access to contraceptives due to preconceived attitudes of healthcare providers. Denial of contraceptives to sexually active adolescents is a violation of SRHR. It exposes them to unprotected sex, resulting in HIV and other sexually transmitted infections and unwanted pregnancies.

3.9 LINKAGES BETWEEN FORMAL JUSTICE SYSTEM AND INFORMAL JUSTICE SYSTEM

The structure of a traditional or informal justice system may be closely connected to that of the formal court system, as well as to the organisation of the communities using them. Because traditional justice systems frequently fill the gap between the needs of the community and the services offered by the formal court system, the shape and design of traditional justice systems change as the formal court system changes and as the needs of the community evolve (van Niekerk 1998:88). Traditional justice systems have undergone considerable change in response to colonialism and later, post-independence in Zimbabwe. Dual models where the traditional and official state systems exist alongside one another are a product of colonialism (UNHR 2016). The movement to incorporate the traditional forum into the formal court system is not universal, however, and in a significant number of states, the two operate in isolation from one another (UNHR 2016).

Likewise, even in countries where the formal courts have incorporated elements of traditional justice systems or are authorised to apply customary law, traditional justice systems may continue to operate independently in their original form. The traditional courts handled many legal and non-legal issues due to their proximity to rural areas and accessibility. Most rural populace were more attracted to the informal justice system because it was accessible; it provided instant remedies and justice; there was no need for legal representation; and mediation and conflict resolution mechanisms were available (Mushayavanhu 2018). Informal courts were also attractive in that there are perceptions that access to the formal justice system has been affected by lack of transparency and accountability as well as corruption

163 Interview, Nurse, Mutasa

164 Interview, JSC, Mutasa

associated with reporting mechanisms and court processes.

It was indicated that many of the traditional leaders had very limited understanding of women's rights and children's rights which were often violated as a result of gender and social norms. Though they promoted mediation and conflict resolution, and remedies for the survivor, their processes were not centred on the survivor, but on promoting family and community cohesion. In addition, they were unable properly to interpret the constitutional rights and international human rights and regional standards that address SGBV, HP and SRHR. This was also attributed to absence of court rules and standards to adhere to when they dealt with matters. WLSA and ZWLA participated and monitored the chief's court processes. A JSC official also stated,

The formal justice remains best for redressing issues to do with cases such as SGBV. The informal justice system has too many loopholes. People may use traditional systems such as matare emhuri [family dispute resolution platforms] and this only leads to some form of fines and the perpetrator remains free to do whatever he wants as he is not thrown in jail or anything. At times, because it is a relative who may be a perpetrator, family members connive and quickly cover up the issue. This presents a risk of having cases recurring. The formal justice orders are also easily enforceable because we have the police as the law enforcement officers who enforce Protection Orders is, they are violated, and violators of these order will be arrested.¹⁶⁵

Most stakeholders in the formal justice systems were highly critical of the informal justice system. Building on the above narrative, a nurse argued that the informal system has no mechanisms to ensure that the abuse stops, but that, going to the police provided access

¹⁶⁵ Interview, JSC, Mutasa District.

to other services such as health care, shelters and psychosocial and counselling. The key informants from the police also indicated how the perceived weaknesses of the formal justice system often leads people towards informal justice system. He argued,

Most people do not report their cases because they are afraid of losing support. This is because most of the perpetrators are the bread winners and victims are heavily dependent on them. They do not have transport to go to the police or courts and people are not patient for the long court processes. They would rather have the informal justice hear and try the cases.¹⁶⁶

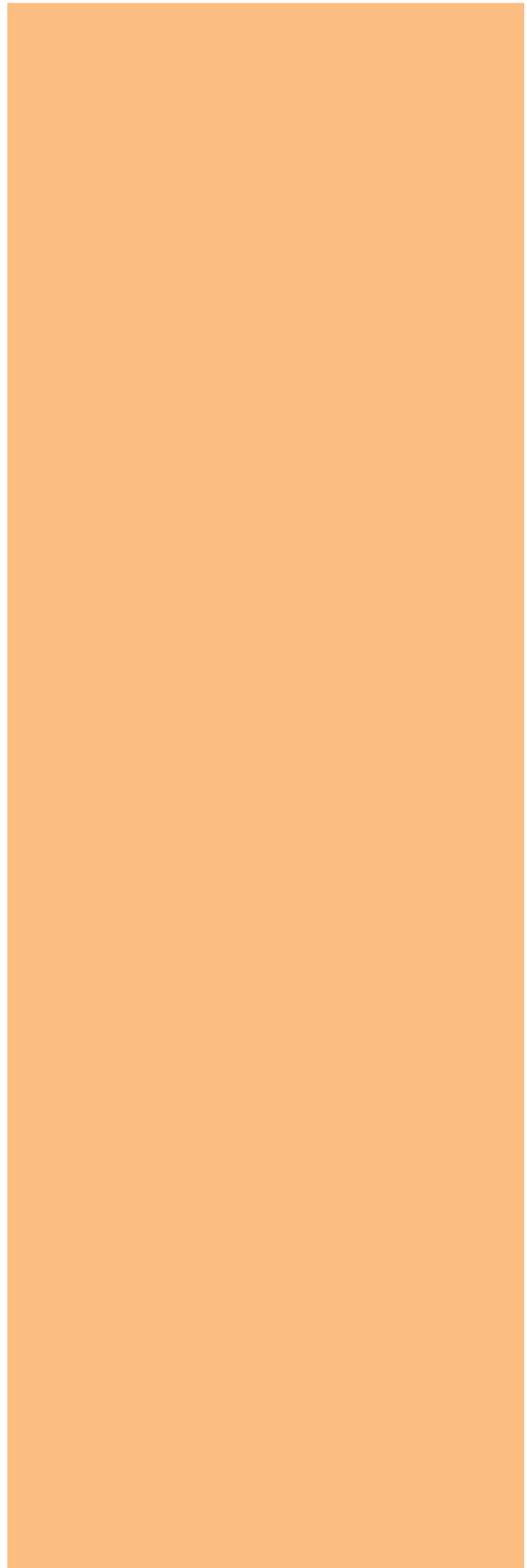
3.10 CHAPTER CONCLUSION

This chapter presents and discusses the key findings from this research. It thematically explores issues that include access, efficacy and gaps within the formal justice system. The documented experiences from various key stakeholders within the system – survivors, witnesses and civil society – indicate that the problem of access to justice is not merely of a social or economic kind, but also apparently comes in the form of gender discrimination. There are numerous gaps that require attention mainly for government to ensure access to protection and justice especially for women, children, people with disabilities and sexual minorities. These groups are found at the intersection of multiple forms of exclusion, which mutually work to limit their access to formal systems and SRHR services. For example, most of the courts are located in urban or peri-urban areas, in spite of the fact that 67.79% of Zimbabweans are situated in the rural areas.¹⁶⁷ In addition, 48% of Zimbabwean children live in rural areas. This means that the majority of the vulnerable groups in the rural areas are

¹⁶⁶ Interview, VFU, Mutasa District.

¹⁶⁷ http://www.zimstat.co.zw/sites/default/files/img/publications/Health/Women_and_Men_Summary

seriously disadvantaged by the location of the courts in urban areas. This is coming against the backdrop that many women and children are at bottom of the economic ladder and confront challenges in getting physical access to the avenues of the formal justice system.



CHAPTER 4:

Recommendations and Conclusions

4.1 INTRODUCTION

Key takeaways from this report are recommendations emerging from the analysis of the formal justice system. The recommendations are based on what emerged from this study and underline areas that require improvement so as to ensure access to quality SRHR services, access to social justice and protection from SGBV and HP. This includes the need to continue advocacy around aligning laws with the 2013 Constitution to enhance legal protections for issues such as child marriage.

4.2 AMEND THE LAWS AND ALIGN LAWS WITH INTERNATIONAL AND REGIONAL HUMAN RIGHTS AGREEMENTS

The laws (in particular Legal Aid Act and Domestic Violence Act) should be amended so that they provide for legal aid for survivors of SGBV, HP and SRHR as a justiciable right. This is because the right to a fair trial requires that that both survivors/witnesses and perpetrators of SGBV, HP and SRHR have equal access to legal representation in asserting their rights and claiming appropriate remedies. It should also give additional rights to survivors and witnesses in the same manner it guarantees the rights of arrested, accused and detained persons who may be perpetrators of SGBV, HP and SRHR. The Zimbabwean government must

also provide a mechanism for the automatic domestication of international treaties that the country is a signatory to.

4.3 ALIGNMENT OF LAWS WITH THE INTERNATIONAL AND REGIONAL HUMAN RIGHTS AGREEMENTS AND CONSTITUTION OF ZIMBABWE

The constitutional realignment process in Zimbabwe is moving at a frustratingly slow pace, leading to complexities in implementing the laws related to SGBV and HP. There is need to advocate for fast-paced reforms of legal frameworks for the protection of women and children in line with the 2013 Constitution. Machakanja, Jerenyama and Bere (2016) noted that the 2016 Constitutional Court ruling banned child marriages by stating that ‘no person may enter into any marriage, including an unregistered customary law union or any other union including one arising out of religion or religious rite, before attaining the age of 18 years’; yet in spite of this ruling, girls are still getting married below the age of 18, since the Marriage Act and the Customary Marriage Act have not yet been aligned to the Constitution and to international human rights standards as well as in relation to the recommendations by CEDAW Committee.

4.4 STRENGTHENING THE REFERRAL PATHWAY

According to stakeholders a seamless referral system that responds to the needs for survivors of SGBV should be like the one that follows in Figure 4.

Figure 4: Recommended referral system



A referral pathway refers to ongoing support and services from a set of networking/coordinated service providers. In terms of survivor of gender-based violence, a survivor has to report the case at the police station who must immediately refer the case to the VFU. The VFU upon interviewing the survivor should refer immediately to the nearest hospital for medical examination. This pathway can be followed in a different order depending on where the survivors first reported. The healthcare facility or police must then refer the survivor to get psychosocial support that is involving Department of Social Welfare in cases involving children, involving other stakeholders such as civil society organisations for provision of other services such as shelter. Legal aid organisations should be involved in supporting the survivor throughout the court process. In order for these pathways to achieve the desired goal, there is need to clearly define what service each organisation provides at district level. This can be done through the Victim Friendly System Sub-Committees as established in the Protocol on the Multi-sectoral Approach to Sexual Abuse and Violence in Zimbabwe. The establishment of one-stop-centres in some districts has assisted in ensuring that survivors get the complete service they require at one place.

Another issue that emerged is how various actors within the pathway do not know the other actors or institutions involved. One key informant noted that they were not aware of the whole pathway, but only knew the police whom they work with closely. This means that they are unable to provide information or answer questions of survivors who may want to know the entire process. In addition, an official from Mutasa indicated, 'There is need for capacity building for all the relevant ministries and departments. You will find that not all of them are aware of the laws that exist to protect the victims. So, the more knowledge they have, the more they are equipped to assist survivors.'

4.5 BUILDING CAPACITY OF PROSECUTORS AND POLICE OFFICERS IN HANDLING SGBV CASES

There were very low conviction rates using the Domestic Violence Act, attributed to lack of knowledge of human rights and handling of survivors by police and prosecutors as well as late involvement of legal aid lawyers in the referral pathway. The relation between the prosecutor, police and survivors should be improved. The prosecutors should be trained on basics of handling and sitting down with survivors and language to use in explaining

court processes including bail applications by suspected offenders, postponements and delays of trial proceedings. The police officers should be trained on human rights and handling of survivors in a gender sensitive manner. The prosecutors should simplify the legal terms and update the survivors on the progress of cases and court dates. They should make deliberate efforts to demystify the courts process and familiarise themselves with survivors and their cases. The training for prosecutors should focus on use of language in court and a survivor centred approach that includes being sensitive and how to interview and communicate with survivors. There is also need for training in mental health issues to understand why some witnesses do not remember what happened or do not easily give evidence at trial. Other challenges were lack of resources by key justice actors leading to corruption and non-prosecution of cases; and slow or non-existent law reforms especially on domestic violence and non-alignment of laws results in non-enforcement of the laws and policies. Overall, the prosecutors and police officers should be trained on the Protocol.

4.6 INVESTMENT IN TECHNOLOGY AND INFRASTRUCTURE TO MAKE FORMAL JUSTICE SYSTEM MORE ACCESSIBLE

There are however still major challenges in using technology in most rural parts of Zimbabwe. In Mutasa, key informants indicated that some parts of the district do not have cell phone reception and that most people do not have phones. The use of technology is thus limited in such contexts. There is therefore need to build cheap technological systems that enhance access to SRHR services. In Mutasa, an official with the National AIDS Council suggested that there is need to take basic steps such as a toll-free number for reporting cases to reduce costs.

4.7 RECOMMENDATIONS FOR LEGAL AID DIRECTORATE

LAD needs to build and develop relationships with each of the CSO legal aid providers. These relationships should be formalised through Memorandums of Understanding that clearly set out the roles and expectations of each party. Strategic partnership agreements or Memorandums of Understanding need to be developed to formalise the LAD's relationships with key stakeholders (including independent commissions, the police, prisons, and courts) and other legal aid providers. This will help to ensure that roles and responsibilities are clearly defined and, if publicised more broadly, will enhance understanding about who is responsible for doing what. LAD should establish a robust sector-wide referral system (LAD 2014: viii). This should replace the existing referral system which is ad hoc and confusing, with the reasons for a referral not always understood or explained to clients/survivors.

A formalised referral system should clearly set out when and why a case could be referred, to which players specific cases should be referred, the procedure to be followed when doing so, and the explanations that should be provided to the client and the service provider they are being referred to (LAD 2014: viii). This will increase coordination, assist in enhancing equal access to justice and bring greater clarity to current legal aid providers. A formalised referral system and increased coordination of legal aid services provision will accelerate access to justice by survivors of SGBV, who are predominantly women and girls. Paralegal models can assist survivors of SGBV, HP and SRHR so that they can pursue matters and reduce the likelihood of withdrawals. Another issue outlined in the research is the need to ensure that para legal officers be fairly remunerated. At the moment, 'legal aid providers are not given enough

incentives in the form of payment, there are therefore high chances of seeking illegal methods to supplement income and affect the course of justice’.

4.8 RECOMMENDATIONS TO THE JUDICIAL SERVICES COMMISSION

Besides creating specialised courts, the JSC should receive adequate funding from government to build infrastructure that ensures that courts are adequately equipped to reduce survivors’ contact with the accused and ensure their safety. This may include separate waiting rooms and entrances; private rooms to conduct interviews; infrastructure to ensure facilitation of survivors’ testimony, and special units within the court administrative staff for coordinating support for survivors throughout the trial (UN 2019:138). The JSC should ensure that courtrooms have separate waiting rooms and safe and easily accessible restrooms for the survivor, which should not be the same as those used by the relatives of the perpetrators of SGBV and HPs (UN 2019). Clear signage and documents in all relevant languages should be made available by the JSC so that survivors know where they have to be. The JSC should procure court equipment to ensure safe environments for survivors of SGBV and HPs. This includes facilities for private videotaping or closed-circuit television testimony of survivors of SGBV and HPs. In addition to that, the JSC can also appoint presiding magistrates and judges who have specialised knowledge of SGBV against women and girls. It can also train all court personnel to gain some expertise in dealing with cases of gender-based violence against women and girls (Harrison 2014).

Such provisions would make courts more likely to act with sensitivity and reject harmful gender stereotypes. Where specialised courts are not easily accessible due to costs or location, for example in rural areas or for any other reason, the JSC should facilitate the

creation of specialised dockets as a less costly way to prioritise cases of SGBV against women and girls (UNODC 2009). Specialised dockets dedicate a time frame and a magistrate or magistrates and a judge or judges to handle these kinds of cases. Cases can be put directly on the specialised docket rather than the often more congested regular docket (UN 2019). Moreover, appreciating that waiting in overcrowded courtrooms increases secondary victimisation, the JSC can designate court times to reduce uncertainty and anxiety, caused by delays, of the survivor (Smith and Skinner 2012). Often there are clear procedural guidelines for court staff for these designated court times in order to promote consistent and reliable service (Smith and Skinner 2012).

The JSC should make sure that police officers are available as the public enters the courthouse, especially in SGBV and HPs cases. Escorts for survivors and witnesses can be provided as they enter and leave the building to safeguard the survivor’s rights to safety and privacy, including protecting the identity of the survivor from the media and the public. Other recommendations for the JSC that emerged from interviews include the following:

- If there is a way to shorten the procedure of justice services, I think we’ll see more people accessing the judicial services. It will also cut down costs for people who have to travel endless times for hearings and so forth. We also need the assistance of paralegals and resources to support those interested in using the formal justice system.
- There is also need for case conferencing in which people are given updates of the cases, especially in communities like these where everyone knows someone and are aware of these cases. This promotes transparency as well as encouraging people to report their own cases if there is an example to show for it.

- Providing machines, such as DNA testing machines or scientific advances that allow for testing of tissue samples, would ensure that in cases of SGBV, evidence provided is more reliable.
- The justice sector also needs to be better funded and better equipped in order to provide quality services. For example, shortages of fuel and vehicles result in delays in receiving probation officers' reports from DSW or prisons, delaying transporting prisoners. Improved communication between service providers is also key.
- Government should map hot spots for SGBV such as artisanal mining areas, which have high rates of crime. Government should take that into consideration and provide services such as clinics and police stations in proportion to the activities rampant in the area, as well as taking into consideration the populations and coverage area of each service provider.
- Coverage areas per station/service provider are too large. Distances contribute to the high expenses associated with seeking services, and perhaps act as a deterrent to community members seeking services, whilst encouraging perpetrators to continue with their criminal ways.
- In Zimbabwe, apart from the constitutional provision on the right of children to protection of the courts, there is no mention of the right of children to legal aid. It is submitted that the Children's Act and the Legal Aid Act ought to be amended to provide for the right of children to legal aid services.

4.9 CONTINUED PROGRAMMING AND TRAINING AROUND CHANGING COMMUNITY ATTITUDES AND NORMS THAT PROMOTE SGBV AND HP

There is need to continue investing in community training and advocacy that focuses on changing attitudes, norms and practices that promote SGBV and HP. Focusing on the community and household level is important to promote a culture of reporting and supporting survivors. Community stigma was highlighted as a barrier to reporting and it is important to combat this through continued programming. A respondent in Umzingwane also argued,

Unless traditional methods of thinking are shifted and communities become more supportive of each other as neighbours and women, reports of SGBV and HP are likely to remain low, and witnesses are unlikely to want to help. Punishments for perpetrators should be punitive and deterrent to make reporting worthwhile and reduce the fear of reporting.

Community support is thus important in encouraging communities to be supportive of survivors and not be involved in secondary trauma through stigmatising survivors.

4.10 BROADENING THE JUSTICE AGENDA

Although efforts are being made to support survivors, more still needs to be done, especially beyond the court systems. For instance, it was noted, 'Indirect costs are suffered by children who may grow up emotionally wounded, and the survivor may suffer secondary stigmatisation by the community or relatives of the accused.' Another key informant commented, 'Even when there is justice, it usually only entails punishment for the perpetrator, but the victim is left without a solution of how to carry on with their lives. There is need for a recovery

programme for victims that teaches them to be economically empowered.’ This research has also shown that financial concerns are key in the decision-making process to utilise the formal justice system by survivors and to report SGBV and HPs perpetrators who are the breadwinners in the family. Hence if justice is defined for survivors as simply getting the perpetrator into custody, this reflects a narrow approach to framing justice. Therefore, there is need to invest more in building survivor resilience through a survivor-centred multifaceted approach to justice.

4.11 JUDICIAL ACTIVISM

There is a growing number of voices advocating judicial activism to protect the rights of vulnerable groups, especially women and children, from outdated laws. The judiciary, like other branches of government in Zimbabwe, are governed by the constitution. Section 81 (3) of the Constitution states, ‘Children are entitled to adequate protection by the courts, in particular by the High Court as their upper guardian.’ Advocates of judicial activism use this section to call for the judiciary in specific cases where the law is not in the best interests of the child to intervene and protect child rights. Writing a judgement focusing on a case that sought to expand common law to protect jointly owned matrimonial homes, Justice Gwaunza warned about the limits of judicial activism and noted that the judiciary strive ‘not stepping on the toes of the Legislature.’ The written judgement placed the onus on gender and women’s rights activists to lobby changes to this law. Yet as back as 1991, Ben Hlatshwayo (1991:4) was arguing, ‘Since the notion that judges do make law is no longer seriously contested, the question of judicial passivism falls away.’ The judiciary thus has a role in actively protecting the rights of women and children from unjust laws. One way of doing this is promoting the judiciary when they make

their rulings to utilise international agreements to which Zimbabwe is party, such as CEDAW.

4.12 RECOMMENDATIONS TO THE POLICE

This section outlines the measures that the police can institute to improve the service provided to survivors, witnesses and the community in general.

4.12.1 Ensure that the police and other law enforcement agents are able to identify and deal with violence against women

- Ensure that police officers with contact with victims should have the necessary skills to assess the situation and make safe referrals.
- Ensure that police officers who have contact with victims should be skilled to recognise signs of abuse or violence against women.
- Increase understanding of the groups of women and girls who are more vulnerable or are at greater risk of particular forms of violence, including vulnerability factors that have an impact on the safety of lives of these women.
- Build effective partnerships between police, child protection officers and schools where children are at risk or make disclosures.
- Promote effective partnerships between police and health-care facilities.

4.12.2 Ensure that the police and other law enforcement agents work with communities to identify and support victims

- Challenge attitudes that create acceptance of crimes of violence against women, and empower communities to prevent such crimes.
- Raise awareness of hidden forms of violence against women and challenge attitudes which condone them through media

activities, training events and community engagement.

- Encourage people to report cases and support community referral systems.
- Develop gender sensitive legal literacy materials with information about national laws, how the legal system protects survivors' rights and available services.
- Ensure that legal materials include messages of empowerment, and give women concrete alternatives to either avoid violence or escape from it if it has already occurred.
- Ensure that the materials are available in different languages and are tailored to address the needs of different groups.
- Establish outreach programmes for specific groups of women that may be acutely vulnerable to violence

14.12.3 Establishing and strengthening effective reporting systems at police stations

- Adopt measures to address under reporting of SGBV, HPs and related issues.
- Identify barriers to victims reporting violent crimes and develop strategies to overcome these barriers.
- Create ways for victims to report easily and confidentially (including outreach programmes, police helplines, free of charge hotlines, websites and improved linkages between police, health and social services).
- Enhance levels of police intelligence or knowledge on perpetrators of SGBV and HPs.
- Ensure that police officers registering the complaint have proper training and experience in receiving reports.
- Ensure that victims do not pay any fees for making a report to the authorities, including for receiving medical certificates.
- Ensure that receiving officers take full account of the claims of the victims and

never trivialise reports of violence against women.

- Stipulate that the timeliness of the victim's report does not lessen the severity of the incident and must not affect the police response.

4.11 Chapter Conclusion

The chapter focused on the recommendations that emerged out of the research. It began from the premise that all programming that focuses on women or gender equality must recognise that violence is not only a major cause of injury and humiliation for women, but also a major inhibitor for women's participation in public life, including justice sector institutions. The recommendations build on the need to capacitate the formal justice system with relevant financial, material and human resources that will ensure improvement in the quality of services and justice. Access to formal justice systems needs to be improved especially for women and children in rural areas. The study also showed the need to promote legislation that operationalises specific aspects of the Constitution which are not justiciable, such as the right to legal aid. Given that it falls under a chapter entrenching national objectives or goals, the provision of legal aid depends on the capacity of the state to fulfil this objective. This means that the provision of legal representation to victims of SGBV and HP is neither justiciable nor legally enforceable unless or until such time as supportive legislation is enacted to this effect. In Zimbabwe, children do not enjoy the constitutional right, supported by statute, to legal representation: national laws, including the Zimbabwean Children's Act, are silent on the provision of legal aid to children. This means that child victims, particularly girls, continue to face challenges in making or winning civil claims against perpetrators of SGBV and HPs. The study concludes that whilst Zimbabwe is doing a lot in improving access to justice and

protections from SGBV and HP, there are still many gaps at cultural, institutional, political and economic levels that require concerted efforts of all involved stakeholders



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Annexes

ANNEXURE 1: CIVIL SOCIETY ORGANISATIONS DEALING WITH SGBV, HP AND SRHR

Providers of Legal Services in Zimbabwe			
Organisation	Target Group	Area of Coverage	Nature of Legal Service
Legal Aid Directorate	All except litigation against the state, land disputes and conveyancing	All 10 provinces. Has opened offices in 3 districts: Masvingo, Chivhu and Beit Bridge	Legal representation, advice, and assistance
Department of Social Services	All	Countrywide	Psychosocial support and counselling
Women in Law Southern Africa Women	All women and their children	Chiredzi, Chitungwiza, Chinhoyi, Harare, Norton, Mutasa	Women in inheritance matters, legal advice, drafting, research, advocacy, Estate administration, Court monitoring, legal education
Zimbabwe Women Lawyers Association	All women and their children	Harare, Bulawayo Mobile clinics in Murombedzi, Norton Hatcliffe, Nketa, Emganwini, Esigodini and Gwanda	Legal representation, training, education and awareness and advocacy, legal advice, legal drafting in civil matters, court monitoring research and advocacy advice in criminal matters particularly sexual violence, mobile legal aid clinics
Legal Resources Foundation	All. Also have specialised prisons and children support	Harare, Bulawayo, Gweru, Masvingo, Mutare Legal advice centres: Bindura, Mutoko, Murehwa, Nyanga, Marondera, Gutu, Zaka, Chipinge, Chiredzi, Beitbridge, Gwanda, Zvishavane, Plumtree, Hwange, Gokwe, Kwekwe Satellite legal advice centres: Lupane, Bikita	Legal representation, Alternative dispute resolution, education, awareness, drafting court papers

Providers of Legal Services in Zimbabwe			
Organisation	Target Group	Area of Coverage	Nature of Legal Service
Law Society of Zimbabwe	All	Major cities	Regulate legal profession, Legal representation (Pro bono/Pro Deo), Advocacy, Legal Education and free legal advice during open days and JSC Outreach
Great Zimbabwe University	All	Masvingo	Drafting Papers, legal assistance for self-representation, legal advice Training Traditional Leaders on Legal Issues
University of Zimbabwe	All	Harare and surrounding environs	All legal services for the indigent, Drafting Papers, legal assistance for self-representation, legal advice
Midlands State University	All but with special emphasis on people with disabilities	Gweru	Legal advice, bail applications, legal drafting and education. Teaches a Diploma for Paralegals
Zimbabwe Ezekiel Guti University (ZEGU)	All	Bindura	All legal services for the indigent, Drafting Papers, legal assistance for self-representation, legal advice
Justice for Children	Children	Harare, Mutare, Bulawayo and mobile clinic sites in Chinhoyi, Bindura, Chegutu, Mhondoro, Mutasa and Mutare Rural	Legal representation, legal assistance for birth registration especially Research and Advocacy Assist children in civil and criminal cases, both victims and alleged perpetrators, mobile legal aid clinics Psychosocial support and counselling
Care at the Core of Humanity (CATCH) Trust	Children in conflict with the law	Harare, Mutare, Murehwa and Gweru	Legal Assistance and representation, Social Work, Research and advocacy
Zimbabwe Labour Centre	Workers	Harare	Legal representation, legal advice
Zimbabwe Congress of Trade Unions	Members of Trade Unions affiliated to ZCTU	Nationwide	Legal representation in the Labour court, workplace hearings, legal assistance and legal education on Labour law matters

Providers of Legal Services in Zimbabwe			
Organisation	Target Group	Area of Coverage	Nature of Legal Service
Christian Legal Society	All	Bulawayo	Legal representation, and advocacy and research, assist all groups including children, through prison visits, legal outreaches, mobile legal clinics/strategic litigation and ADR both criminal and civil
Leonard Cheshire Disability Trust	Children with Disabilities	Nationwide	Legal Advice and Pre-trial preparation
Musasa Project	Victims of Domestic violence	Harare and One Stop Centre	Legal advice through ZWLA lawyer, advocacy and safe shelter Psychosocial support and counselling.
Zimbabwe Lawyers for Human Rights	All (victims of human rights abuses) Human Rights Defenders Criminal	Harare	Legal support, mobile legal aid clinics, strategic litigation
Veritas	All	Harare	Strategic litigation
Padare			
Katswe Sisterhood	Adolescents and young women from 15 to 35 years.	Harare, Mbire	Legal advice and Advocacy. Psychosocial support and counselling
Adult Rape Clinic	All	Harare	Medical-legal examinations. Psychosocial support and counselling
Miracle Missions	People with Disabilities (PWDs), Prisons, Orphans and vulnerable	Harare	Platforms for network, awareness raising, charity
ZimRights	All	Harare, Kwekwe, Mutare, Bulawayo	Legal advice and support to protect and defend human rights
Zimbabwe Gender Commission	All	Harare	Investigations of violation of systemic gender discrimination
Zimbabwe Human Rights Commission	All	Harare, Bulawayo	Protect, promote and enforce human rights in Zimbabwe. Receiving complaints on human rights Monitoring and Investigations of violation of human rights

Providers of Legal Services in Zimbabwe			
Organisation	Target Group	Area of Coverage	Nature of Legal Service
Lawyers with Disabilities	Persons with disabilities	Harare	Legal advice, legal representation
Doctors for Human Rights	All (victims of human rights abuses)	Harare	Medica-legal examinations. Psychosocial support and counselling

ANNEXURE 2: STUDY RESPONDENTS

Field Data Sources	Who	Data Collection Method	Number
Key Informant Interviews	<p>Dorcas Makaza, Gender Expert for TRACE and SAFE Projects</p> <p>Chinga Govhati (Former Projects Manager JCT) (Bindura)</p> <p>WLSA – Hazel (Head Office); Hilda (Chinhoyi); and Vimbai (Chiredzi)</p> <p>Adult Rape Clinic – Dr Illif, Chairperson</p> <p>Adult Rape Clinic - Memory Kadau Co-Director</p> <p>Legal Resources Foundation</p> <p>Chengetai Hamadziripi, Lecturer, MSU Legal Aid Clinic</p> <p>Abi Matsvai, Director, ZWLA</p> <p>Talent Jumo, Director, Katswe Sisterhood</p> <p>Sheila Kanyangarara, Advocate Johannesburg Law Chambers and Expert on SGBV</p> <p>Cleopatra Nyaku, SGBV Expert</p> <p>Mr. Nyoni, Male survivors' counsellor</p> <p>Dr. Nelson Muparamoto, key populations expert</p>	Key informant interviews	15
Key Informant Interviews: Research Districts (Mutasa, Umzingwane and Hurungwe)	<p>District Administrators (or representative)</p> <p>Councilors</p> <p>Counsellors</p> <p>Nurses</p> <p>Government ministries</p> <p>JSC</p> <p>Civil society organisations</p> <p>Community development coordinators</p> <p>Traditional leaders</p>	Key informant interviews	21
Survivors and witnesses	Names withheld for confidentiality	In depth interviews	40

ANNEXURE 3: SELECTED STORIES FROM THE FIELD

Belinda's story: Mutasa

Married 28-year-old woman with 3 children. First child when she was 17. She did not want to report to the formal justice system because she would have to pay her husband's fine and if he was imprisoned then she would have to find food for her child on her own. She brought out the issue that most women stay in abusive relationships because of their children. They are told that the child belongs to the husband therefore they must stay with the husband if they want to keep the child. When it comes to sexual abuse Belinda said that if one refuses, the husband asks, 'Why did you come here,' Anobvaati ndizvo zvawakaurira pana pa' [this is why you came here] perpetuating the belief that women have the a duty to sleep with their husbands as part of marriage. She said that she was sexually abused but she didn't want to talk about, she also said other people do not want to talk about. Her worry about reporting was that a woman would lose her financial support. She worried that the fine would be extremely high and as part of the family she would contribute to the fine, therefore she would be worse off by reporting. She said she would prefer to go to the headman's court because she would only have to pay a small amount for his fine. SGBV is not something that is easy to talk about. Women who are economically dependent on their husbands cannot report these cases as they will lose their source of income.

Cathy's story: Mutasa

20-year-old woman with one child. First wife. Family and husband belong to the vapostori (apostolic churches). Her family are complacent in her abuse. If she tells her family about the abuse, they tell her 'unofanirwa kushingirira nhamo dzako' (you need to persevere). Her husband abuses a lot of young girls. One of the cases was

reported and the husband was sentenced to 2 months imprisonment, but as soon as he got out her family sent her back. She is afraid to report to the police because she thinks he will just beat her some more. Her church closes all doors to any form of justice, formal or informal. If she reported her case, she would be excommunicated from the church, yet because she was brought up in the church, she feels that she cannot leave the church. She said during the lockdown, cases have increased because the husband reacts abusively when she asks him for food, Vapostori do not allow its members to go to the clinic, so their sexual and reproductive health rights are trampled. A lot of the community get their understanding of SGBV from workshops' help by NGOs, yet the vapostori forbid its members from attending thereby keeping them in the dark regarding their rights. The only place they can report is to the church, yet the justice in the church is biased towards believing the men.

Survivor 1: Magunje

My former boyfriend was physically abusive. He even threatened to kill my mother. I put a stop to the relationship when he attempted to commit suicide at my own house one night in August 2019. I had to ask my neighbour to assist me, but he beat up my neighbour. I ended up going to Karoi to seek a protection order and my order was granted. I was so afraid of him or to even talk to anyone male in general, because he would beat me and the man in question. He even beat my male neighbours one time because he was a possessive and jealous man. In April 2020, my former boyfriend started going against the Protection order I received at court, the DV7. He started following me, attempting to speak to me, insulting me and harassing me via the phone. He even texts me all the time, threatening me. It was during the first 21 days lockdown. I went and reported this matter to the headman who is also a police officer, but he told me to see how lockdown proceeds.

ANNEXURE 4: LAWS AND POLICY DOCUMENTS CONSULTED

International and Regional Laws

- The 1995 Beijing Declaration and Platform for Action (Adopted at the 16th plenary meeting, on 15 September 1995)
- The Convention on the Elimination of all forms of Discrimination Against Women (1979)
- The CEDAW Committee General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19
- The Convention on the Rights of the Child (General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49)
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106)
- The International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976)
- The SADC Protocol on Gender and Development (revised 2016)
- The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (2003)

National Laws

- The Constitution of Zimbabwe (2013)
- The Domestic Violence Act [Chapter 5:16]
- The Public Health Act [Chapter 15:09]
- The Children's Act [Chapter 5:06]
- The Family Planning Council Act (Chapter 15:11)
- The Termination of Pregnancy Act [Chapter 15:10]
- The Criminal Procedure and Evidence Act [Chapter 9:07]
- The Criminal Codification and Reform Act [Chapter 9:23]
- The Mental Health Act [Chapter 15:12]
- The National Aids Council Act [Chapter 15:14]
- The Prevention of Discrimination Act [Chapter 8:16]
- The Sexual Offences Act [Chapter 9:21]

ANNEXURE 5: LAWS GOVERNING SGBV, HP AND SRHR

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
Section 31 requires the state to take all practical measures legal representation for people who need, but cannot afford it.	If the state fulfils its duty to take measures, legal representation enables survivors of SGBV and HPs to get a fair hearing in civil and criminal matters against perpetrators or accomplices in sexual or violence related crimes. However, section 31 is not strictly binding since it forms part of the national objectives, not the fundamental rights stated in the Declaration of Rights. Despite being progressive, the Constitution starts with a narrow approach to legal aid as a national objective that informs policy formulation and legal reforms. It is silent on the provision of legal aid as a right in areas affecting people's access to civil justice. Section 69(4) provides that for one to assert these rights, it is at one's own expenses. This provision does not take into account the historical economic injustices perpetrated on women, nor the intersecting forms of discrimination that that survivors of SGBV, HP and SRHR face. This has negative impact on survivors of SGBV, HP and SRHR, who are usually vulnerable, marginalised and indigent, and cannot afford legal practitioners of their own choice.
Section 34 and 327 – Ratification and domestication of international treaties. Section 46(1)(c) requires courts to take international law into account when interpreting fundamental rights, including those related to SGBV, HPs and SRHR.	If implemented, these provisions can lead to the domestication of international human rights standards that address SGBV, HP and SRHR. This provides an entry point to amend or enact new laws relating to SGBV, HP and SRHR such as CEDAW and the Maputo Protocol. Sections 34, 46(1)(c) and 327 can be the basis for harmonising domestic laws with international and regional human rights standards.
Section 48: Provides that everyone has the right to life.	his is one of the non-derogable rights in the Constitution. It imposes on the state the duty to respect, protect and promote human life. It is the focal point of all rights as one has to be alive in order to assert and enjoy fundamental rights. The state has a duty to protect everyone, especially women, from SGBV and HPs when they threaten human life and SRHR.
Section 50: Rights of arrested and detained persons	While the rights of arrested, detained and accused persons do not directly impact access to justice by survivors of SGBV and HPs, they ensure the quick resolution of legal disputes emanating from SGBV, HPs and violations of SRHR.
Section 51: Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected	This right ensures that everyone is treated with equal worth and concern. The right binds other people and state organs to behave in a way that pays homage to it. Human dignity can be a basis for discouraging and punishing what looks like minor violations of human rights in the SGBV, HP and SRHR sphere. This promotes access to justice for survivors of such practices
Section 52: Every person has the right to bodily and psychological integrity, which includes the right— (a) to freedom from all forms of violence from public or private sources; (b) to make decisions concerning reproduction.	Section 52 outlaws breaches of bodily and psychological integrity caused by SGBV, HPs and violations of SRHRs. This is very clear from the prohibition of violence from private or public sources as well as the explicit guarantee of reproductive freedom. The sub-rights to freedom from violence and to make decisions concerning reproduction assist the state and society to protect survivors from SGBV and HPs that degrade and dehumanise people.

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
Section 53: Freedom from torture or cruel, inhuman or degrading treatment or punishment.	Most forms of SGBV, HPs and violations of SRHR also constitute cruel, inhuman or degrading treatment. Section 53 can play an important role in providing a normative basis for extending legal protection to survivors of SGBV and HPs. More importantly, confirmed violations of this right cannot be justified because it is a non-derogable right.
Section 56: The right to equality and non-discrimination.	Provides that everyone has the right to equal treatment and benefit of the law. It also requires the state to take reasonable legislative and other measures to protect or advance people or classes of people who have been disadvantaged by unfair discrimination. This includes people, especially women, who have experienced violations of their rights in the SGBV, HP and SRHR spheres. In other words, the state has the legal duty to adopt legislation to protect women and girls from SGBV, HPs and violations of SRHRs
Section 57: The right to privacy.	The right to privacy includes the right not to have the privacy of one's communications infringed and the right not to have one's health condition disclosed. These rights guarantee the confidentiality of health-related information, including details relating to SGBV and SRHR.
Section 69(2) provides that every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law. Section 69(3) confers on every person the right of access to the courts, or to some other tribunal or forum established by law for the resolution of any dispute.	The right of access to court and to a fair hearing enables survivors of SGBV and HPs to approach formal courts seeking relief for violations of rights perpetrated by perpetrators thereof; and the right to a speedy hearing, within a reasonable time enhances expedited access to justice for survivors of SGBV and HPs. The right to a fair hearing entails that survivors of SGBV, HP and SRHR have access to justice and legal representation. The Constitution does not define what constitutes a need for legal representation or the standard of financial capacity. In the absence of constitutional criteria, it is the responsibility of the Courts to interpret the obligation on the State. There is no definition of what constitutes a fair hearing. Section 69(1) provides for fair hearing in criminal cases and section 69(2) provides for access to a fair, speedy and public hearing in the determination of civil disputes. In criminal trials, survivors of SGBV and HPs and violations of SRHR find it difficult to prove their claims and to withstand the pressure from the accused's lawyer during cross-examination. However, the main challenge is that the provisions relating to vulnerable witnesses are rarely properly applied. For instance, the provisions of the Criminal Procedure and Evidence Act -s319 A-H, are far more flexible and useful set of provisions than is generally understood.
Section 76: Right to health care, including reproductive health care. It also provides for the right to emergency medical treatment at any health care institution.	This right allows women and girls to require the state to respect, protect and promote their reproductive rights by adopting relevant implementing legislation and policies. It also allows survivors of SGBV and HPs to get emergency medical treatment, which is an important element of access to justice in the broad sense.
Section 78(1) provides that every person who has attained the age of eighteen years has the right to found a family.	This is important for purposes of protecting girls and boys from sexual exploitation and the harms that come with child marriage. By placing the age of marriage at 18 years for boys and girls, the Constitution outlawed provisions of the Marriage Act which made an exception for girls aged 16 years or older to get married.

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
<p>Section 80(1) provides that every woman has full and equal dignity of the person with men. Section 80(3) provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.</p>	<p>These provisions protect girls and women from harmful cultural practices that violate women's rights in the SRHR sphere and promote SGBV. This includes practices that permit child marriage, honour killings and many other practices that violate women's rights. Laws, customs, practices or any conduct of administrative bodies or individuals that condones SGBV, HPs and violations of SRHR is inconsistent with women's rights to freedom from violence, dignity and equal protection of the law. They should be declared null and void. In addition, SGBV, HPs and violations of SRHR violate women's and girls' equal worth and should be declare null and void.</p>
<p>Section 81: The rights of the child.</p>	<p>Read with section 78(1) of the Constitution, section 81 puts the age of majority and marriage at 18 years and extends special protection to children. It also imposes a duty on the courts to act as upper guardians of all minors and outlaws all laws, practices and conduct that is inconsistent with the rights of the child. These guarantees are vital for purposes of protecting children, especially girls, from sexual exploitation, violence, maltreatment and neglect</p>
<p>Section 82 provides for older persons' rights to receive reasonable care and assistance from their families and the State; and to receive health care and medical assistance from the State.</p>	<p>The right to receive reasonable care and assistance from the state becomes very compelling when older persons are subjected to SGBV or HPs or suffer violations of SRHRs. This is because these occurrences exacerbate their vulnerability and heighten the need for further protection. Similarly, the right to health care and medical assistance from the state, especially in emergency situations, fosters access to justice for older persons and other classes of people in society.</p>
<p>Section 83 imposes an obligation on the State to take appropriate measures to ensure that persons with disabilities realise their full potential, including measures.</p>	<p>To achieve full potential, PWDs need assistance in recovering from the physical or psychological harm caused by SGBV and HPs they experience. This is evident from the state's obligation to take measures that both protect PWDs from all forms of exploitation and abuse; and that give them access to medical, psychological and functional treatment.</p>
<p>Section 85: Enforcement of fundamental human rights and freedoms.</p>	<p>Section 85 allows a broad range of persons to initiate proceedings on behalf of adult or child survivors of SGBV and HPs who cannot act on their own behalf due to incapacity, fear or any other reason. Given that violations of many rights in the SGBV, HP and SRHR spectrum are also described as offences under the Domestic Violence Act, the Criminal Law Code and other pieces of legislation, the liberalisation of rules governing standing enhances access to justice by survivors (of SGBV and HPs), who often lack the knowledge and resources to vindicate rights in the formal courts. Where the SGBV or HPs are perpetrated by the parent, legal guardian or relative, the survivor or another can easily bring the matter to court.</p>

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
Domestic Violence Act	
<ul style="list-style-type: none"> • Section 3 provides for meaning of domestic violence and its scope to include 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 the following— (a) physical abuse; (b) sexual abuse; (c) emotional, verbal and psychological abuse; (...) abuse derived from the following cultural or customary rites or practices that discriminate against or degrade women— <ul style="list-style-type: none"> (i) forced virginity testing; or (ii) female genital mutilation; or (iii) pledging of women or girls for purposes of appeasing spirits; or (iv) forced marriage; or (v) child marriage; or (vi) forced wife inheritance; or (vii) sexual intercourse between fathers-in-law and newly married daughters-in-law; (viii) abuse perpetrated on the complainant by virtue of complainant’s age, or complainant’s physical or mental incapacity; (ix) abuse perpetrated on the complainant by virtue of complainant’s physical, mental or sensory disability, including a visual, hearing or speech functional disability; • abuse perpetrated on the complainant by virtue of complainant’s mental illness, arrested or incomplete development of the mind, psychopathic disorder or any other disorder or disability of the mind. (...) 	<ul style="list-style-type: none"> • The Act gives a very detailed definition of domestic violence and acknowledges the non-physical forms of violence as domestic violence. • It makes a novel provision for the treatment of domestic violence offences as criminal offences. Where such treatment is merited, it is an interesting approach in total as it hovers between civil and criminal remedies. • It also provides for various forms of relief for survivors of domestic violence including protection from potential violence. • It provides for third parties to report domestic violence, where the person experiencing domestic violence is unable to report it. • It provides for the interpretation of a complainant. This means one has to prove that he or she has a relationship with a defendant in a particular case. This excludes traditional leaders and healers who may recommend sex with a child as a belief on HIV cleansing. • Assault charges might be preferred as opposed to domestic violence because one has to prove the existence of a domestic relationship before applying the Act. • The Act provides for a protection order that, among others, makes provision for payment of emergency monetary relief in respect of the complainant’s needs and those of any child or dependent, including household necessities, medical expenses, school fees and mortgage bond or rent repayments • It also makes provision for temporary custody and regulation of access to a child or dependent. • The Domestic Violence Act governs harmful practices and may other criminal acts that constitute SGBV. • It stipulates that any person who is given interim custody is also entitled to temporary maintenance. • The designated courts for domestic violence will act as ‘one stop’ courts. This means that a person who applies for redress for harm caused by forms of SGBV and HPs stated in the Act does not have to go to many courts for redress but will have to file a single all-encompassing application. • The Act does not provide for provision of one-stop centres as well as integrated GBV services.

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
The Public Health Act	
<ul style="list-style-type: none"> • The preamble to Public Health Act of Zimbabwe provides for rights of all parties in the public health system, but in essence it is dealing with rights of healthcare providers. The Act was enacted to give effect to • Section 29: Health services; • Section 44: Duty to respect human rights and freedoms; • Section 76: Right to healthcare; • Section 81: Rights of children; and • Section 82: Rights of the elderly. • The Act defines ‘informed consent’ as ‘consent for the provision of a specified health service given by a person with legal capacity to do so and who has been informed’. • No person may disclose any user’s medical information unless the user consents to that disclosure in writing, or a court order or any law requires that disclosure. • Act explicitly guarantees the autonomy of patients by providing that no health service may be provided to the user without the latter’s consent. 	<ul style="list-style-type: none"> • The legal provisions have not aligned the Act with Constitution of Zimbabwe. Though the Act respects human rights and adherence to both rights and responsibilities; promotion of justice, equity and gender equity; and protection of best interests of vulnerable groups of minors. • The Act pays lip-service to these human rights principles. This negatively affect rights of survivors of SGBV, HP and SRHR in that no legal provisions have translated constitutional rights into reality. • It does not provide for the right to healthcare for children, elderly person who are subject to several forms of SGBV. They are also subjected to harmful practices that result in them requiring health-related services such access to basic healthcare services including reproductive healthcare services. • Although section 33 of the Act provides for emergency treatment, it does not specify healthcare services that includes access to post-exposure prophylaxis (PEP), emergency contraceptives and safe abortions for survivors of SGBV. Nonetheless, PEP and other forms of treatment can be subsumed into the right to health care services under the Constitution of Zimbabwe.

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
The Children's Act	
<ul style="list-style-type: none"> Part II: Establishment of children's court. Part III: Prevention of Neglect, Ill-Treatment and Exploitation of Children and Young Persons. 	<ul style="list-style-type: none"> The Children's Act criminalises a wide array of actions that constitute neglect, ill-treatment and exploitation of children. This protects children, particularly girls, from sexual violations that are targeted at them. This is an important extension of the constitutional provisions that protect children from maltreatment, abuse, neglect and sexual exploitation. Thus, the Children's Act criminalises HPs and acts that constitute SGBV, thereby adding another layer of protection to children's rights.
The Family Planning Council Act (Chapter 15:11)	
<ul style="list-style-type: none"> It provides for child spacing and fertility services in Zimbabwe and the promotion and implementation of primary health care and other community-based development programmes relating to family health and for the integration and co-ordination of other relevant activities. 	<ul style="list-style-type: none"> The Act neither provides for SRHR nor has specific provisions for access to contraception or provision of family planning or sexual health awareness other than issues implied in relation to functions of Family Planning Council provided for under Section 22 of the Act.
The Termination of Pregnancy Act	
<ul style="list-style-type: none"> Section 4 provides for termination of pregnancy in circumstances where the pregnancy is a result of rape, or where the unborn child's health is in danger or where pregnancy is a result of an incestuous relationship. 	<ul style="list-style-type: none"> This creates a right on the part of the woman to demand termination of pregnancy only if the applicable conditions are met. If a person is not happy with the refusal by a superintendent of a health institution to give permission for termination of pregnancy, they may appeal to the Secretary of the Ministry of Health and Child Care.¹ If the Secretary refuses, one can apply to court. Magistrates may either delay writing or not write the court order to authorise the termination of pregnancies that have resulted from SGBV and HP within the stipulated 12 weeks allowed for termination. There are many bureaucratic barriers and the procedure for procuring the termination of pregnancy is very long even where the pregnancy is a result of rape. The Act does not permit the termination of pregnancy on demand, even in the first trimester. Finally, there are instances when survivors of rape have been denied access to emergency contraception, thereby causing pregnancy and the ultimate birth of an unwanted child. This happened in <i>Mapingure v Minister of Health and Others</i>.

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
The Criminal Procedure and Evidence Act	
<ul style="list-style-type: none"> • The Act defines a sexual offence as any offence such as rape; aggravated indecent assault; sexual intercourse or performing an indecent act with a young person; sodomy; sexual intercourse within a prohibited degree of relationship; deliberate infection of another with a sexually transmitted disease; deliberate transmission of HIV; and coercing or inducing a person for the purpose of engaging in sexual conduct.² • The Act deals with securing witnesses to attend court;³ duty to remain as witnesses;⁴ absconding of witnesses;⁵ arrest and punishment for failure to attend;⁶ and payment of persons attending the court.⁷ 	<ul style="list-style-type: none"> • While the Act does not define SGBV, HPs and SRHR, these terms are defined and dealt with in other pieces of legislation such as the DVA. However, cases are taken to court as rape, aggravated indecent assault; sex with a minor; and sexual intercourse within a prohibited degree of relationship or incest. • The Act does not have an offence of SGBV or HP and several offences listed under the Domestic Violence Act. • Due to the lengthy and cumbersome court processes, witnesses abandon the processes

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
The Criminal Codification and Reform Act (Chapter 9:23)	
<ul style="list-style-type: none"> • The Act deals with crimes against the person that include murder, homicide and attempted murder. • Section 60 deals with unlawful termination of pregnancies. • The Act deals with sexual crimes that include rape, aggravated indecent assault and indecent assault. • It also deals with sexual intercourse or performing indecent acts with young persons; sexual crimes committed against young or mentally incompetent persons outside Zimbabwe; sexual intercourse within a prohibited degree of relationship; and complicity in sexual crimes. • Section 79 deals with deliberate transmission of HIV. • Section 80 deals sentence for certain crimes where accused is infected with HIV. 	<ul style="list-style-type: none"> • The constitutionality of Section 79 was lodged in the case of S v Mpofu & Anor CC-5-16 which informs the proposed repeal of this legal provision. • Some arguments have been made to the effect that criminalisation of wilful transmission dissuades people from getting HIV tests. • The cases of teenagers who are impregnated are treated as ‘sex with minors.’

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
Mental Health Act	
<ul style="list-style-type: none"> • Section 106: Any person who has sexual intercourse with a patient shall be guilty of an offence and liable to imprisonment for a period not exceeding five years or to a fine not exceeding level seven or both. • Section 106: The accused should either be employed at an institution where a patient is detained (or receiving treatment) in terms of the Act or should have the custody, care or charge of any patient in terms of this Act. • A patient shall be deemed to be detained in an institution even though s/he may have been absent with or without leave. 	<ul style="list-style-type: none"> • Prevents the HIV/AIDS status of patients from being unnecessarily disclosed. • Does not protect the informational privacy of patients infected with other STIs. • The Act is a constitutive statute that merely establishes institutions without protecting the substantive rights of people living with HIV and rights of key populations such as sex workers. • It offers no guidelines on SGBV and violations of SRHR in the context of HIV/AIDS.
National Aids Council Act	
<ul style="list-style-type: none"> • Section 4: The Act creates a National AIDS Council to combat HIV and AIDS; to develop and apply strategies to control the pandemic; to enhance the capacity of various sectors of the community to respond to the epidemic and to co-ordinate their responses. • Section 34 makes it a criminal offence for any person to disclose any information acquired by him in the performance of any function under this Act, in relation to the state of health or personal affairs of any other person. 	<ul style="list-style-type: none"> • Prevents the HIV/AIDS status of patients from being unnecessarily disclosed. • Does not protect the informational privacy of patients infected with other STIs. • The Act is a constitutive statute that merely establishes institutions without protecting the substantive rights of people living with HIV and rights of key populations such as sex workers. • It offers no guidelines on SGBV and violations of SRHR in the context of HIV/AIDS.

Key Provisions	Comments on Implications for SGBV, HP and SRHR
Constitution of Zimbabwe	
Prevention of Discrimination Act	
<ul style="list-style-type: none"> The Act prohibits discrimination on the ground of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender and provides a remedy for persons injured by such discrimination. It prohibits the promotion of such discrimination 	<p>The Prevention of Discrimination Act does not extend to persons living with HIV and TB, vulnerable populations such as people with disabilities and key population</p>

Notes

1. Section 6.
2. Sections 278 and 302A of the Criminal Procedure and Evidence Act.
3. Section 229 of the Criminal Procedure and Evidence Act.
4. Section 231 of the Criminal Procedure and Evidence Act
5. Section 235 of the Criminal Procedure and Evidence Act
6. Section 237 of the Criminal Procedure and Evidence Act
7. Section 239 of the Criminal Procedure and Evidence Act

ANNEXURE 6: EXAMPLES OF RATIFIED INTERNATIONAL CONVECTIONS

Human Rights Instrument	Date of accession (A) or Ratification
ICCPR (1966)	13 May 1991 (A)
ICESCR (1966)	13 May 1991 (A)
CEDAW (1979)	13 May 1991 (A)
CRC (1989)	11 Sep 1990 (R)
CRC OP on the sale of children, child prostitution and child pornography (2000)	14 Feb 2012 (A)
CRC-OP on the involvement of children in armed conflict (2000)	22 May 2013 (R)
CRPD (2006)	23 Sep 2013 (A)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	23 Sep 2013 (A)
ACHPR	May 30, 1986 (A)
ACRWC	19/01/1995
Maputo Protocol	1986 (R)
Consolidated SADC Treaty	1992 (R)
Revised Protocol on Gender and Development	2016 (R)

Source: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx, <https://www.acerwc.africa/ratifications-table/> and Literature

