



Spotlight Initiative
To eliminate violence against women and girls

ISSUES PAPER

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





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

Prepared with the assistance of Dr. James Tsabora

This publication may be reproduced for non-commercial use in any form, provided due credit is given to the publishers, and the work is presented without any distortion.

Design & Print
Colourbay Media (PVT) Ltd
+263 242 305 826



01

INTRODUCTION.

In August 2020, WILSA compiled a Research Report on the efficacy of Zimbabwe's informal or traditional justice system in addressing Sexual and Gender Based Violence in three districts of Hurungwe, Mutasa and Umzingwane. A key theme underpinning the research was how the traditional or informal justice system for SGBV, HPS and SHRR is mediated and informed by cultural practices, beliefs and societal norms. In specific terms, the overarching objective of the assessment was to use the findings from the research to inform and underpin the formulation, application and implementation of sexual and gender policies, legislation and national measures with a broader goal of eliminating discriminatory and violent societal practices especially against girls and women.

According to WILSA, the research has to be understood in the context of significant constitutional, legal and policy frameworks aimed at enhancing protection of human rights such as women's rights, children's rights, and securing the interests of vulnerable social groups including girls and women. Importantly, the research sought to uncover how and in what ways constitutional, legislative and policy changes meant to prevent and eliminate forms of sexual and gender based violence are reflected within specific cultural contexts. Another important perspective of the research explored how cultural beliefs, practices, values and norms obtaining in areas under study correspond to legal and policy positions and also how and in what ways they enable or constrain certain modes of behaviour and practice. The specific research questions developed for these objectives are as follows;

- How and in what ways are sexual and gender-based violence cases handled or adjudicated within the informal justice system as well as in traditional courts?
- How and in what ways are informal/traditional justice systems (in)accessible for particular categories of individuals?
- What are the underlying cultural beliefs, values, norms and practices that shape and inform the handling and resolution of sexual and gender-based violence cases?
- How and in what ways do cultural beliefs, practices, norms and values mediate the resolution of sexual and gender-based violence cases?

- How and in what ways do policy making institutions, NGOs, formal justice institutions interact with the traditional and informal justice system in order to address sexual and gender-based violence in specific localities?

Guided by these research questions, the research report made several key findings relating to the efficacy of the traditional justice system in addressing SGBV, SHRR & HPs in the selected areas.

This Issues Paper sets out to identify the salient issues that arise from the Research Report for the purpose of informing advocacy on SGBV, HPs and SHRR under the spotlight project. Based on the key findings and recommendations of the Research Report, the following Major Issues are identified.

Introduction of contextualised educational and sensitisation programmes

Civil society and other non-state actors must focus advocacy efforts towards critical educational, sensitisation, information-sharing and specialised capacity building interventions aimed at changing perceptions, attitudes, behaviour and moral value system of the traditional justice system. This lobby effort is informed by the finding made in the Research report to the effect that 'participants identified different forms and manifestations of sexual and gender-based violence' but that 'there are different meanings and interpretations as to what constitutes SGBV and harmful practices' and also that there are 'contradictory and ambivalent interpretations' among different members of society.

In order to address this, advocacy efforts must design educational approaches that target the whole infrastructure of the informal justice system. Key structures to be targeted include those systems concerned with complaints handling, investigations, prosecutions, adjudication and sentencing SGBV cases. This is key in the fight against SGBV through traditional/informal justice systems. In the same vein, non-state stakeholders and civil society must assist in the packaging and designing of the educational curricular to be developed for this purpose. This approach can be beneficial to both perpetrators and victims of SGBV in society.

In addition, interventions of an educational nature such as the proposed one can adequately address the problem of different levels of understanding of SGBV, HPs and SHRR illustrated in the Report.

02

LOBBY FOR MONITORING, SUPERVISION AND REGULAR ASSESSMENTS OF THE INFORMAL JUSTICE SYSTEM IN SGBV, HPS AND SHRR CASES

Serious lobbying can be conducted around the need for comprehensive monitoring, supervision, inspection and regular assessments of the performance of informal justice systems in relation to cases of SGBV and HPs. In terms of this approach, state institutions can be engaged to implement mechanisms meant to ensure qualitative outcomes from the justice processes through clear monitoring frameworks. Allied to this, civil society need to develop model monitoring and supervision frameworks customised to assess performance of traditional justice system in dealing with SGBV, HPs cases. The monitoring tools can target the procedural and administrative structure of the informal justice system.

The basis for this advocacy is the clearly patriarchal nature of the informal justice system whose structures and procedures impinge on the rights of women, girls, children and persons with disabilities. Tools for monitoring and assessments can be developed by civil society for this purpose and such tools must be informed by the rights and freedoms in the Declaration of Rights, provisions on Chapter 15 of the Constitution on traditional leaders and legislative provisions relating to fair trials.

03

ENGAGEMENTS WITH GOVERNMENT, PARLIAMENT AND CONSTITUTIONAL BODIES

Civil societies and other stakeholders need to generate robust debate in Parliament on the legal regulatory framework for the traditional justice system. Such advocacy may be centred on engagement with parliamentary structures such as Parliamentary Portfolio Committees on Justice and on Human Rights and equivalent Senate Thematic Committees. Legislators can be engaged to move motions for debate on the efficacy of the informal justice sector in dealing with SGBV, HPs and cases involving SHRR. In addition, similar engagements must also target the Council of Chiefs, which is the superior body superintending the traditional leadership system in Zimbabwe. Finally, engagements must be made between civil society and police and prosecuting authorities, the Judicial Service Commission and relevant departments in the Ministry of Justice, and Local Government. The Gender Commission, the Zimbabwe Human Rights Commission and the Judicial Service Commission must also be approached.

It is submitted that a lobby that crystallises around these actors with a clear constitutional mandate can adequately expose the flaws in the informal justice sector in relation to the problem of SGBV, HPS and SHRR, and seek to address them.

04

ADVOCACY CENTRED ON PRINCIPLES TO INFORM TRADITIONAL LEADERS LEGISLATION

Lobbying need to be directed at development, formulation and incorporation of comprehensive, gender-sensitive substantive principles in legislation that regulates the informal justice system. This submission emerges from the key finding made in the Research Report that the informal justice system is fundamentally flawed from a gender perspective. Specifically, a finding that was made in this vein is that:

'a significant barrier to the functioning of informal mechanisms and traditional courts was the system that shapes and informs these mechanisms and Zimbabwean society in general-patriarchy. Participants were of the view that the resolution and adjudication of cases in these platforms tends to be mediated by patriarchal views and attitudes and ultimately these negatively impact women and girls seeking justice through these platforms.'

It is submitted that to address this fundamental flaw, clear legal benchmarks and standards must be inserted in both the Traditional Leaders Act and the Customary Law and Local Courts Act to remove the practises that negatively impact on women and girls in the SGBV, HPs and SHRR cases. The legal standards must inform the administrative and procedural framework as well as the system of remedies to be integrated into the Act. Currently, the two pieces of legislation are short of any meaningful standards and have not proved useful in the protection of women victims in SGBV, HPs and SHRR cases. Further, the two Acts are outdated, and need a comprehensive reform. CSOs must take advantage of the findings of the Research Report, the national legislative alignment process and international trends to lobby for the review and reform of these Acts to incorporate contemporary approaches that adequately address SGBV, HPs and SHRR cases in the traditional justice system.

Among other areas of concern, the changes to the law must centre on the complaints handling procedures; the protection of complainants and witnesses; nature of evidence that can be adduced; explanations that cannot be accepted as defences; the kind of remedies that may be given and the role of family members in enforcement of decisions.

05

ADDRESS SILENCE AND FAILURE TO REPORT SGBV AND HPS CASES THROUGH RIGHTS EDUCATION

The Research Report made a finding on the high levels of silence and low levels of reporting of cases of SGBV and HPs to relevant authorities, especially in cases where the victims are women. In order to address this reality, it is submitted that CSOs involved in rights education in educational institutions must specifically mainstream the issues of SGBV, HPs and SHRR in the rights education curricular. Such rights education need to feature rights awareness, rights enforcement; rights protection institutions; the role of law enforcement agencies; remedies for rights violations and aspects of the criminal justice system. Most importantly, such rights education must be mainstreamed in educational curricula of primary and secondary education level, at higher and tertiary education level and in all the general professional training curricular.

The objective for this approach is to train young women and girls and other possible victims in their early years so that they can understand SGBV, HPs and SHRR and remedies available to them. To target women in marriage or other mature relationships may not bear the desired results, considering the fact that pressure brought about by cultural indoctrination would have accumulated for years.

06

INSTITUTIONALISE RIGHTS OF PWDS IN THE INFORMAL JUSTICE SYSTEM

Current advocacy on the human rights and protection of persons living with disabilities must be adapted so that the same messages can be institutionalised within the informal justice system. This advocacy angle must be pursued upon further consultations with PWDs that access the informal justice system. A move to institutionalise rights and interests of PWDs is informed by the finding that this social group is also a key user and stakeholder of the informal justice system.

The justification for this advocacy angle is the finding made in the Research Report, that *'persons with disabilities and young girls were confronted with immense difficulties in accessing justice but at one and the same time they are often victims of GBV and SGBV. Study material shows that in most instances they are victims of sexual violence and other forms of harm because they cannot report the issues and in cases where the issues come to light their cases may not be presented in a competent manner due to discriminatory societal practices and attitudes.'*

07

INSTITUTIONALISE RIGHTS OF CHILDREN AND WOMEN IN THE INFORMAL JUSTICE SYSTEM

The Research Report made critical findings concerning the patriarchal nature of the informal justice system, and how this directly impinge on rights of women and children affected by SGBV, HPs and SHRR. This means that despite the informal justice system being accessible, affordable and flexible, it fails to adequately protect key social groups in great need of its protective regime.

Current efforts advocating for the protection and promotion of women and children's rights must be applied in the context of the informal justice system. this entails the modification of existing interventions aimed at promoting and protecting children and women's rights in the whole institution of the state and society in general. These social groups are most vulnerable to SGBV, HPs and SHRR and inadequate institutional reforms of the informal justice system will not address this vulnerability and exposure.

08

ADVOCATE FOR GUIDELINES FOR THE INFORMAL JUSTICE SECTOR

CSOs may need to coalesce around the issue of judicial guidelines to guide the procedures and administration of justice in the informal justice sector. The Guidelines may need to extend to basic fundamental principles of justice and also establish a basic framework on how different social groups may be treated. Importantly, the guidelines must guide how cases on SGBV, HPs and SHRR may be handled, treated and prosecuted.

Apart from these issues, the Guidelines must unpack and simplify the relevant sections in the Declaration of Rights, Chapter 15 and Chapter 2 of the Constitution. Implementation of such guidelines has to be monitored under the monitoring and supervision and inspection framework proposed in this Paper.

This call for this advocacy approach is based on the findings that the informal justice system is rooted in culture and tradition, and the negative practises and actions from the traditional cultural system may not be easy to extricate from the informal justice system without these kind of educative approaches to human rights implementation.

CONTACT DETAILS

-  16 Lawson Avenue Milton Park,
Harare Zimbabwe
-  +263 242 253001/2/3 or 2928337
-  +263 775 708 476
Tollfree Number 08080479
-  admin@wlsazim.co.zw
-  www.wlsazim.co.zw
-  @wlsazim
-  Women and Law in Southern Africa -
Zimbabwe